

# Baldeón García v. Peru

## ABSTRACT<sup>1</sup>

*This case is about the arbitrary arrest, torture, and killing, in 1990, of an elderly peasant in the high Andes by a unit of the Peruvian army. This was followed by the subsequent failure by the State to properly investigate and prosecute. The Court found that the State violated the American Convention on Human Rights.*

## I. FACTS

### A. Chronology of Events

**1922:** Mr. Bernabé Baldeón García is born in the community of Pucapaccana Lambrasniyocc, District of Independencia, Province of Vilcashuamán, Department of Ayacucho.<sup>2</sup> He is a peasant farmer, living at high altitude on the eastern slope of the Andes, with no other means of livelihood, residing in his community all his life.<sup>3</sup>

**Early 1980s:** The Peruvian military begins to battle armed insurgents.<sup>4</sup> Prominent among the military's tactics is the use of torture and extrajudicial executions.<sup>5</sup> The victims disproportionately come from the Department of Ayacucho.<sup>6</sup> The majority of the Ayacucho's population are peasants and speak Quechua or Aymara as their native language.<sup>7</sup>

**December 29, 1982:** As part of its battle against insurgents, the Peruvian military takes control of the Ayacucho.<sup>8</sup>

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1. Brian Gabriel, Author; Amy Choe, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Baldeón García v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 72(14) (Apr. 6, 2006).

3. *Id.*

4. *Id.* ¶ 72(2).

5. *Id.*

6. *Id.* ¶ 72(8).

7. *Id.* ¶ 72(9).

8. *Id.* ¶ 72(13).

**1985:** The Peruvian military establishes a base in Accomarca, Province of Vilcashuamán.<sup>9</sup> Base authorities demand that local villages and communities provide animals and other provisions to feed the military forces stationed there.<sup>10</sup>

**September 1990:** The villages and communities under the control of the military base in Accomarca fail to supply sufficient provisions and animals to military personnel at the base.<sup>11</sup>

**September 25, 1990:** During a counterinsurgent operation within the Department of Ayacucho, Peru, Peruvian military forces from the military base at Accomarca, enter Pucapaccana.<sup>12</sup> The soldiers fire shots into the air, collect the members of the village in the main square and force them to hand over rams and other provisions.<sup>13</sup> The soldiers look for Mr. Eustaquio Baldeón, whose name appears on a list of insurgents the soldiers possess; he is not present.<sup>14</sup> In lieu, an officer arrests his next of kin, Mr. Barnabé Baldeón García, a 68 year old man.<sup>15</sup> After looting money and supplies from several houses and threatening the village members with death, the soldiers leave the village, taking Mr. Baldeón García and the other arrestees to the village of Pacchahuallhua.<sup>16</sup> Mr. Baldeón García is detained in the church of Pacchahuallhua.<sup>17</sup> Seeking the whereabouts of his relative, the accused insurgent Mr. Eustaquio Baldeón, the soldiers interrogate Mr. Baldeón García.<sup>18</sup> They beat him, tie him with wires, and hang him upside down from a ceiling beam.<sup>19</sup> They then submerge him in a tank of cold water.<sup>20</sup>

**September 26, 1990:** Mr. Baldeón García dies in military custody.<sup>21</sup> A

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9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* ¶ 72(16).

13. *Id.* ¶ 72(17).

14. *Id.*

15. *Id.*

16. *Id.* ¶ 72(18).

17. *Id.* ¶ 2.

18. *El Estado Pide Perdon a Familias de Desaparecidos* [The State Apologizes to Families of the Missing], LA PRIMERA (July 24, 2013), [http://www.laprimerape.com.pe/online/politica/el-estado-pide-perdon-a-familias-de-desaparecidos\\_144845.html](http://www.laprimerape.com.pe/online/politica/el-estado-pide-perdon-a-familias-de-desaparecidos_144845.html) (Peru).

19. *Baldeón García v. Peru*, Merits, Reparations, and Costs, Judgment, ¶ 72(20).

20. *Id.*

21. *Id.* ¶ 72(21).

post-mortem examination is conducted in the presence of the Justice of the Peace and two medical expert witnesses.<sup>22</sup> It indicates that the skull “shows no signs of trauma.”<sup>23</sup> The examiners also conclude that a “simple hematoma” on the face was probably caused after death during the transportation of the body.<sup>24</sup> Further, they find no marks on his back, the back of his lower extremities, anterior part of the trunk, abdomen, or genitalia.<sup>25</sup> The examination then notes an “abrasion of the superficial epidermis,” and describes the anterior aspect of the lower extremities as “normal.”<sup>26</sup> The examination concludes that the probable cause of death was “cardiac arrest.”<sup>27</sup> No medico-legal autopsy is performed on Mr. Baldeón García’s body.<sup>28</sup> Mr. Baldeón García is buried with no next of kin present.<sup>29</sup>

**November 15, 1990:** Crispín and Vicente Baldeón Yllaconza, sons of Mr. Baldeón García, file a complaint with a Senate Investigating Committee.<sup>30</sup>

**February 21, 1991:** Crispín Baldeón Yllaconza and the Association for Human Rights (*Asociación Pro Derechos Humanos*, “APRODEH”) file a complaint with the General Prosecutor’s Office of Peru (*Fiscalía de la Nación*).<sup>31</sup>

**October 1, 1993:** Mr. Baldeón García’s next-of-kin file a complaint with the Human Rights and Pacification Commission of the Congress (*Comisión de Derechos Humanos y Pacificación del Congreso*).<sup>32</sup>

**July 21, 2000:** Crispín Baldeón-Yllaconza files a complaint with the Vilcashuamán Province General Attorney’s Office (*Fiscalía Provincial de Vilcashuamán*).<sup>33</sup>

**December 26, 2001:** The Vilcashuamán Province General Attorney’s Office issues Resolution No. 030-2001, which temporarily suspends the

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22. *Id.*

23. *Id.*

24. *Id.* ¶ 72(23).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* ¶ 72(24).

29. *Id.* ¶ 72(22).

30. *Id.* ¶ 72(25).

31. *Id.* ¶ 72(26).

32. *Id.* ¶ 72(27).

33. *Id.* ¶ 72(29).

investigation of Mr. Baldeón García's death because investigators are unable to obtain the actual name of the soldier identified by the complainants as the person who killed Mr. Baldeón García.<sup>34</sup>

**September 30, 2002:** Despite having information concerning pseudonyms that appear in army records, which could help identify the soldiers who killed Mr. Baldeón García, the Vilcashuamán Province General Attorney's Office fails to reopen the investigation on his death.<sup>35</sup>

**December 7, 2004:** The Ayacucho Superior Attorney's Office (*Fiscalía Superior Decana de Ayacucho*) orders that the record of the investigation be referred to the Special Prosecutor's Office for Human Rights and the Decentralized District Commission for the Internal Control of the Judicial District of Ayacucho (*Comisión Distrital Descentralizada de Control Interno del Distrito Judicial de Ayacucho*).<sup>36</sup>

**January 14, 2005:** The Peruvian Team of Forensic Anthropology (the "Team") unearths Mr. Baldeón García's body in the presence of Crispín and Fidela Baldeón Yllaconza.<sup>37</sup> The Team subsequently issues an expert report stating that the body was fully "skeletonized" and complete, except for some missing bones in his feet and hands, plus a missing rib.<sup>38</sup> The report also describes multiple fractures and other injuries on the victim's skull, spine, ribs and numerous other places, which suggest that he was shot.<sup>39</sup> The Team further noted several injuries on the neck, pelvis, and back that were likely inflicted after Mr. Baldeón García died.<sup>40</sup>

**July 26, 2005:** The Special Prosecutor's Office for Human Rights files a report identifying two Peruvian Army soldiers for their alleged involvement in the death of Mr. Baldeón García.<sup>41</sup>

**August 25, 2005:** The Supraprovincial Criminal Court Specialized in Human Rights of the Supreme Court of Ayacucho (*Juzgado Penal*

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34. *Id.* ¶ 72(30).

35. *Id.*

36. *Id.* ¶ 72(32).

37. *Id.* ¶ 72(33).

38. *Id.* ¶ 72(34).

39. *Id.*

40. *Id.*

41. *Id.* ¶ 72(35).

*Supraprovincial Especializado en Derechos Humanos de la Corte Superior de Justicia de Ayacucho*) orders the commencement of criminal proceedings against the two Peruvian Army soldiers on charges of “torture followed by death.”<sup>42</sup> The Court further issues a writ of indictment against them, which orders their arrest, prevents them from leaving the country and seizes their property.<sup>43</sup>

### *B. Other Relevant Facts*

In the early 1980s through the mid-1990s, Peru’s police and military forces systematically engaged in extrajudicial executions and torture to allegedly fight the armed insurgents terrorists.<sup>44</sup> Evidence suggests that Peru also systemized the forced disappearances of persons, so that a set of procedures were employed to identify, abduct, torture and murder victims.<sup>45</sup> After being identified, victims, no matter their age or sex, are arrested, brought to a military or police facility and interrogated under torture.<sup>46</sup> One of the torture methods, known as the “submarine,” is used to exhaust and suffocate the victims.<sup>47</sup> The “submarine” method consists of tying the victims’ hands and feet and submersing the victims’ bodies headfirst into a tank containing intoxicating substances.<sup>48</sup> After killing their victims, the military forces eliminate all evidence of these crimes, including the corpses of those tortured to death.<sup>49</sup>

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**May 24, 1997:** Guadalupe Yllaconza Ramírez de Baldeón, Mr. Baldeón García’s wife, and Crispín Baldeón Yllaconza file a petition, before the Inter-American Commission on Human Rights, for the illegal and arbitrary detention, torture, and extra-judicial execution of their next of kin, Mr. Baldeón García, by members of the Peruvian armed forces.<sup>50</sup>

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42. *Id.* ¶ 72(36).

43. *Id.*

44. *Id.* ¶ 72(2).

45. *Id.* ¶ 72(3).

46. *Id.* ¶ 72(4).

47. *Id.* ¶ 72(5).

48. *Id.*

49. *Id.* ¶ 72(3).

50. *Id.* ¶ 7.

**July 3, 1997:** The Commission acknowledges the submission of the petition, assigns it the case number 11.767, and orders the case commenced.<sup>51</sup>

**October 19, 2004:** The Commission approves the Admissibility and Merits Report No. 77/04.<sup>52</sup> The report concludes that the State of Peru is responsible for the violation of Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection) of the American Convention on Human Rights, in relation to Article 1(1) (Obligation to Respect Rights).<sup>53</sup>

The Commission then recommends that the State conduct a thorough and immediate investigation into the circumstances of Mr. Baldeón García's death, and identify all persons who participated in the events.<sup>54</sup> In addition, the Commission recommends that the State make reparations to Guadalupe Yllaconza-Ramírez and to the children of Mr. Baldeón García.<sup>55</sup>

**November 11, 2004:** The Commission sends the Admissibility and Merits Report to the State, and gives the State two months to adopt its recommendations.<sup>56</sup>

**December 22, 2004:** The State informs the Commission that, in partial compliance with the Commission's recommendation, the Superior Prosecutor's Office of Ayacucho orders that the records of the investigation into Mr. Baldeón García's torture and death are sent to the Special Prosecutor's Office for Human Rights and the local prosecutor's office in the district of Ayacucho.<sup>57</sup>

**January 12, 2005:** The State reports that the Special Prosecutor's Office for Human Rights attempted to clarify certain facts in Mr. Baldeón García's case, but no conclusions could be drawn yet.<sup>58</sup> The Commission concludes that the State did not comply with its first recommendation, and finds that the State did not provide any information regarding compliance with the rest of their

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51. *Id.* ¶ 8.

52. *Id.* ¶ 9.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* ¶ 10.

57. *Id.* ¶ 13.

58. *Id.* ¶ 14.

recommendations.<sup>59</sup>

*B. Before the Court*

**February 11, 2005:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>60</sup>

**July 22, 2005:** The State partially acknowledges its international responsibility for the violations alleged by the Commission with respect to Article 4 (Right to Life), Article 5 (Right to Humane Treatment), and Article 7 (Right to Personal Liberty) of the Convention, to the detriment of Mr. Baldeón García.<sup>61</sup> The State further acknowledges its international responsibility for the violations alleged by the Commission with respect to Article 1(1) (Obligation to Respect Rights) and Article 8(1) (Right to a Fair Trial) of the American Convention, to the detriment of Mr. Baldeón García's next of kin.<sup>62</sup> The State ignores the alleged violations of Article 5 (Right to Humane Treatment) and Article 25 (Judicial Protection) of the Convention, to the detriment of the next of kin of the alleged victim.<sup>63</sup>

**September 8, 2005:** The Court requests the State to submit a statement to clarify "whether its acknowledgment of international responsibility extended to the alleged violation of Article 5 (Right to Humane Treatment) and Article 25 (Judicial Protection) of the American Convention," to the detriment of the next of kin of Mr. Baldeón García.<sup>64</sup>

**October 20, 2005:** The State files a statement to clarify the acknowledgment of responsibility, made in answer to the application.<sup>65</sup> The State informs the Court that it will address the matters regarding the State's international responsibility pursuant to violations of Article 5 (Right to Humane Treatment) and Article 25 (Right to Judicial Protection) of the Convention to the detriment of the next of kin of the victim.<sup>66</sup>

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59. *Id.*

60. *Id.* ¶ 16.

61. *Id.* ¶ 20.

62. *Id.*

63. *Id.*

64. *Id.* ¶ 24.

65. *Id.* ¶ 25.

66. *Id.*

1. Violations Alleged by Commission<sup>67</sup>

To the detriment of Mr. Baldeón García:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, Cruel, Inhuman, or Degrading Treatment)

Article 7 (Right to Personal Liberty)

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

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Mr. Baldeón García's next of kin:

Article 25 (Right to Judicial Protection)

*in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims<sup>68</sup>

To the detriment of Mr. Baldeón García's next of kin:

Same Violations Alleged by Commission, plus:

Article 2 (Acts that Constitute Torture)

Article 3 (Persons who May be Found Guilty of Torture) of the Inter-American Convention to Prevent and Punish Torture

## III. MERITS

A. *Composition of the Court*

Sergio García Ramírez, President

Alirio Abreu Burelli, Vice-President

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67. *Id.* ¶ 1.

68. *Id.* ¶ 19. Miguel Jugo Vlorá and Gloria Cano Legua, both of the APRODEH, served as representatives of Mr. Baldeón García's next of kin.

Oliver Jackman, Judge  
Antônio A. Cançado Trindade, Judge  
Cecilia Medina Quiroga, Judge  
Manuel E. Ventura Robles, Judge  
Diego García-Sayán, Judge

Pablo Saavedra-Alessandri, Secretary

*B. Decision on the Merits*

**April 6, 2006:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>69</sup>

The Court found that the State had violated:

Article 4 (Right to Life), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Baldeón García,<sup>70</sup> because:

*The State acknowledged international responsibility for violating Article 4 (Right to Life).<sup>71</sup> Nevertheless, rendering the judgment constituted a form of reparation for Mr. Baldeón García and his next of kin, and could help prevent similar events.<sup>72</sup> Thus, the Court considered it important to make precise determinations on Article 4 violations.<sup>73</sup>*

*The Court discussed the Article 4 (Right to Life) violations within the context of two sub-issues.<sup>74</sup> The first issue is the State's violation of its duties to preserve and protect the right to life.<sup>75</sup> The American Convention imposes a legal obligation to respect everyone's right to life, to ensure that no one is arbitrarily deprived of life.<sup>76</sup> Prior cases require that, along with the negative duty to not arbitrarily deprive life, States have a positive duty to adopt any and all necessary measures to protect a person's right to life.<sup>77</sup> States must adopt all measures to*

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69. Baldeón García v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147 (Apr. 6, 2006).

70. *Id.* ¶ 105.

71. *Id.* ¶¶ 46, 56.

72. *Id.* ¶ 56.

73. *Id.*

74. *Id.* ¶ 86.

75. *Id.*

76. *Id.* ¶ 84.

77. *Id.*

create a legal framework that deters “any possible threat to the right to life,” to establish “an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals,” and to “guarantee the right to unimpeded access to conditions for a dignified life.”<sup>78</sup> Here, the State admitted that those who killed Mr. Baldeón García were Peruvian soldiers.<sup>79</sup> As such, the State bears responsibility for the actions of Mr. Baldeón García officials and, thus, his death.<sup>80</sup>

The second issue, under an Article 4 violation, is the State’s obligation to conduct an effective investigation.<sup>81</sup> The State bears a legal duty to conduct an effective official investigation of the events resulting in a killing,<sup>82</sup> and to use “all legal means available” to establish the true facts.<sup>83</sup> The Court noted “significant omissions” in the State’s investigation, including an inaccurate cause of death indicated on the only official document drafted on the day of the killing.<sup>84</sup> No photographs were taken of Mr. Baldeón García’s body,<sup>85</sup> and the examination of the body did not meet forensic scientific standards, and neither the standards of the international law of human rights.<sup>86</sup> In result, the Court found that the State deprived Mr. Baldeón García of his life and failed to conduct a “rigorous, thorough, and effective investigation” of his death, and is therefore liable for the violation of Article 4 (Right to Life) and Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof.<sup>87</sup>

Article 5(2) (Prohibition Against Torture), in relation to Article 1(1) of the Convention, to the detriment of Mr. Baldeón García,<sup>88</sup> because:

*There is a presumption that the State inflicted torture or cruel or inhuman treatment if authorities failed to conduct a rigorous factual*

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78. *Id.* ¶ 85.

79. *Id.* ¶ 88.

80. *Id.* ¶ 89.

81. *Id.* ¶ 90.

82. *Id.* ¶ 92.

83. *Id.* ¶ 94.

84. *Id.* ¶ 98.

85. *Id.* ¶ 99.

86. *Id.* ¶ 101.

87. *Id.* ¶¶ 104, 105. The Court indicated that the State violated both Article 4 (Right to Life) and 4(1) (Prohibition of Arbitrary Deprivation of Life).

88. *Id.* ¶ 126.

investigation “into the facts followed by the indictment of those identified as the perpetrators of such acts.”<sup>89</sup> Further, injuries found in Mr. Baldeón García’s skeleton were consistent with traumatic wounds suggestive of torture, and “the victim might have suffered perimortem wounds that are compatible with torture.”<sup>90</sup> Furthermore, during the time of Mr. Baldeón García’s disappearance, the State engaged in a “pattern of extrajudicial executions, cruel, inhuman or degrading treatment and torture.”<sup>91</sup> Because the State did not challenge allegations of torture with respect to this Article, the Court found that “the treatment given to Mr. Baldeón García during his arrest and before his death constitutes an act of torture prohibited by Article 5(2) (Prohibition Against Torture) of the Convention.”<sup>92</sup>

Article 5 (Right to Humane Treatment) in relation to Article 1(1) of the Convention, to the detriment of Mr. Baldeón García’s next of kin,<sup>93</sup> because:

*The State violated the mental and moral integrity of Mr. Baldeón García’s next of kin.*<sup>94</sup> In cases of forced disappearances, a victim’s next of kin may also suffer human rights violations.<sup>95</sup> The Court considered the manner in which Mr. Baldeón García was arrested, the intimate relationship he shared with his family, and the hardship the family experienced trying to uncover the truth surrounding Mr. Baldeón García’s case.<sup>96</sup> As a result of these circumstances, Mr. Baldeón García’s family experienced great suffering and damage to their mental and moral integrity.<sup>97</sup> Therefore, the Court ruled that the State violated Article 5 (Right to Humane Treatment) of the Convention, to the detriment of Mr. Baldeón García’s next of kin.<sup>98</sup>

Article 8(1) (Right to an Impartial Hearing) and Article 25 (Right to Judicial Protection) in relation to Article 1(1) of the Convention, to the detriment of Mr. Baldeón García’s next of kin,<sup>99</sup> because:

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89. *Id.* ¶ 120.

90. *Id.* ¶¶ 64, 124.

91. *Id.* ¶ 125.

92. *Id.*

93. *Id.* ¶ 127.

94. *Id.* ¶ 128.

95. *Id.*

96. *Id.* ¶ 129.

97. *Id.*

98. *Id.* ¶ 130.

99. *Id.* ¶ 131.

*The State failed to provide an effective remedy and the opportunity for a fair trial to Mr. Baldeón García's next of kin.<sup>100</sup> The State failed to fully acknowledge responsibility for the Article 8(1) (Right to an Impartial Hearing) violation until November 2000.<sup>101</sup> Following November 2000, the State claimed that they had conducted an effective judicial intervention and thus were not responsible for a continued violation of Article 8(1) (Right to an Impartial Hearing).<sup>102</sup>*

*The Court nonetheless ruled on the Article 8 (Right to a Fair Trial) violation and concluded that the State continued to violate Article 8 to the detriment of Mr. Baldeón García's next of kin.<sup>103</sup> Article 8 specifically requires States to decide a case in its docket within a reasonable time.<sup>104</sup> For criminal matters, the reasonableness of the time period runs from when the criminal proceedings against the perpetrator are commenced until the court renders a final judgment.<sup>105</sup>*

*The Court concluded that the State's domestic courts took an unreasonable amount of time.<sup>106</sup> To measure reasonableness, the Court considered (1) the complexity of the matter; (2) the procedural activities carried out by the interested party; and (3) the conduct of judicial authorities.<sup>107</sup> For the first factor, the Court concluded that the case was not complex because it involved just one victim who was identified with certainty and there was enough evidence to conduct an investigation.<sup>108</sup> As for the second factor, the Court ruled that the victim's family helped the case by filing numerous petitions and providing evidence pertaining to the case.<sup>109</sup> Therefore, judicial authorities were responsible for any delay in the proceedings.<sup>110</sup> Finally, the Court determined that the third prong of the test was satisfied because the State judiciary's conduct was unreasonable, since the case had not been resolved fifteen years after the case commenced.<sup>111</sup> This delay proved prejudicial to Mr. Baldeón García's*

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100. *Id.* ¶ 155.

101. *Id.* ¶ 138.

102. *Id.*

103. *Id.* ¶ 162.

104. *Id.* ¶ 150.

105. *Id.*

106. *Id.* ¶ 155.

107. *Id.* ¶ 151.

108. *Id.* ¶ 152.

109. *Id.*

110. *Id.*

111. *Id.* ¶ 153.

*next of kin because they could not qualify for civil compensation without the domestic court's final determination of criminal liability.*<sup>112</sup>

*In sum, because the State spent an unreasonable amount of time investigating the case, and the case is still without resolution, the Court ruled that the State violated Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) of the Convention to the detriment of Mr. Baldeón García's next of kin.*<sup>113</sup>

Article 1 (Obligation to Prevent and Punish Torture), Article 6 (Obligation to Take Effective Measures), and Article 8 (Obligation to Investigate) of the Inter-American Convention to Prevent and Punish Torture,<sup>114</sup> because:

*Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture compels State parties to take effective steps in the prevention, prosecution, and investigation of torture cases.*<sup>115</sup> *This Convention applied to the present case because the Convention was in force in the State while the State's obligation to investigate was pending.*<sup>116</sup>

*The State failed to comply with these obligations because the State investigation of Mr. Baldeón García's case was defective.*<sup>117</sup> *Investigators failed to examine both Mr. Baldeón García's skull and the bruises on his face, rendering any investigation incomplete.*<sup>118</sup> *Furthermore, the examiner only superficially noted a lack of trauma signs on the victim's body.*<sup>119</sup> *Expert testimony submitted to the Court stated that the individual who conducted the examination was neither skilled nor qualified.*<sup>120</sup> *The investigation's defects allowed Mr. Baldeón García's torturers to go unpunished for sixteen years at the time of judgment.*<sup>121</sup>

*Consequently, because the State did not competently investigate*

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112. *Id.* ¶ 154.

113. *Id.* ¶ 169.

114. *Id.* ¶ 136.

115. *Id.* ¶ 157.

116. *Id.* ¶ 158.

117. *Id.* ¶ 162.

118. *Id.* ¶ 160.

119. *Id.*

120. *Id.*

121. *Id.* ¶ 161.

*Mr. Baldeón García's case, the State violated Article 1 (Obligation to Prevent and Punish Torture), Article 6 (Obligation to Take Effective Measures), and Article 8 (Obligation to Investigate) of the Inter-American Convention to Prevent and Punish Torture.*<sup>122</sup>

Article 7 (Right to Personal Liberty), in relation to Article 1(1) of the Convention, to the detriment of Mr. Baldeón García,<sup>123</sup> because:

*The Court noted the State's acknowledgement of international responsibility for violations of Article 7 (Right to Personal Liberty) and found that there no longer exists a factual controversy with respect to such violations.*<sup>124</sup> *Therefore, the Court held that the State violated Article 7 (Right to Personal Liberty) to the detriment of Mr. Baldeón García.*<sup>125</sup>

### C. Dissenting and Concurring Opinions

#### 1. Separate Opinion of Judge Antônio Augusto Cançado Trindade<sup>126</sup>

In a separate opinion, Judge Cançado Trindade, while concurring with the Judgment entered by the Court, contended the Court missed an opportunity to set precedent that could help establish *jus cogens* with respect to the right to a fair trial.<sup>127</sup> The Court found a systematic pattern of “mistreatment and extrajudicial executions.”<sup>128</sup> The State abducted, tortured, and killed Mr. Baldeón García during this pattern of torture and death.<sup>129</sup> Judge Cançado Trindade opined that such a systematic pattern constitutes an “aggravating circumstance” and thus presented the Court with an opportunity to make “progress on the precedent setting process.”<sup>130</sup>

Further, while the Court considered allegations of violations of Article 8 (Right to a Fair Trial) and Article 25 (Judicial Protection) as they relate to the obligations of Article 1(1) (Obligation to Respect

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122. *Id.* ¶ 162.

123. *Id.* ¶ 45.

124. *Id.*

125. *Id.*

126. *Baldeón-García v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 147 (Apr. 6, 2006).*

127. *Id.* ¶ 1.

128. *Id.* ¶ 3.

129. *Id.* ¶ 2.

130. *Id.* ¶ 4.

Rights),<sup>131</sup> Judge Cançado Trindade argued that the Court could have set a stronger precedent by considering these violations in the light of international *jus cogens*.<sup>132</sup> In doing so, the Court could have expanded the scope of such *jus cogens* to cover the right to a fair trial, by broadly wrapping it in the blanket of a right to justice.<sup>133</sup>

Finally, Judge Cançado Trindade contended that this right to justice is a compulsory law imposing upon the State the obligation to “achieve a given result” when conducting its investigation.<sup>134</sup> Without such result, the obligations are not compulsory and potentially veil any wrongdoers with impunity.<sup>135</sup> Judge Cançado Trindade, therefore, dissented from the Court’s reasoning when it found an obligation to merely “act in a given manner.”<sup>136</sup>

#### IV. REPARATIONS

The Court ruled that the State had the following obligations:

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

###### 1. Publish the Judgment

The State shall publish at least once in the official gazette and in another nationwide newspaper the proven facts and the operative paragraphs in the Judgment within six months of notice of this Judgment.<sup>137</sup>

###### 2. Investigate and Identify, Prosecute, and Punish Those Responsible

The State must adopt any necessary measures to identify, prosecute, and punish the perpetrators and instigators of the violations committed against Mr. Baldeón García.<sup>138</sup> These measures must meet international standards for documentation and construction of forensic

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131. *Id.* ¶ 7.

132. *Id.* ¶ 9.

133. *Id.* ¶ 10.

134. *Id.* ¶ 12.

135. *Id.*

136. *Id.* ¶ 11.

137. Baldeón García v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 194 (Apr. 6, 2006).

138. *Id.* ¶ 199.

evidence for investigations of torture and other cruel, inhumane or degrading treatment.<sup>139</sup> The State shall publicize both the findings of the investigation as well as the prosecution so that the Peruvian public knows the truth of the events.<sup>140</sup>

### 3. Publically Acknowledge Liability and Apologize

The highest-ranking authorities of the State shall publically acknowledge the State's liability for the arrest, torture, and extrajudicial execution of Mr. Baldeón García in the presence of his next of kin, and shall publicly apologize to them for covering up the truth for over fifteen years.<sup>141</sup>

### 4. Name a Street, Park, or School for Mr. Baldeón García

Within one year following notice of this Judgment, the State and Mr. Baldeón García's next of kin shall name a public street, park, or school located in Mr. Baldeón García's birthplace of Pucapaccana after him.<sup>142</sup> If the location chosen is a school or park, a sign shall be installed that makes reference to the violence inflicted on the rural workers by the State during that period.<sup>143</sup>

### 5. Provide Psychological and Psychiatric Treatment

The State shall provide to Mr. Baldeón García's widow, Guadalupe Yllaconza-Ramírez de Baldeon, and their children, Crispin, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina, and Fidela Baldeon Yllaconza, free psychological and psychiatric treatment, including any necessary medication, for as long as treatment is required, at health-care facilities chosen by the State.<sup>144</sup>

## *B. Compensation*

The Court awarded the following amounts:

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139. *Id.* ¶ 200.

140. *Id.* ¶ 199.

141. *Id.* ¶ 204.

142. *Id.* ¶ 205.

143. *Id.*

144. *Id.* ¶ 207.

### 1. Pecuniary Damages

The Court awarded \$5,000 to Mr. Baldeón García,<sup>145</sup> divided among his relatives.<sup>146</sup> Fifty percent of this award should go to his children, and fifty percent should go to his widow, Mrs. Guadalupe Yllaconza Ramírez, for loss of income.<sup>147</sup>

The Court awarded \$20,000 to Crispín Baldeón Yllaconza for the consequences that arise out of being forced into exile and such other consequences arising out of the serious instability to which he was subjected since his father's death.<sup>148</sup> Finally, \$10,000 was awarded each to Guadalupe Yllaconza Ramírez, and Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina, and Fidela Baldeón Yllaconza, for the same reasons as Crispín Baldeón Yllaconza.<sup>149</sup>

### 2. Non-Pecuniary Damages

The Court ordered the State to pay \$75,000 to Mr. Baldeón García,<sup>150</sup> divided among his relatives in equal parts to his children and to his widow, Mrs. Guadalupe Yllaconza Ramírez,<sup>151</sup> for being subjected to torture.<sup>152</sup>

The Court awarded \$25,000 to each of the following persons: Guadalupe Yllaconza Ramírez, and Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina, and Fidela Baldeon Yllaconza,<sup>153</sup> for the emotional consequences of the events, including the impact of the loss due to its unexpected nature, the exile and loss of social contacts, the anguish and uncertainty caused by the long searching process, fear, and the sadness of noticing the deterioration of their everyday life conditions, among others.<sup>154</sup>

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145. *Id.* ¶ 185.

146. *Id.* ¶ 182.

147. *Id.*

148. *Id.* ¶ 187.

149. *Id.*

150. *Id.* ¶ 191.

151. *Id.* ¶ 182.

152. *Id.* ¶ 190.

153. *Id.* ¶ 191.

154. *Id.* ¶ 190.

### 3. Costs and Expenses

The Court ordered the State to pay \$5,000 to Crispín Baldeón Yllaconza, for expenses incurred by APRODEH for services rendered both within the domestic and the Inter-American legal systems.<sup>155</sup>

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

\$310,000

#### C. Deadlines

The State must comply with the order of the Court to publish the part of the judgment containing the proven facts and the operative paragraphs, within six months of notice of the Judgment.<sup>156</sup>

The State must, within a reasonable amount of time, investigate the events and punish the perpetrators of the violations.<sup>157</sup>

The State must, within six months of notice of the Judgment, publicly acknowledge liability and apologize to the next of kin.<sup>158</sup>

Within one year of notice of the Judgment, the State must name a school, park, or street after Mr. Baldeón García in his birthplace of Pucapaccana.<sup>159</sup>

The State must, within a reasonable amount of time, provide to the next of kin the psychiatric and psychological care, if they so desire.<sup>160</sup>

Finally, the State must compensate the next of kin and reimburse their costs and expenses within one year of notice of the Judgment.<sup>161</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

**February 7, 2008:** The Court found that the State failed to inform the Court of the measures it had adopted in compliance with the Judgment,

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155. *Id.* ¶ 209.

156. *Id.* ¶ 194.

157. *Id.* ¶ 199.

158. *Id.* ¶ 204.

159. *Id.* ¶ 205.

160. *Id.* ¶¶ 207, 210.

161. *Id.*

and subsequently requested that the State inform the Court of all measures it has taken to comply with the Court's Judgment by March 12, 2008.<sup>162</sup>

**April 3, 2009:** The Court found that the State complied with the obligations to publish both the proven facts and the operative paragraphs of the Judgment.<sup>163</sup> However, the Court found that the State failed to provide certain medicines to Guadalupe Yllaconza Ramírez and thus was in partial breach of the obligation to provide psychological and psychiatric treatment to Mr. Baldeón García's next of kin.<sup>164</sup>

The State had to investigate, prosecute, and punish the perpetrators and instigators of the violations committed against Mr. Baldeón García.<sup>165</sup> Further, the State had neither publically apologized nor acknowledged its international liability.<sup>166</sup> Additionally, the State had not paid to the next of kin, nor had it compensated Crispin Baldeon Yllaconza for legal costs and expenses.<sup>167</sup>

## VII. LIST OF DOCUMENTS

### *A. Inter-American Court*

#### 1. Decisions on Merits, Reparations and Costs

[Baldéon García v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 147 \(Apr. 6, 2006\).](#)

[Baldéon García v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 147 \(Apr. 6, 2006\).](#)

#### 2. Provisional Measures

[None]

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162. *Baldéon García v. Peru*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. ¶ 11 (Feb. 7, 2008).

163. *Baldéon García v. Peru*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. 10 ¶ 1 (Apr. 3, 2009).

164. *Id.* ¶¶ 1-2.

165. *Id.* ¶¶ 13-15.

166. *Id.* ¶ 23.

167. *Id.* ¶ 32.

### 3. Compliance Monitoring

[Baldéon García v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Apr. 3, 2009\).](#)

[Baldéon García v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 7, 2008\).](#)

### 4. Review and Interpretation of Judgment

[None]

#### *B. Inter-American Commission*

##### 1. Petition to the Commission

Guadalupe Yllaconza-Ramirez de Baldeón and Crispín Baldeón-Yllaconza v. Peru, Petition No. 11.767, Inter-Am Comm'n H.R. (July 3, 1997).

##### 2. Report on Admissibility

[None]

##### 3. Provisional Measures

[None]

##### 4. Report on Merits

[None]

##### 5. Application to the Court

Baldéon García v. Peru, Petition to the Court, Inter-Am. Ct. H.R., Case. No. 11.767 (Feb. 11, 2005).

### VIII. BIBLIOGRAPHY

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*El Estado Pide Perdon a Familias de Desaparecidos* [The State Apologizes to Families of the Missing], LA PRIMERA (July 24, 2013), [http://www.laprimerape.com/online/politica/el-estado-pide-perdon-a-familias-de-desaparecidos\\_144845.html](http://www.laprimerape.com/online/politica/el-estado-pide-perdon-a-familias-de-desaparecidos_144845.html) (Peru).

Clara Sandoval, *The Challenge of Impunity in Peru: The Significance of the Inter-American Court of Human Rights*, 5 ESSEX HUM. RTS. REV. 1-20 (July 2008).