

Peasant Community of Santa Bárbara v. Peru

ABSTRACT¹

This case is about the disappearance and mass murder of fifteen farmers and their families in an Andean community by units of the Peruvian Army. Despite partial recognition of responsibility, the Court found the State in violation of the American Convention and of the Inter-American Convention on Forced Disappearance of Persons.

I. FACTS

A. Chronology of Events

Beginning 1981: The government places most of the country under a state of emergency.² This suspends the rights to privacy, free movement and assembly and freedom from arbitrary arrest.³

June 1991: Because of the state of emergency, the city of Huancavelica establishes a curfew from 7:00 p.m. until 6:00 a.m.⁴ With the excuse of maintaining order, military, and patrol members enter villagers' homes, steal belongings and commit murder and rape.⁵

July 2, 1991: Two military patrols, "Angel," commanded by Lieutenant Abel Gallo Coca, and "Escorpio," commanded by Infantry Lieutenant Javier Bendezú Vargas, deploy from the Lircay and Santa Teresita

1. Tamara Menashy, Author; Shira Diamant, Editor; Kimberly Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 299, ¶ 90 (Sept. 1, 2015); Bárbara Crossette, *The World; In Peru's Shining Path, U.S. Sees Road to Ruin*, N.Y. TIMES, 1992, <<https://www.nytimes.com/1992/03/22/weekinreview/the-world-in-peru-s-shining-path-us-sees-road-to-ruin.html>>.

3. *Id.*

4. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, Report No. 77/11, Inter-Am. Comm'n H.R., Case No. 10.932, ¶ 106 (Jul. 21, 2011).

5. *Id.*

military bases.⁶ The patrols implement “Operation Apolonia” in the Rodeo Pampa area, where the Community of Santa Bárbara is located.⁷

July 4, 1991: The Escorpio patrol arrives in Santa Bárbara.⁸ The soldiers raid the homes of Hilario Quispe and Hilario Morán, arrest fourteen people, and set both homes on fire.⁹

Mr. Alejandro Huamaní Robles travels from his ranch in Santa Bárbara with his twenty-two year old son, Mr. Elihoref Huamaní Vergara, and his grandson.¹⁰ The Escorpio patrol intercepts them and arrests Mr. Huamaní Vergara.¹¹

The Escorpio patrol forces the fifteen bound detainees to walk for several hours without food or water.¹² They reach an abandoned mine known as “Mysterious” or “Vallarón” (“Mysterious”).¹³ The soldiers force the prisoners through the mine’s tunnel.¹⁴ They riddle the men, women, and children with bullets fired from machine guns.¹⁵ The soldiers then use dynamite in the mine to tear the bodies apart.¹⁶

July 6 & 7, 1991: Mr. Zósimo Hilario Quispe, his two brothers, Mr. Marcelo and Mr. Gregorio Hilario Quispe, and their brother-in-law, Mr. Zenón Cirilo Osnayo Tunque, return home from out-of-town and learn of their relatives disappearances.¹⁷

July 8, 1991: While searching for their relatives, Mr. Osnayo Tunque and Mr. Marcelo and Mr. Gregorio Hilario Quispe find human remains at the

6. *Id.* ¶ 107.

7. *Id.*

8. *Id.* ¶ 109.

9. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 90. The ten individuals arrested from the Hilario Quispe household are: Francisco Hilario Torres, Dionicia Quispe Mallqui, Antonia Hilario Quispe, Magdalena Hilario Quispe, Mercedes Carhuapoma de la Cruz, and the minors; Yessenia Osnayo Hilario (age 6), Miriam Osnayo Hilario (age 3), Edith Osnayo Hilario (age 8 months), Alex Jorge Hilario (age 6), and Wilmer Hilario Carhuapoma (age 3). The four individuals arrested from the Hilario Morán household are: Ramón Hilario Morán, Dionica Guillén Riveros, and the minors Héctor Hilario Guillén (age 6) and Raúl Hilario Guillén (age 18 months). Peasant Community of Santa Bárbara v. Peru, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 10.932, ¶ 71 (Dec. 10, 2013).

10. Peasant Community of Santa Bárbara v. Peru, Petition to the Court, ¶ 74.

11. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 91.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. Peasant Community of Santa Bárbara v. Peru, Petition to the Court, ¶¶ 80, 81.

entrance of Mysterious.¹⁸ They identify some of their relatives' corpses and belongings.¹⁹

Mr. Zósimo Hilario Quispe files a complaint with the Office of the Huancavelica Special Prosecutor for Crime Prevention ("Special Prosecutor").²⁰ Additionally, President Nicolás Hilario Morán of Santa Bárbara files a complaint with the Special Prosecutor alleging the disappearance of fourteen people in the community by military personnel.²¹

July 9, 1991: Mr. Viviano Hilario Mancha files a complaint with the Huancavelica Special Prosecutor stating that the Army abducted his son, his wife, and their two minor children.²²

July 10, 1991: The Special Prosecutor sends a letter notifying the Military and Political Chief of Ayacucho of Mr. Zósimo Hilario Quispe's complaint.²³

July 11, 1991: The Army responds to the Special Prosecutor's letter and denies any role in the disappearances.²⁴

Mr. Hilario Mancha finds the half-buried body of his grandson, Hectór, among other remains he could not identify.²⁵

July 12, 1991: Mr. Hilario Mancha reports his findings to the Huancavelica Provincial Prosecutor ("Provincial Prosecutor") and the Huancavelica Examining Magistrate's Court.²⁶ He also files a complaint for his son, Ramón Hilario Morán's homicide, as well as the other unidentified individuals in the mine.²⁷ The Santa Bárbara Community Board notifies the Provincial Prosecutor that the abducted community

18. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 93.

19. *Id.*

20. *Peasant Community of Santa Bárbara v. Peru*, Admissibility Report and Report on Merits, ¶ 112.

21. *Id.* ¶ 113.

22. *Id.* ¶ 114.

23. *Id.* ¶ 115.

24. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 95.

25. *Peasant Community of Santa Bárbara v. Peru*, Admissibility Report and Report on Merits, ¶ 116.

26. *Id.*

27. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 98.

members found in an abandoned mine had been identified by their relatives.²⁸ The Board requests removal of the remains.²⁹

July 14, 1991: The delegation responsible for removing the bodies from the mine either loses its way or runs out of fuel before reaching the mine.³⁰ Additionally, military personnel detain the group of villagers planning to assist with the removal from 10:00 a.m. to 5:30 p.m.³¹ The villagers hear an explosion that they speculate was caused by soldiers using dynamite to blast the entrance in an attempt to erase any remaining evidence of the massacre.³²

July 15, 1991: Mr. Huamaní Robles files a complaint with the Special Prosecutor for the detention and whereabouts of his son.³³

July 16, 1991: President Hilario Morán and the Treasurer of the Santa Bárbara Community file a complaint with the Office of the Special Attorney of the Ombudsman and the Minister of Defense.³⁴

July 18, 1991: The Provincial Prosecutor along with the examining magistrate, journalists, police officers, and Santa Bárbara community members go to Mysterious, where they find fragmented remains.³⁵ The remains are sent to forensic experts to confirm if they are human remains.³⁶

Mr. Huamaní Robles petitions both the Lircay and Huancavelica Examining Magistrate's Court for writs of habeas corpus on behalf of his son.³⁷

July 19, 1991: The Legal Medicine and Morgue of Huancavelica Department issues a report identifying the remains collected as human.³⁸

28. *Id.* ¶¶ 98, 99.

29. *Id.* ¶ 98.

30. *Id.* ¶ 99; Peasant Community of Santa Bárbara v. Peru, Petition to the Court, ¶¶ 89, 90. (There are differing accounts as to what happened to the delegation).

31. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶ 117.

32. *Id.*

33. *Id.* ¶¶ 102, 103, 118.

34. *Id.* ¶ 119.

35. *Id.* ¶ 122.

36. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 101.

37. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶ 125.

38. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 103.

July 22, 1991: The explosives found at the mine are sent to the Departmental Headquarters of the Technical Police in Lima.³⁹ The Special Prosecutor resends its letter from July 10th to the Army Commander of Ayacucho, which the Military Chief dismisses.⁴⁰

The Huancavelica Court⁴¹ holds that the writs are inadmissible because they are not factually based allegations.⁴² The Lircay Court issues no ruling.⁴³

August 5, 1991: Mr. Huamaní Robles attempts to appeal the habeas corpus decision, but the State courts never resolve it.⁴⁴

August 26, 1991: A police report is issued stating that the discovered remains are not “fully confirmed as human, much less those of the disappeared persons.”⁴⁵

October 25, 1991: The Ministry of Defense determines that the Escorpio patrol committed violence against fourteen farmers “presumed to be subversive criminals.”⁴⁶ Because it appears to be a military-related incident, the complaint is submitted to the Permanent Court Martial of the Second Army Judicial District (“Court Martial”).⁴⁷

October 28, 1991: Major Juan Pablo Ramos Espinoza (“Military Judge”), Judge of the Sixth Ayacucho Permanent Military Tribunal (“Military Court”), takes the case from the Permanent Court Martial.⁴⁸ He issues an order to detain the accused and receive their preliminary statements.⁴⁹

November 29, 1991: Mr. Zósimo Hilario Quispe files a complaint with the Provincial Prosecutor against Lt. Bendezú Vargas, Non-Commissioned Officer; third class (3rd NCO) Dulio Chipana Tarqui; Non-Commissioned Officer, second class (2nd NCO) Fidel Gino Eusebio Huaytalla; Sergeant, first class (1st Sgt.) Oscar Carrera González;

39. *Id.* ¶ 101.

40. *Id.* ¶ 239.

41. *Id.* ¶ 127.

42. *Id.*

43. *Peasant Community of Santa Bárbara v. Peru*, Admissibility Report and Report on Merits, ¶ 124.

44. *Id.*

45. *Id.*

46. *Id.* ¶ 129.

47. *Id.*

48. *Id.* ¶ 137.

49. *Peasant Community of Santa Bárbara v. Peru*, Admissibility Report and Report on Merits, ¶ 137.

Sergeant, second class (2nd Sgt.) Carlos Pedro Chinchay, and; 2nd Sgt. Dennis Pacheco Zambrano (“Lt. Bendezú Vargas and his five subordinates”), accusing them of crimes against life, the fourteen victims.⁵⁰

December 1991: Death certificates dated July 4, 1991 for Mr. Francisco Hilario Torres and Ms. Dionicia Quispe Mallqui are recorded.⁵¹

February 5, 1992: As military jurisdiction may only hear offenses committed in the line of duty, Mr. Zósimo Hilario Quispe files a jurisdictional plea requesting the case be transferred from the Military Court to the Huancavelica Examining Magistrate.⁵²

February 7, 1992: The Provincial Prosecutor formally charges Lt. Bendezú Vargas and his five subordinates for crimes of genocide, larceny, abuse of authority, and obstruction of justice to the detriment of all fifteen victims.⁵³

February 20, 1992: In response to the start of the Huancavelica Criminal Court’s investigation against the same defendants, the Military Court challenges the Huancavelica Court in the Criminal Chamber of the Supreme Court of Justice (“Supreme Court”) based on the jurisdictional conflict.⁵⁴

February 25, 1992: The Military Judge orders the registration of death certificates for the remaining victims.⁵⁵ These certificates reflect different ages than the victims were at their deaths.⁵⁶ In particular, the six minors’ ages are recorded as older than eighteen.⁵⁷

October 16, 1992: The Court Martial acquits Lt. Abel Hipólito Gallo Coca, 1st Sgt. Carrera González, 2nd Sgt. Pacheco Zambrano and Corporal

50. *Id.* ¶¶ 132, 135.

51. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 107.

52. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶ 134.

53. *Id.* ¶ 135.

54. *Id.* ¶ 139.

55. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 107.

56. *Id.*

57. *Id.*

Simón Fidel Breña Palante.⁵⁸ Lt. Bendezú Vargas is acquitted of the original charge of “aggravated homicide, disobedience, negligence and extortion,” and instead convicted of the lesser crime of “abuse of authority, with the aggravating factor of mendacity,” and sentenced to eighteen months in prison with a fine of 500 nuevos soles (USD 403.19) in civil reparations.⁵⁹ 2nd NCO Eusebio Huaytalla is convicted of “disobedience, with the aggravating factor of larceny.”⁶⁰ His sentence is two months in prison with a payment of 200 nuevos soles (USD 161.28) in civil reparations.⁶¹ 3rd NCO Chipana Tarqui is convicted of crimes against duty and sentenced to eight months in prison with an 100 nuevos soles (USD 80.64) fine.⁶²

February 10, 1993: The Supreme Council of Military Justice reviews the Court Martial’s judgment and confirms Lt. Bendezú Vargas’s acquittal, but increases his sentence to ten years in prison and orders him to pay 4,000 nuevos soles (USD 1,966.13) in civil reparations.⁶³ Additionally, the Council prohibits him from serving in the Peruvian army or the national police for life.⁶⁴ However, the Council upholds the remainder of the judgment with respect to the other convicted military personnel.⁶⁵

February 26, 1992: The Huancavelica Criminal Court opens criminal proceedings against Lt. Bendezú Vargas and his five subordinates in response to the February 7th charges from the Provincial Prosecutor.⁶⁶

June 1993: The Supreme Court issues a judgment on the jurisdictional conflict holding that the ordinary courts are the judicial forum competent to decide the case.⁶⁷

58. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶ 141. *See* Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 126, 133-35. (Corporal Breña Palante is recommended for re-trial for homicide, but is ultimately released because the Court considers him a minor at the time of the crime, despite conflicting evidence as to his actual age).

59. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶ 141.

60. *Id.*

61. *Id.*

62. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 108.

63. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶ 141.

64. *Id.*

65. *Id.*

66. *Id.* ¶ 144.

67. Peasant Community of Santa Bárbara v. Peru, Petition to the Court, ¶ 124.

August 19, 1994: The Huancavelica Criminal Court rules there is merit to conduct an oral trial against the military personnel for their crimes against the victims of the Santa Bárbara Community.⁶⁸

June 14 & 28, 1995: The Peruvian Congress passes Amnesty Laws 26479 and 26492, which grant amnesty for human rights violations committed by all military, police, or civilian personnel between May 1980 and June 14, 1995.⁶⁹ Under the Amnesty Law 26479 all persons who were arrested, detained, or in prison are released.⁷⁰ Amnesty Law 26492 further provides for permanent dismissal of all judicial proceedings, whether pending or with an issued conviction, and prohibits reopening new investigations into the subject of dismissed proceedings.⁷¹

July 4, 1995: The Huancavelica Criminal Court applies the Amnesty Laws to Lt. Bendezú Vargas and his five subordinates' trial.⁷² The Court permanently dismisses the case.⁷³

March 14, 2001: The IACHR rules in its Judgment on *Barrios Altos v. Peru*⁷⁴ that the Amnesty Laws lack legal validity because they are incompatible with the American Convention.⁷⁵

May 26, 2004 & June 24, 2004: The Provincial Prosecutor sends a request to the Attorney General, after previously submitting one on behalf of the Huancavelica Prosecutor, asking to re-open the Bendezú Vargas case in consideration of the IACHR's *Barrios Altos* decision and the investigatory Truth and Reconciliation Report.⁷⁶

July 14, 2005: The Huancavelica Court annuls the judgment of July 4, 1995, which held the Amnesty Laws applicable to the Bendezú Vargas case, and orders the investigation and proceedings reopened.⁷⁷

68. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶ 146.

69. *Id.* ¶¶ 149-51.

70. *Id.* ¶ 150.

71. *Id.* ¶ 151.

72. *Id.* ¶ 147.

73. *Id.* ¶ 147.

74. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶ 154.

75. *Id.* ¶ 153.

76. *Id.* ¶¶ 154, 155.

77. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 124.

August 25, 2005: The Huancavelica Court again orders the investigation and proceedings in the Bendezú Vargas case reopened.⁷⁸

November 10, 2005: The Public Prosecutor announces proceedings should resume and continue from the stage they reached prior to July 4, 1995.⁷⁹

November 14, 2006: The Huancavelica Court remits the Bendezú Vargas case to the National Criminal Chamber in Lima (“National Criminal Court”) because it lacks jurisdiction over human rights violations.⁸⁰

December 12, 2006: An order is made for immediate capture of Lt. Bendezú Vargas and the four remaining defendants: 3rd NCO Chipana Tarqui, 2nd NCO Eusebio Huaytalla, 2nd Sgt. Pacheco Zambrano, and 1st Sgt. Carrera González.⁸¹

December 6, 2007: 1st Sgt. Carrera González’s trial commences.⁸²

March 4, 2008: The National Criminal Court acquits 1st Sgt. Carrera González of the crime of genocide, but finds him guilty of extortion, sentencing him to twelve years in prison.⁸³ The Court holds the larceny and obstruction of justice charges are barred by the statute of limitations.⁸⁴

April 15, 2009: In response to appeals filed by 1st Sgt. Carrera González, the Prosecutor’s office, and the families of the victims,⁸⁵ the Supreme Court annuls the Carrera González conviction and orders a retrial.⁸⁶

November 2009 & March 1, 2010 – March 8, 2010: More remains at Mysterious mine are exhumed and recovered.⁸⁷

78. *Id.*

79. *Id.*

80. *Id.* ¶ 125.

81. Peasant Community of Santa Bárbara v. Peru, Petition to the Court, ¶ 141. *See* Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 125. (The case against 2nd Sgt. Carlos Manuel Pedro Chinchay was dismissed because he was a minor during the events.)

82. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶ 159.

83. *Id.* ¶ 160.

84. *Id.*

85. *Id.*

86. *Id.* ¶ 162.

87. *Id.* ¶¶ 160, 169.

April 2010 & May 2010: The Public Prosecutor recommends genetically testing the remains.⁸⁸

July 2010: 1st Sgt. Carrera González's trial for charges of genocide begins.⁸⁹

August 2010: While oral proceedings in 1st Sgt. Carrera González's trial are underway, the four other accused defendants are subject to default judgments, because they have yet to be apprehended.⁹⁰

September 30, 2010: Several of the victims' family members give blood and saliva samples for DNA analysis.⁹¹ Samples are also taken from the recovered remains to compare to family members' DNA samples.⁹²

September 28, 2011: The National Criminal Court requests the extradition of 2nd Sgt. Pacheco Zambrano from Argentina.⁹³

October 12, 2011: A landslide occurs at Mysterious mine in the middle of a judicial inspection.⁹⁴ The amount of human remains within the mine are never confirmed.⁹⁵

October 24, 2012: The Public Ministry reports that none of the victims' family members' DNA samples match the recovered remains.⁹⁶

February 9, 2012: The National Criminal Court convicts 1st Sgt. Carrera González as a secondary accomplice to a homicide, sentences him to a nine year prison term, and orders him to pay 25,000 nuevos soles (USD 9,394.04) in civil reparations.⁹⁷ The Court acquits both 3rd NCO Chipana Tarqui, and 2nd NCO Eusebio Huaytalla for the crime of homicide and holds that actions for larceny, damages, obstruction of justice, and abuse

88. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 144.

89. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, ¶¶ 163, 164.

90. *Id.* ¶¶ 164, 165.

91. *Id.* ¶ 170; Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 144.

92. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 144.

93. *Id.* ¶ 255.

94. *Id.* ¶ 142.

95. *Id.* ¶ 144.

96. *Id.* ¶ 145.

97. *Id.* ¶ 131.

of authority have expired.⁹⁸ In addition, the Court sends certified copies of the case to the Public Prosecutor's office to assist with investigating five other suspects.⁹⁹

May 14, 2013: The National Criminal Court submits an application requesting the extradition of 2nd Sgt. Pacheco Zambrano from the United States.¹⁰⁰

May 29, 2013: In response to appeals filed by 1st Sgt. Carrera González and the Huancavelica Prosecutor, the Supreme Court issues its decision reducing 1st Sgt. Carrera González's conviction from primary accomplice to homicide to secondary accomplice to homicide.¹⁰¹

October 31, 2013: In response to a letter from the National Criminal Court, the Chief of the International Division of Crimes against Life, Body and Health informs the Court that 2nd Sgt. Pacheco Zambrano has been living in the United States since 2000.¹⁰²

January 21, 2015: The DNA samples and recovered remains generate a complete genetic profile of Mr. Marcelo Hilario Quispe.¹⁰³

II. PROCEDURAL HISTORY

A. *Before the Commission*

July 26, 1991: The Center for Studies and Action for Peace (CEPAZ) submits a petition to the Inter-American Commission on Human Rights claiming the State is responsible for the disappearance of the fifteen people of the community of Santa Bárbara.¹⁰⁴

July 7, 1992: The Center for Justice and International Law (CEJIL) joins as a co-petitioner.¹⁰⁵

98. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 131.

99. *Id.*

100. *Id.* ¶ 255.

101. *Id.* ¶ 132.

102. *Id.* ¶ 255.

103. *Id.* ¶ 144.

104. *Peasant Community of Santa Bárbara v. Peru*, Admissibility Report and Report on Merits, ¶ 1.

105. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 2.

August 31, 2010: The organization Paz y Esperanza takes over representation of the Petitioners from CEAPAZ.¹⁰⁶

July 21, 2011: The Commission adopts Report on Admissibility and Merits No. 77/11.¹⁰⁷ To the detriment of the fifteen victims, it finds violations of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) of the American Convention in relation to Article 1(1) (Obligation of Non-Discrimination).¹⁰⁸ To the detriment of the seven minor victims, it finds violation of Article 19 (Rights of the Child) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.¹⁰⁹ To the detriment of the victims and their next-of-kin, it finds a violations of (1) Article 17 (Rights of the Family) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention; (2) Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, and Article 1 (Obligation to Adopt Measures) of the Inter-American Convention on Forced Disappearance of Persons, and Articles 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, as well as; (3) Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention and Articles 3 (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearance of Persons.¹¹⁰ To the detriment of the next-of-kin, it finds a violation of Article 5 (Right to Humane Treatment) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.¹¹¹

The Commission recommends the State: (1) adopt mechanisms to prevent a re-occurrence of the events in Santa Bárbara, including the implementation of education programs on human rights law in police and military training academies; (2) take administrative action against the State agents who were involved in the human rights violations; (3) impartially, effectively, and promptly complete any domestic

106. *Id.*

107. *Id.*

108. Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, “VI: Conclusion,” ¶ 1.

109. *Id.* ¶ 2.

110. *Id.* ¶¶ 3-5.

111. *Id.* ¶ 6.

proceedings and investigations that remain open with respect to the victims; (4) provide sufficient material and moral reparations for its violations that account for the special nature of the seven child victims, as well as provide psycho-social care to the next-of-kin, and divulge the truth of what happened to the community of Santa Bárbara, and; (5) employ a mechanism capable of effectively identifying the victims' remains and return those remains to their families.¹¹²

B. Before the Court

July 8, 2013: The Commission submits the case to the Court, after the State failed to adopt its recommendations.¹¹³

June 9, 2014: The President of the Court issues an order granting financial assistance to the victims from the Victims Legal Assistance Fund of the Court.¹¹⁴

January 30, 2015: The John Marshall School International Human Rights Clinic submits an amicus curiae brief.¹¹⁵

1. Violations Alleged by Commission¹¹⁶

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 17 (Rights of the Family)

Article 19 (Rights of the Child)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

112. *Id.* ¶ 262.

113. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

114. *Id.* ¶ 351.

115. *Id.* ¶ 11.

116. *Peasant Community of Santa Bárbara v. Peru*, Admissibility Report and Report on Merits, ¶ 6.

Article 1(1) (Obligation of Non-Discrimination) of the American Convention

Article 1 (Obligation to Adopt Measures) of the Inter-American Convention on Forced Disappearance of Person

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention

Article 3 (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearance of Persons.

2. Violations Alleged by Representatives of the Victims¹¹⁷

Same violations alleged by the Commission, plus:

Article 11 (Right to Privacy)

Article 13 (Freedom of Thought and Expression)

Article 21 (Right to Property) of the American Convention.

III. MERITS

A. *Composition of the Court*¹¹⁸

Humberto Antonio Sierra Porto, President

Roberto F. Caldas, Vice President

Manuel E. Ventura Robles, Judge

Alberto Pérez Pérez, Judge

Eduardo Vio Grossi, Judge

Eduardo Ferrer Mac-Gregor Poisot, Judge

117. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 7.

118. Judge Diego García Sayán did not participate in the Judgment, as per Article 19.1 of the Rules of the Court, because he is a Peruvian National. *Id.* n. *.

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

September 1, 2015: The Court issues its Judgment on Merits, Reparations and Costs.¹¹⁹

The Court found by five votes to one to:

Accept the State's partial acknowledgement of international responsibility,¹²⁰ because:

*The State recognized its responsibility to the extent of the facts established in its National Criminal Court judgment of February 9, 2012 and the Supreme Court judgment of May 29, 2013.*¹²¹

Dismiss the State's preliminary objection alleging that the petitioners failed to exhaust domestic remedies,¹²² because:

*The Court already accepted the State's partial acknowledgment of responsibility so to accept that the petitioners did not exhaust available remedies would contradict that ruling.*¹²³ *Additionally, the State failed to show that there were adequate and effective specific domestic remedies still available to petitioners.*¹²⁴

Dismiss the State's preliminary objection that the facts should not be analyzed under the Inter-American Convention on Forced Disappearances of Persons; rather it should apply principles of subsidiarity and complementarity, as the State finalized its own criminal proceedings for aggravated homicide,¹²⁵ because:

119. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs.

120. *Id.* ¶ 363.

121. *Id.* ¶ 24.

122. *Id.* ¶ 363.

123. *Id.* ¶ 45.

124. *Id.* ¶ 46.

125. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 47, 363.

The State's accountability for forced disappearances does not change even when it is obvious that the victims were killed.¹²⁶ Additionally, the violation continues until the family knows what happened, which includes having any recovered remains identified.¹²⁷ Overall, the Court found that the State's behavior clearly established the State's complicity in a forced disappearance case.¹²⁸

First, the Army authorities refused to recognize the victims' arrests, and covered up the murder evidence by using dynamite on the mine three times in an effort to make the remains unidentifiable.¹²⁹ Second, the evidence collected on July 18, 1991 which was retained in State custody was never reviewed.¹³⁰ Moreover, the Judge of the Military Court ordered the death certificates recording the six minors' ages as over eighteen.¹³¹ Lastly, for over twenty-three years, the State declined to investigate what had happened with the remains from July 18, 1991.¹³²

Eighteen years later, the State conducted a lackluster reinvestigation of the mine.¹³³ All evidence collected during these investigations was never followed up on.¹³⁴ Additionally, because the State failed to implement a registry for evidence collected at the mine, the State lacked the ability to track what had been found and what still remained.¹³⁵ Furthermore, although the Public Prosecutor recommended DNA analysis in April and May 2010, five years later, the State still did not perform an effective scientific analysis with certain results.¹³⁶

To dismiss the alleged violations of Articles 11 (Right to Privacy) and 17 (Rights of the Family),¹³⁷ because:

126. *Id.* ¶ 163.

127. *Id.* ¶ 164.

128. *Id.* ¶ 163.

129. *Id.* ¶ 166, 168.

130. *Id.* ¶ 171.

131. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 173.

132. *Id.* ¶ 176.

133. *Id.* ¶¶ 177, 178.

134. *Id.* ¶ 179.

135. *Id.* ¶ 180.

136. *Id.* ¶¶ 182, 183.

137. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 363.

*The Court determined that there was insufficient evidence to prove such violations.*¹³⁸

The Court found by five votes to one that Peru violated:

Articles 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) and 21 (Right to Property) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of the victims,¹³⁹ because:

*Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) protects the home from arbitrary invasions.*¹⁴⁰ *Here, the soldiers of operation Apolonia stole victims' belongings and livestock and burned their homes, violating the victims' property rights under Article 21 (Right to Property).*¹⁴¹ *This also constituted a violation of Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), because the homes were destroyed without justification.*¹⁴²

The Court found by four votes to two that Peru violated:

Articles 7 (Right to Personal Liberty), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 4(1) (Prohibition of Arbitrary Deprivation of Life), and 3 (Right to Juridical Personality) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of the victims, and in relation to Article 19 (Rights of the Child) to the detriment of the seven minor victims,¹⁴³ because:

138. *Id.*

139. *Id.* ¶ 363. The victims are: Francisco Hilario Torres, Dionicia Quispe Mallqui, Antonia Hilario Quispe, Magdalena Hilario Quispe, Mercedes Carhuapoma de la Cruz, Zenón Cirilo Osnayo Tunque, Marcelo Hilario Quispe, Yessenia Osnayo Hilario, Miriam Osnayo Hilario, Edith Osnayo Hilario, Alex Jorge Hilario, Wilmer Hilario Carhuapoma, Ramón Hilario Morán, Dionicia Guillén Riveros, Héctor Hilario Guillén, and Raúl Hilario Guillén.

140. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 200.

141. *Id.* ¶¶ 201-204.

142. *Id.* ¶ 205.

143. *Id.* ¶ 363. The minor victims are: Yessenia, Miriam and Edith Osnayo Hilario, Alex Jorge Hilario, Wilmer Hilario Carhuapoma, and Héctor and Raúl Hilario Guillén.

The military abused its power by taking advantage of the state of emergency to suspend personal liberty guarantees in violation of Article 7 (Right to Personal Liberty).¹⁴⁴ This was the first step in the forced disappearances and could not be justified by the State as a national security measure.¹⁴⁵ Moreover, after being deprived of their personal liberty, the soldiers beat and forced the victims to walk for several hours without food and water.¹⁴⁶ This affected the victims' physical and psychological well-being, causing them severe anxiety and fear.¹⁴⁷ The Court determined that the mental distress was equivalent to torture because the soldiers acted intentionally.¹⁴⁸ Thus, the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment).¹⁴⁹

Additionally, the State violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life) by killing the victims in the mine, including seven minors and one pregnant woman, and using dynamite to destroy the remains.¹⁵⁰ Moreover, the State ignored its obligations to the minors by recording incorrect ages on the death certificates in violation of Article 19 (Rights of the Child).¹⁵¹ Lastly, the whereabouts of the victims remain unknown, violating Article 3 (Right to Juridical Personality).¹⁵²

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture and Article 1(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on

144. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 188.

145. *Id.*

146. *Id.* ¶ 189.

147. *Id.*

148. *Id.*

149. *Id.*

150. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 190.

151. *Id.* ¶ 192.

152. *Id.* ¶ 190.

Forced Disappearance of Persons to the detriment of the victims and their relatives,¹⁵³ because:

*States are obligated under the Convention to do everything necessary within its means to uncover the facts of a crime and judge and sanction those responsible for the crime.*¹⁵⁴ *States are similarly obliged under Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.*¹⁵⁵

*Following a forced disappearance, the State, on its own initiative, should investigate the matter immediately, objectively and seriously.*¹⁵⁶ *Here, the Special Prosecutor delayed the investigation into the crimes until after several people filed complaints and the remains were discovered.*¹⁵⁷ *Additionally, the Special Attorney of the Ombudsman and the Defense Minister failed to take any initiative after receiving several complaints.*¹⁵⁸ *Thus, at the onset the State failed to fulfill its obligation to investigate.*¹⁵⁹

*Furthermore, the Court articulated that part of ensuring due process of law requires protecting the authorities involved in prosecuting and investigating the crime from intimidation or threats aimed at deterring them.*¹⁶⁰ *Here, in contrast with this obligation, the army denied the Special Prosecutor's requests for information about military operations.*¹⁶¹ *In fact, aside from the initial dynamite designed to prevent a conclusive investigation, the military also detained villagers heading to the mine on July 14, 1991 in order to dynamite the area again, as the villagers attested to hearing explosions.*¹⁶² *Several of the villagers perceived the detention as a threat.*¹⁶³ *These detentions delayed the investigation for*

153. *Id.* ¶ 363. The victims' relatives are: Zósimo Hilario Quispe, Marcelo Hilario Quispe, Gregorio Hilario Quispe, Zenón Cyril Osnayo Tunque, Victor Carhuapoma de la Cruz, Ana de la Cruz Carhuapoma, Abilio Hilario Quispe, Marcelina Guillén Riveros, Alejandro Huamaní Robles, Marino Huamaní Vergara, Viviano Hilario Mancha, Dolores Morán Paucar, Victoria Riveros Valencia, and Justiniano Guillén Ccanto.

154. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 216.

155. *Id.* ¶ 218.

156. *Id.* ¶ 221.

157. *Id.* ¶¶ 223, 224.

158. *Id.* ¶ 225.

159. *Id.* ¶ 229.

160. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 238.

161. *Id.* ¶ 239.

162. *Id.* ¶ 242.

163. *Id.*

four days.¹⁶⁴ To further derail the investigation, the Military Court changed the birthdates on the death certificates of minor victims to lead investigators into believing their deaths were more likely due to subversive involvement.¹⁶⁵

The Military also intervened in its attempt to take the case under military jurisdiction.¹⁶⁶ The Court determined that such criminal military jurisdiction in a democracy must be limited in scope to serve only military functions.¹⁶⁷ Nor, as established in previous Court jurisprudence, is military jurisdiction the appropriate venue for investigating and prosecuting human rights violations.¹⁶⁸ Lastly, while the Court already considered that the Amnesty Laws enacted by Peru constituted a *per se* violation of human rights, its application delayed the ordinary courts from beginning to properly investigate for ten years.¹⁶⁹ Accordingly, the State violated its obligation to guarantee due process of law with respect to the initial proceedings.¹⁷⁰

The Court further reasoned that although the proceedings were reopened in 2006 and an order was issued to capture the fugitives, only eight attempts to capture them were made, and stopped altogether in 2013.¹⁷¹ The Court requested evidence of the State's management procedure and plan to capture the criminals, which the Court determined insufficient.¹⁷² Thus, the approach to capture the perpetrators lacked the necessary due diligence.¹⁷³ After twenty-four years, it remains unclear exactly what happened and who was involved.¹⁷⁴ Lest the same lack of diligence continue, the Court cautioned the State with respect to the additional suspects that the National Criminal Court had identified in 2012 and since directed the Public Prosecutor to research.¹⁷⁵

164. *Id.*

165. *Id.* ¶ 243.

166. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 244.

167. *Id.* ¶ 245.

168. *Id.* ¶ 246.

169. *Id.* ¶¶ 248, 250.

170. *Id.* ¶ 251.

171. *Id.* ¶ 257.

172. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 257.

173. *Id.*

174. *Id.* ¶ 259.

175. *Id.* ¶ 258.

Overall, the Court found the State violated the right to know the truth.¹⁷⁶ Earlier jurisprudence has established that this right is part of the right of a victim and his family to learn from the State what human rights violations were committed and which State personnel committed them under Articles 8 (Right to a Fair Trial) and 25(1) (Right of Recourse Before a Competent Court).¹⁷⁷ Additionally, the Inter-American Convention on Forced Disappearance of Persons expressly recognizes the right to know the truth.¹⁷⁸

Article 7(6) (Right to Have Recourse Before a Competent Court) of the Convention to the detriment of Mr. Elihoref Huamaní Vergara, his father Mr. Huamaní Robles, and his brother, Mr. Marino Huamaní Vergara,¹⁷⁹ because:

Article 7(6) (Right to Have Recourse Before a Competent Court) is specific to personal physical freedom and mandates that the State must provide effective access to habeas corpus petitions.¹⁸⁰ Specifically, courts should not delay responding to the writ.¹⁸¹ Here, the State dismissed Mr. Huamaní Robles's petition for writs of habeas corpus based on police statements claiming the allegations lacked a factual basis.¹⁸² In fact, the Judge who dismissed the petition had been present at the removal of the human remains at Mysterious four days earlier.¹⁸³ Furthermore, Mr. Huamaní Robles's appeal was never resolved.¹⁸⁴ Accordingly, the State violated Article 7(6) (Right to Have Recourse Before a Competent Court).¹⁸⁵

Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of the victims' families,¹⁸⁶ because:

176. *Id.* ¶ 267.

177. *Id.* ¶ 264.

178. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 265.

179. *Id.* ¶¶ 363, 84.

180. *Id.* ¶ 232.

181. *Id.*

182. *Id.* ¶ 233.

183. *Id.* ¶ 234.

184. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 234.

185. *Id.*

186. *Id.* ¶ 363. Mr. Zósimo Hilario Quispe, Mr. Marcelo Hilario Quispe, Mr. Gregorio Hilario Quispe, Mr. Zenón Cyril Osnayo Tunque, Mr. Victor Carhuapoma de la Cruz, Ms. Ana de la Cruz Carhuapoma, Mr. Abilio Hilario Quispe, Ms. Marcelina Guillén Riveros, Mr. Alejandro Huamaní

The Court opined that the families of forcibly disappeared persons suffer physiological, psychological, and moral pain.¹⁸⁷ Additionally, a violation of the right to know the truth may cause a violation of Article 5(1) (Right to Physical, Mental, and Moral Integrity).¹⁸⁸ Here, the Court determined that the relatives who found and identified the remains of their family at the mine suffered the anguish of seeing the lifeless, mutilated bodies of their loved ones.¹⁸⁹ Additionally, the relatives who filed repeated complaints suffered frustration and pain at their inability to obtain validation from the Army for its role in their suffering.¹⁹⁰

Moreover, Mr. Victor Carhuapoma de la Cruz told the Court that he no longer lived normally, was depressed, fearful, and full of despair.¹⁹¹ Similarly, Mr. Abilio Hilario Quispe, of the Hilario Morán family, was only two when his father and brothers were killed.¹⁹² As a result, he grew up without emotional support or proper education and worked as a child in order to survive.¹⁹³ Ms. Marcelina Guillén Riveros stated that the uncertainty surrounding her sister, Dionicia Guillén Riveros's, death caused her mother to die of sadness and the family to live in fear.¹⁹⁴ She still felt as though she could find her sister because there was no grave.¹⁹⁵

C. Dissenting and Concurring Opinions

1. Dissenting Opinion of Judge Alberto Pérez Pérez

Judge Pérez Pérez held that the Court incorrectly classified the murder of the fifteen victims as forced disappearances.¹⁹⁶ The State, in its partial acknowledgement of responsibility, had clarified the facts surrounding the victims' disappearance.¹⁹⁷ Therefore, it was inconsistent

Robles, Mr. Marino Huamani Vergara, Mr. Viviano Hilario Mancha, Ms. Dolores Morán Paucar, Ms. Victoria Riveros Valencia, Mr. Justiniano Guillén Ccanto.

187. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 274.

188. *Id.* ¶ 271.

189. *Id.* ¶ 280.

190. *Id.*

191. *Id.* ¶ 279.

192. *Id.*

193. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 279.

194. *Id.* ¶ 280.

195. *Id.*

196. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion of Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. (ser. C) No. 299, ¶ 1 (Sept. 1, 2015).

197. *Id.* ¶ 16.

for the Court to accept the State's partial acknowledgment of responsibility and yet still consider the violations as forced disappearances.¹⁹⁸ Additionally, Judge Pérez Pérez reasoned that classifying the violations as forced disappearances was unnecessary because the State's own court system already categorized the case as a crime against humanity.¹⁹⁹

Moreover, Judge Pérez Pérez articulated that everyone knew of the victims' mass murder; the relatives who went to the mine were able to identify the bodies they saw.²⁰⁰ Although, there were attempts to cover up the crime, those attempts were unsuccessful and insufficient to satisfy a typical case of forced disappearances.²⁰¹ A proper characterization of a forced disappearance is if it is uncertain that the person missing is dead or alive.²⁰² Here, Judge Pérez Pérez stated that the fate and location of the Santa Bárbara victims were known, regardless of DNA testing that may forever be pending.²⁰³ Accordingly, the natural conclusion is to classify the events as a mass extrajudicial execution.²⁰⁴

2. Dissenting Opinion of Judge Eduardo Vio Grossi

Judge Vio Grossi stated that the Court incorrectly dismissed the State's preliminary objection regarding the petitioners alleged failure to exhaust domestic remedies in accordance with Article 46 of the Convention.²⁰⁵ The Court reasoned that the State should have presented the remedies which remained available and adequate.²⁰⁶ However, Judge Vio Grossi reasoned that, in accordance with Article 31.1(c) of the Regulations of the Commission, the State was only required to respond to what was in the Petition.²⁰⁷ Additionally, regarding the Court's consideration that the rule to exhaust domestic remedies had to have been met when the Commission admitted the Petition, Judge Vio Grossi explained that this is not the default rule.²⁰⁸ Rather, the Commission may

198. *Id.* ¶ 15.

199. *Id.* ¶¶ 25, 26.

200. *Id.* ¶¶ 9, 21.

201. *Id.* ¶¶ 21, 22.

202. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion of Judge Alberto Pérez Pérez, ¶ 22.

203. *Id.* ¶ 24.

204. *Id.* ¶ 28.

205. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 299, "Introduction."

206. *Id.*

207. *Id.* "The contents in the response or observations of the State."

208. *Id.* "Response or observations of the State."

admit the Petition pending verification from the Petitioners that prior domestic remedies have been exhausted.²⁰⁹ It is when the Petition is presented to the Court that the requirement to exhaust domestic remedies must actually be met.²¹⁰

Applying his position, Judge Vio Grossi found that because the Petition never invoked the requirement of compliance with Article 46 to exhaust domestic remedies, the State never had to demonstrate which specific remedies were still available.²¹¹ Secondly, here, he argued that the Court failed to refer to the fact that the Commission did not comply with its obligation to request of Petitioners to inform the Commission on whether domestic remedies had been exhausted before submitting the Petition to the Court.²¹² This created a procedural inequality between the State and Petitioners.²¹³

IV. REPARATIONS

The Court ruled by five votes to one that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Obligation to Investigate

The State must investigate to the fullest extent necessary those responsible for the declared violations in order to prosecute them.²¹⁴

209. *Id.*

210. *Id.* “Legal consequences of considering the rule of prior exhaustion of domestic remedies as a requirement of the admissibility of the petition and not of it.”

211. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion of Judge Eduardo Vio Grossi, “Legal consequences of considering the rule of prior exhaustion of domestic remedies as a requirement of the admissibility of the petition and not of it.”

212. *Id.* “Conclusion.”

213. *Id.*

214. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 363.

2. Obligation to Identify the Remains in the Mine

The crime scene at Mysterious mine must be preserved, and the remains must be exhumed and identified.²¹⁵ It is imperative that the State address this issue rigorously using effective resources.²¹⁶

3. Obligation to Address Psychological Needs

Victims' requests for medical, psychological or psychiatric treatment must be immediately honored through qualified institutions, free of charge.²¹⁷ This includes supplying medications.²¹⁸

4. Judgment as a Form of Reparation

The Court ordered the publication of the Judgment in a widely circulated Peruvian newspaper and on the State's official website to recognize its violations of the victims and their families nationally.²¹⁹

B. Compensation

1. Pecuniary Damages

The Court accounted for the victims' Andean way of life.²²⁰ It, therefore, required the State to deliver ten alpacas each to Mr. Osnayo Tunque and Mr. Marcelo Hilario Quispe, or the equivalent fair market value of the alpacas.²²¹ In addition, the Court required the State to provide adequate housing for both Mr. Osnayo Tunque and Mr. Marcelo Hilario Quispe.²²² Further, if after a year, they were without housing, the State must compensate them with \$25,000 each.²²³ The specific terms of these requirements should be based on a satisfactory agreement between the State and the victims.²²⁴

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.* ¶¶ 309, 363.

220. *Peasant Community of Santa Bárbara v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 303.

221. *Id.* ¶ 363.

222. *Id.*

223. *Id.*

224. *Id.*

The Court also ordered compensation to the victims for lost income.²²⁵ The adult victims between the ages of twenty to thirty-one were awarded \$50,000.²²⁶ The two adult victims who were fifty-seven and sixty were awarded \$20,000.²²⁷ The minor victims were awarded \$20,000.²²⁸

2. Non-Pecuniary Damages

The Court awarded: \$80,000 to the adult victims;²²⁹ \$80,000 to the minor victims;²³⁰ \$45,000 to the relatives who were parents, spouses, and children of the victims;²³¹ \$45,000 to the deceased family members who were parents, spouses and children;²³² \$10,000 to the victims' siblings.²³³

The Court stated that the State may deduct from these amounts anything previously paid to the victims who benefitted from its Economic Reparations Program ("ERP"), as well as deduct from any future ERP payments.²³⁴

3. Costs and Expenses

The Court awarded \$10,000 to CEAPAZ, and \$12,000 to CEJIL to reimburse the organizations for their litigation work.²³⁵ Additionally, the

225. *Id.* ¶ 343.

226. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 343. These victims are: Ms. Antonia Hilario Quispe, Ms. Magdalena Hilario Quispe, Ms. Mercedes Carhuapoma de la Cruz, Ms. Dionicia Guillén Riveros, Mr. Ramon Hilario Morán and Mr. Elihoref Huamaní Vergara.

227. *Id.* The victims are: Mr. Francisco Hilario Torres and Dionicia Quispe Mallqui.

228. *Id.* The victims are: Yessenia, Miriam, and Edith Osnayo Hilario, Alex Jorge Hilario, Wilmer Hilario Carhuapoma, and Héctor and Raúl Hilario Guillén.

229. *Id.* ¶ 338. The victims are: Mr. Francisco Hilario Torres, Ms. Dionicia Quispe Mallqui, Ms. Antonia Hilario Quispe, Ms. Magdalena Hilario Quispe, Ms. Mercedes Carhuapoma de la Cruz, Mr. Ramón Hilario Morán, Ms. Dionisia Guillén and Mr. Elihoref Huamaní Vergara.

230. *Id.* The victims are: Yessenia, Miriam, and Edith Osnayo Hilario, Alex Jorge Hilario, Wilmer Hilario Carhuapoma, and Héctor and Raúl Hilario Guillén.

231. *Id.* The victims are: Mr. Zenón Cirilo Osnayo Tunque, Mr. Zósimo Hilario Quispe, Mr. Marcelo Hilario Quispe, Mr. Greporio Hilario Quispe and Mr. Abilio Hilario Quispe.

232. Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 338. The victims are: Ms. Ana de la Cruz Carhuapoma, Ms. Viviano Hilario Mancha, Ms. Dolores Moran Paucer, Mr. Justiniano Guillén Ccanto, Ms. Victoria Riveros Valencia and Huamaní Alejandro Robles.

233. *Id.* The victims are: Mr. Víctor Carhuapoma de la Cruz, Ms. Marcelina Guillén Riveros and Mr. Marino Huamaní Vergara.

234. *Id.* ¶ 341.

235. *Id.* ¶ 350.

Court ordered the State to reimburse the Victims Legal Assistance Fund \$3,457.40.²³⁶

4. Total Compensation (including Costs and Expenses ordered):

\$375,457.40

C. Deadlines

All deadlines commenced with the notification of the Judgment.²³⁷ The Court gave the State six months to publish the Judgment, and one year to submit a report to the Court on the measures it adopted to comply with the terms of the Judgment.²³⁸ Additionally, the State must satisfy the compensatory reparation for the alpacas and homes within one year.²³⁹

V. INTERPRETATION AND REVISION OF JUDGMENT

February 15, 2016: The State submits an application to the Court to interpret the reparation measure requiring it to investigate the violations found in the September 1, 2015 Judgment.²⁴⁰ First, it requests the Court interpret whether the State should open a new investigation or continue from the previous criminal proceedings.²⁴¹ Second, the State questioned whether a decision to try the violations under the crime of extrajudicial execution would undermine the Court's ruling.²⁴²

A. Composition of the Court

Roberto F. Caldas, President
Eduardo Ferrer Mac-Gregor Poisot, Vice President
Manuel E. Ventura Robles, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge

236. *Id.* ¶ 356.

237. *Id.* ¶ 363.

238. *Id.* ¶ 363.

239. *Id.* ¶ 363.

240. *Peasant Community of Santa Bárbara v. Peru*, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 324, ¶ 2 (Sept. 1, 2015).

241. *Id.* ¶ 11.

242. *Id.* ¶ 16.

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Merits

The Court found unanimously the application for revision admissible.²⁴³ The Court unanimously rejected both the State's requests.²⁴⁴ With regards to the first request, the Court stated that it had clearly explained how the State should investigate, which implied either continuing or opening a new investigation, as appropriate.²⁴⁵ Additionally, with regards to the State's second request, the Court held that ensuring an effective investigation and punishment was a matter of the Court's procedure and duty to monitor compliance with its Judgment.²⁴⁶

VI. COMPLIANCE AND FOLLOW-UP

November 14, 2017: The State fully complied with the requirement to reimburse the Victims Legal Assistance Fund.²⁴⁷

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Peasant Community of Santa Bárbara v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 299 \(Sept. 1, 2015\).](#)

243. *Id.* ¶ 8.

244. *Id.* "Resolution Points," ¶ 2.

245. *Id.* ¶ 16.

246. Peasant Community of Santa Bárbara v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, ¶ 20.

247. Cases of Osorio Rivera and family, J., Miguel Castro Castro Prison, Tarazona Arrieta et al., Espinoza González, Cruz Sanchez et al., Canales Huapaya et al., Peasant Community of Santa Barbara, Quispialaya Vicapoma, and Tenorio Roca et al. v. Peru, Reimbursement of Victim's Legal Assistance Fund, Provisional Measures, Order of the Court, "Resolves," ¶ 1 (Nov. 14, 2017).

[Peasant Community of Santa Bárbara v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 324 \(Nov. 21, 2016\).](#)

3. Provisional Measures

[Peasant Community of Santa Bárbara v. Peru, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(Dec. 4, 2014\).](#)

4. Compliance Monitoring

[Cases of Osorio Rivera and family, J., Miguel Castro Castro Prison, Tarazona Arrieta et al., Espinoza González, Cruz Sanchez et al., Canales Huapaya et al., Peasant Community of Santa Barbara, Quispialaya Vicapoma, and Tenorio Roca et al. v. Peru, Reimbursement of Victim's Legal Assistance Fund, Provisional Measures, Order of the Court \(Nov. 14, 2017\).](#)

5. Review and Interpretation of Judgment

[Peasant Community of Santa Bárbara v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 324 \(Nov. 21, 2016\).](#)

A. *Inter-American Commission*

1. Petition to the Commission

[None]

2. Report on Admissibility

[Peasant Community of Santa Bárbara v. Peru, Admissibility Report and Report on Merits, Report No. 77/11, Inter-Am. Comm'n H.R., Case No. 10.932 \(Jul. 21, 2011\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[included with Report on Admissibility]

5. Application to the Court

[Peasant Community of Santa Bárbara v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.932 \(Dec. 10, 2013\).](#)

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