

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Bernabe Baldeon-Garcia v. Peru
Doc. Type:	Judgement (Merits, Reparations, and Costs)
Decided by:	President: Sergio Garcia-Ramirez; Vice President: Alirio Abreu-Burelli; Judges: Oliver Jackman; Antonio A. Cancado Trindade; Cecilia Medina-Quiroga; Manuel E. Ventura-Robles; Diego Garcia-Sayan
Dated:	6 April 2006
Citation:	Baldeon-Garcia v. Peru, Judgement (IACtHR, 6 Apr. 2006)
Represented by:	APPLICANT: the Asociacion Pro Derechos Humanos
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

In the Case of Baldeón-García,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, or “the Court”), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Articles 29, 31, 53(2), 55, 56 and 58 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers the following Judgment.

I. INTRODUCTION TO THE CASE

1. On February 11, 2005, pursuant to Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) filed before the Court an application against the State of Peru (hereinafter “the State” or “Peru”), originated in Petition number 11,767, received by the Secretariat of the Commission on May 24, 1997. In its Petition, the Commission requested the Court to declare that the State violated the rights protected in Article 4 (Right to Life), Article 5 (Right to Humane Treatment) and Article 7 (Right to Personal Liberty) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same, in detriment of Bernabé Baldeón-García. Furthermore, the Commission requested the Court to declare the State’s responsibility for the violation of Article 5 (Right to Humane Treatment), Article 8 (Right to a Fair Trial) and Article 25 (Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to respect Rights) of the same, in detriment of the next of kin of the alleged victim, to wit: Guadalupe Yllaconza-Ramirez de Baldeón (wife) and Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina, all of them Baldeón-Yllaconza (children).

2. Bernabé Baldeón-García was a 68 year-old peasant who lived together with his family and earned his living as a farmer in the Department of Ayacucho, Peru. On September 25, 1990, as a part of a counterinsurgent operation carried on in such Department, military forces reached the community where Baldeón-García lived and there, they allegedly proceeded to arrest three persons, including Baldeón-García. The alleged victim was taken to the Church of Pacchahuallhua, wherein he was allegedly mistreated, and “was tied up with wires and hung upside down to be subsequently whipped and submerged in water tanks,” and allegedly died as a consequence of such mistreatment.

3. The Commission argued that these events occurred within a context of “a recurrent pattern of violations of that kind arising at that time, more particularly, in the department in which the arrest and subsequent death of the [alleged] victim took place.” The Commission considered that “the case reflected the abuses committed by the military armed forces during a domestic conflict, in detriment of peasants living in the Peruvian mountain regions, as the Commission had pointed out since the early 90’s, and as more recently pointed out by the Comisión de la Verdad y Reconciliación del Perú (Truth and Reconciliation Commission of Peru).”

4. Furthermore, the Commission submitted information to the Court about the alleged damage caused by the State to the alleged victim’s next of kin due to the alleged moral and psychological damages caused by the alleged detention and subsequent execution of Baldeón-García and by the lack of a complete, impartial and effective investigation of the facts. In that sense, the Commission alleged that the criminal proceedings had not been effective and had not been duly carried out. Furthermore, the Commission stated that fourteen years had elapsed since the occurrence of the events and the criminal action was still at its investigative stage, no formal charges were filed against any person whomsoever and nobody was punished so far, and further stated that the case was referred from one prosecutor to another, and this might presumably have caused “unreasonable delays” and turned the proceedings more difficult.

5. Likewise, the Commission requested the Inter-American Court to order the State, under Article 63(1) of the Convention, to adopt the specific reparation measures detailed in the application. Lastly, the Commission requested the Court to order the State to pay the costs and expenses arising from the processing of the case in the domestic courts and those arising from the proceedings under the Inter-American System for the Protection of Human Rights.

II. COMPETENCE

6. The Court has jurisdiction to hear the instant case pursuant to Articles 62 and 63(1) of the American Convention, given that Peru has been a State Party to the Convention since July 28, 1978 and accepted the contentious jurisdiction of the Court on January 21, 1981.

III. PROCEEDING BEFORE THE COMMISSION

7. On May 24, 1997, Guadalupe Yllaconza-Ramirez de Baldeón and Crispín Baldeón-Yllaconza (hereinafter “the petitioners”) filed a petition before the Inter-American Commission

for the alleged illegal and arbitrary detention, torture and extra-judicial execution of their next of kin, Bernabé Baldeón-García, allegedly performed by members of the Peruvian armed forces.

8. On July 3, 1997, the Commission ordered the commencement of the case of Baldeón-García under number 11,767.

9. On October 19, 2004, the Commission, pursuant to Article 50 of the Convention, approved the admissibility and merits report No. 77/04, in which it concluded that the State was 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, in relation to Article 1(1) (Obligation to respect Rights) of the same. Likewise, it considered that the State should adopt the following recommendations:

1. To make a thorough, impartial, effective and immediate investigation of the facts in order to determine the circumstances under which Bernabé Baldeón-García was extra-judicially executed, and to identify all those persons that participated in the events at the different levels of decision making and execution, and also to speed up the criminal proceedings and to impose the corresponding punishment.

2. To make a thorough, impartial and effective investigation of the persons that had taken part in the previous defective investigations and proceedings commenced due to the execution of Bernabé Baldeón-García, in order to make a determination as to the responsibility of such persons for the lack of investigation that derived in the impunity surrounding such case.

3. To provide adequate reparation to Guadalupe Yllaconza-Ramirez and to the children of the victim, respectively, including both the moral and the material damage caused due to the violations of their human rights.

10. On November 11, 2004, the Commission sent the admissibility and merits report to the State granting it a term of two months to adopt the recommendations set forth therein.

11. On the same date, the Commission, pursuant to Article 43(3) of its Rules of Procedure, sent a notice to the petitioners informing them about the adoption of the report and the remittance of that report to the State and requested the petitioners to submit a brief stating their comments regarding the possible filing of the case before the Inter-American Court for its consideration.

12. On December 14, 2004, the petitioners stated that the case should be submitted to the Court for consideration.

13. On December 22, 2004, Peru informed the Commission that “in order to partially comply with the recommendations made in report No. 77/04, on December 7, 2004, the Fiscalía Superior de Ayacucho (Superior Prosecutor’s Office of Ayacucho) ordered that the records of the investigation about the detention, torture and death of Bernabé Baldeón-García be sent to the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales, y Exhumación de Fosas Clandestinas (Special Prosecutor’s Office for Human Rights, Forced Disappearances and Exhumation of Clandestine Graves) at Huamanga (hereinafter “la Fiscalía Especializada en Derechos Humanos” -“Special Prosecutor’s Office for

Human Rights”-) and to the Comisión Distrital Descentralizada de Control Interno del Distrito Judicial de Ayacucho (Decentralized District Commission for the Internal Control of the Judicial District of Ayacucho). The State also informed that after January 10, 2005, it would submit a detailed report to inform about the state of the investigations carried on at the above referred bodies.”

14. On January 12, 2005, the State filed with the Commission an additional report to inform that the Fiscalía Especializada en Derechos Humanos (Special Prosecutor’s Office for Human Rights) “had taken several steps in order to clarify the facts (taking of depositions of eye-witnesses, recognition of the place where the events occurred, exhumation of the corpse, etc.), and stated that until then, no conclusions could be drawn.” In that respect, the Commission concluded that there was no “compliance with recommendation [No. 1],” and that the State “had not provided any information regarding the compliance with the rest of the recommendations made [...] in the report it submitted [...].”

15. On February 8, 2005, the Inter-American Commission decided to submit the instant case for the consideration of the Court, in view of the lack of “a satisfactory implementation” of the recommendations embodied in report No. 77/04.

IV. PROCEEDING BEFORE THE COURT

16. On February 11, 2005, the Inter-American Commission filed an application before the Court (*supra* para. 1), together with documentary evidence and offered to submit testimonies of witnesses and expert witnesses as further evidence. The Commission appointed José Zalaquett and Santiago A. Canton as delegates and Juan Pablo Albán, Pedro Díaz, Ariel Dulitzky and Víctor Madrigal as legal counsel.

17. On March 21, 2005, the Secretariat of the Court (hereinafter “the Secretariat”), after a preliminary examination of the application by the President of the Court (hereinafter “the President”), served the said application and its Appendixes on the State and also notified the State of the term within which it had to answer the application and to appoint its agents in the proceedings. On the same date, and pursuant to Article 35(1) (d) and (e) of the Rules of Procedure, the Secretariat served notice of the application on the original petitioners, Guadalupe Yllaconza-Ramirez de Baldeón and Crispín Baldeón-Yllaconza (*supra* para. 7) and also on the representatives of the next of kin of the alleged victim (hereinafter “the representatives”), and on the Asociación Pro Derechos Humanos (hereinafter “APRODEH”) (Pro Human Rights Association), and also notified them that they would have two months to file their briefs of requests, arguments and evidence (hereinafter “brief of requests and arguments”).

18. On April 21, 2005, the State appointed Manuel Álvarez-Chauca as agent in the instant case.

19. On May 16, 2005, the representatives filed a brief of requests and arguments, and attached documentary evidence and offered testimonies of expert witnesses as evidence. The representatives alleged the same violations as the Commission had alleged in its application (*supra* para. 1) and requested the Court to render judgment regarding the presumed violation of

Articles 2 and 3 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “Inter-American Convention against Torture”).

20. On July 22, 2005, the State filed its answer to the application and its comments on the brief of requests, arguments and evidence (hereinafter the “answer to the application”), together with documentary evidence. In said answer Peru partially acknowledged its international responsibility for the violations alleged by the Commission (supra para.1) as regards Article 4 (Right to Life), Article 5 (Right to Humane Treatment) and Article 7 (Right to Personal Liberty) of the Convention, as regards Article 1(1) (Obligation to Respect Rights) of the same, in detriment of Bernabé Baldeón-García, and also acknowledged its responsibility for the “delay in the administration of justice within the scope of Article 8(1)” (Right to a Fair Trial) of the said Convention, in detriment of the next of kin of the alleged victim. However, the State pointed out that the “violation of the right to a fair trial [...] could be traced back to the date on which the event occurred and up to the commencement of the transition to democracy, because since November 2000 there is an environment of Institutional freedom and autonomy so that the General Attorney’s Office and the Judiciary and any competent authorities may serve in their positions free from any kind of interference whatsoever by any individual or political body.” Lastly, the State made no reference to the alleged violations of Article 5 (Right to Humane Treatment) and Article 25 (Judicial Protection) of the Convention, in detriment of the next of kin of the alleged victim.

21. On August 3, 2005, the Secretariat, following orders of the President, requested the Commission and the representatives to submit before September 5, 2005, any comments that they might deem appropriate to the partial acknowledgement of international responsibility made by the State in its answer to the application.

22. On September 2, 2005, the Commission filed its comments to the partial acknowledgment of international responsibility made by the State in its answer to the application (supra para. 20).

23. On September 6 and 8, 2005, the representatives filed their comments to the partial acknowledgment of international responsibility made by the State in its answer to the application (supra para. 20).

24. On September 8, 2005, the Secretariat, following instructions of the Court en banc, requested the State to submit, before September 30, 2005, 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,” in detriment of the next of kin of the alleged victim.

25. On October 20, 2005, the State, after an extension of term that had been granted, filed a statement to clarify the acknowledgment of responsibility made in the answer to the application, in response to the request made by the Court. In that respect, the State informed that “it made a reserve to address the matters regarding the international responsibility of the State derived from the violation of Article 5 (Right to Humane Treatment) and Article 25 (Right to Judicial Protection) of the Convention [...] in detriment of the next of kin of the [alleged] victim.”

26. On November 14, 2005, the parties were informed that, after the analysis of the principal applications and briefs submitted by the Commission, the representatives and the State (supra paras. 16, 19 and 20), the Court considered that it was not necessary to convene a Public Hearing for the instant case.

27. On December 13, 2005, the President issued an Order stating that he deemed it appropriate to receive, through affidavits, the testimonies of Crispín Baldeón-Yllaconza and Guadalupe Yllaconza-Ramirez, and the testimony of expert witness María Dolores Morcillo-Méndez, that had been offered by the Commission, and also the testimonies of expert witnesses José Pablo Baraybar-Do Carmo and Viviana Frida Valz-Gen Rivera, that had been offered by the representatives. Pursuant to operative paragraph three of said Order, the parties were granted a non-renewable extension of 10 days, running from the moment such testimonies and expert opinions have been received, to submit any comments that they might deem appropriate in respect of the same (infra paras. 28, 29, 30 and 31). Furthermore, in such Order, the President informed the parties that they would have a non-renewable term extending until February 9, 2006, to submit their final written arguments regarding the merits of the case and the possible reparations and legal costs.

28. On January 9, 2006, the Commission sent the affidavits of Crispín Baldeón-Yllaconza and Guadalupe Yllaconza-Ramirez de Baldeón, as well as the expert report of María Dolores Morcillo-Méndez.

29. On that same date, the representatives sent the expert report of Viviana Frida Valz-Gen-Rivera and its Appendixes.

30. On even date, José Pablo Baraybar-Do Carmo sent his expert report.

31. On January 12, 13 and 20, 2006, the representatives, the Commission and the State, respectively, pointed out that they did not have any comments to submit to the testimonies of witnesses and the testimonies of expert witnesses rendered in the instant case (supra paras. 28, 29, and 30).

32. On February 6 and 9, 2006, the Commission and the representatives, respectively, filed their final written arguments. The State did not file any final written arguments.

33. On February 21, 2006, the Secretariat, following instructions by the President, requested the State to submit to the Court before March 10, 2006 all the files containing the investigations made regarding the instant case as evidence to facilitate the adjudication of the case.

34. On March 15, 2006, the State filed the evidence to facilitate the adjudication of the case that had been requested, with the exception of the files with the investigations carried out by the different judicial authorities.

V. PRELIMINARY CONSIDERATIONS

35. Now, the Court will proceed to determine: (a) the scope of the acknowledgement of international responsibility made by the State and (b) the extent of the subsisting controversy.

a) Acknowledgment of international responsibility

36. Article 53(2) of the Rules of procedure sets forth that

If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as to the claims of the representatives of the alleged victims, their next of kin or representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

37. The Inter-American Court, exercising its contentious jurisdiction, applies and interprets the American Convention, and when a case is submitted to its jurisdiction, the Court has the power and authority to determine the international responsibility of a State Party to the Convention for any violations to the provisions of the same. [FN1]

[FN1] Cf. Case of the “Mapiripan Massacre”. Judgment of September 15, 2005. Series C No. 134, para. 64; and Case of Gómez-Palomino. Judgment of November 22, 2005. Series C No. 136, para. 27.

38. The Court, exercising its powers of international judicial protection of human rights, may determine whether an acknowledgment of international responsibility made by a respondent State provides sufficient ground, under the terms of the American Convention, to proceed with the consideration of the merits of the case and the determination of the possible reparations and legal costs. To such effect, the Court will analyze the situation in each particular case. [FN2]

[FN2] Cf. Case of the “Mapiripan Massacre”, supra note 1, para. 65; Case of Gómez-Palomino, supra note 1, para. 28; and Case of Huilca-Tecse. Judgment of March 3, 2005. Series C No. 121, para. 42.

39. In its answer to the application (supra para. 20), the State “acknowledged its international responsibility for the unlawful detention, cruel, unlawful and degrading treatment and extrajudicial execution of Bernabé Baldeón-García upon the violation of Article” 4 (Right to Life), Article 5 (Right to Humane Treatment) and Article 7 (Right to Personal Liberty) of the Convention, as regards Article 1(1) (Obligation to Respect Rights) of the same, in detriment of Bernabé Baldeón-García.

40. Furthermore, Peru “acknowledged the damage caused to Guadalupe Yllaconza-Ramirez de Baldéon (wife of the [alleged] victim;) Crispin, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina Baldeon-Yllaconza (children of the [alleged] victim).

Moreover, the State also acknowledged its responsibility for the “delay in the administration of justice within the scope of Article 8(1) [(Right to a Fair Trial)] of the American Convention, in detriment of the next of kin above-mentioned.” However, the State “pointed out that although the existence of a violation of the right to a fair trial could be determined, it was necessary to make it clear that said violation could be traced back to the date on which the event occurred and up to the commencement of the transition to democracy, because since November 2000 there is an environment of Institutional freedom and autonomy so that the General Attorney’s Office and the Judiciary and any competent authorities may serve in their positions free from any kind of interference whatsoever by any individual or political body.”

41. The Commission, pointed out (*supra* paras. 22 and 32) that: a) it “appreciated the acknowledgment of responsibility made by [...] Peru, as a positive step towards the compliance with its international obligations;” b) the State “accepted in whole the facts of the case, including the denial of justice, and therefore, it requested the [...] Court to consider them as proved and to include them in its judgment on the merits, given the importance that the determination of the truth [...] of the facts had for the victims of violations of human rights, for the next of kin and for the Peruvian society as a whole;” and c) such acknowledgment did not make any reference to the international responsibility derived from the violation of Article 5 (Right to Humane Treatment) and 25 (Right to Judicial Protection) of the Convention, in detriment of the next of kin of the alleged victim.

42. By virtue of the aforesaid, the Commission requested the Court to “admit the acknowledgment of international responsibility made by Peru” and to declare the termination of the controversy “as to the facts and the violations of Article” 4 (Right to Life), Article 5 (Right to Humane Treatment) and Article 7 (Right to Personal Liberty) of the Convention, as regards Article 1(1) (Obligation to Respect Rights) of the same, in detriment of the alleged victim; as well as the violation of Article 8 (Right to a Fair Trial), Article 5 (Right to Humane Treatment), Article 25 (Judicial Protection) and Article 1(1) (Obligation to Respect Rights) of the American Convention, in detriment of the next of kin of Bernabé Baldeón-García. As an alternative, the Commission requested that “in case the Court found that an express declaration by the State were necessary, Peru be ordered to set forth clearly its position as regards the violations of Article 5 [(Right to Humane Treatment)] and Article 25 [(Judicial Protection)] of the Convention, in detriment of the next of kin of the alleged victim.”

43. In turn, the representatives stated (*supra* paras. 23 and 32) their “satisfaction for the acknowledgment by the State of its international responsibility.” However, they pointed out that regarding the alleged violation of Article 8(1) (Right to a Fair Trial) of the Convention, in detriment of the next of kin of Bernabé Baldeón-García, the State “limited that acknowledgment up to November 2000.” Furthermore, they pointed out that the State did not address the alleged violations of Article 5 (Right to Humane Treatment) and Article 25 (Judicial Protection) of the Convention, as regards Article 1(1) (Obligation to Respect Rights) of the same, in detriment of the next of kin of the alleged victim. Lastly, they added that the State “did not either deny or contest the facts stated in the application, and therefore, the said facts should be considered as accepted.”

44. In a communication of October 20, 2005 (*supra* para. 25), Peru stated, as an answer to the clarification requested by the Court about the scope of the acknowledgment of international responsibility regarding the next of kin (*supra* para. 20), that it “would reserve the right to address the matters related to the international responsibility of the State derived from the violations of Article 5 (Right to Humane Treatment) and Article 25 (Right to Judicial Protection) of the American Convention [...], in detriment of the next of kin” of Bernabé Baldeón-García.

i. Acknowledgment of the State as regards the facts

45. In view of the acknowledgment of international responsibility made by the State (*supra* para. 20), the Court considers that there no longer exists a controversy as to the facts alleged in the petition as violations to Article 4 (Right to Life), Article 5 (Right to Humane Treatment) and Article 7 (Right to Personal Liberty) of the Convention, in detriment of Bernabé Baldeón-García, and also as to the facts that have occurred since September 1990 “until the commencement of the transition to democracy” in November 2000, that were alleged by the Commission and the representatives as violations to Article 8 (Right to a Fair Trial) and Article 25 (Judicial Protection) of the same, in detriment of the next of kin of Bernabé Baldeón-García, all of them with respect to Article 1(1) (Obligation to Respect Rights) of such Convention, “due to the delay in the administration of justice.” The said facts are considered proven under paragraphs 72(1) through 72(19), 72(21), 72(25) through 72(29) and 72(38) through 72(44) of this Judgment.

ii. Acknowledgment by the State as to claims regarding questions of law

46. The Court considers it convenient to allow the acknowledgment of international responsibility made by the State for the violation of the rights protected by the following provisions: Article 4 (Right to Life); Article 5 (Right to Humane Treatment) and Article 7 (Right to Personal Liberty) of the American Convention, as regards Article 1(1) (Obligation to Respect Rights) of the same, in detriment of Bernabé Baldeón-García.

47. Likewise, this Court admits the acknowledgment of international responsibility made by the State as regards the alleged violation of Article 8(1) (Right to a Fair Trial) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same, in detriment of Guadalupe Yllaconza-Ramirez de Baldeón; Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina, Baldeón-Yllaconza, for the events that had occurred since September 1990 “until the commencement of the transition to democracy” in November 2000.

iii Acknowledgment by the State as to claims regarding reparations

48. This Court considers that the State has not expressly acknowledged any of the claims regarding reparations and legal costs alleged by the Commission and the representatives.

b) Scope of the subsisting controversy

49. Article 38(2) of the Rules of Procedure provides as follows:

In its answer, the respondent must state whether it accepts the facts and claims or whether it contradicts them, and the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested.

50. The State did not expressly answer the claims about the alleged violations of Article 5 (Right to Humane Treatment) and Article 25 (Judicial Protection) of the American Convention, in detriment of the next of kin of Bernabé Baldeón-García, and “reserved the right to address” those allegations (supra paras. 20 and 44). Likewise, the State did not answer the claim made by the representatives (supra para. 19) concerning the alleged violation of Article 2 of the Convention against Torture, in detriment of Bernabé Baldeón-García.

51. In turn, upon filing their comments to the answer to the application, the representatives stated that “the State had not denied or contested the facts described in the application, and therefore, the same should be considered as accepted” (supra para. 43).

52. Pursuant to Article 38(2) of the Rules of Procedure, the State has the burden to state, at the moment of filing its answer to the application, whether it denies each of the facts contained in such application or whether it decides to contest the claims made by the parties.

53. As regards the arguments filed by the representatives (supra para. 51), the Court has previously pointed out that, pursuant to the rule of procedure quoted above, the Court has the power to consider as accepted those facts that have not been expressly denied and those claims that have not been expressly contested. [FN3]

[FN3] Cf. Case of Acosta-Calderón. Judgment of June 24, 2005. Series C No. 129, para. 37; and Case of Caesar. Judgment of March 11, 2005. Series C No. 123, para. 38.

54. Pursuant to the terms in which the parties expressed their positions, the Court considers that there is a subsisting controversy between them as regards the following:

- a) the facts related to the alleged violation of Article 8 (Right to a Fair Trial) and Article 25 (Judicial Protection) of the American Convention, as regards Article 1(1) of the same, in detriment of the next of kin of Bernabé Baldeón-García, from November 2000 (supra paras. 1, 16, 19, 20, 45 and 47);
- b) The facts related to the alleged violation of Article 5 (Right to Humane Treatment) of the Convention, as regards Article 1(1) of the same, in detriment of the next of kin (supra paras. 1, 16, 19, 20, 45, and 47);
- c) Whether the facts accepted as violation of Article 5 (Right to Humane Treatment) of the Convention, in detriment of Bernabé Baldeón-García (supra para. 45) constitute torture; and furthermore, the alleged violation by the State of Articles 2 and 3 of the Inter-American Convention against Torture, these latter alleged only by the representatives (supra para. 19); and
- d) All matters related to the determination of the reparations and legal costs (supra paras. 1, 16, 19 and 48).

55. The Court considers that the acknowledgment by the State constitutes a positive contribution to the development of this proceeding and the enforcement of the principles consecrated by the American Convention. [FN4]

[FN4] Cf. Case of Gutiérrez-Soler. Judgment of September 12, 2005. Series C No. 132, para. 59; Case of Huilca-Tecse, supra note 2, para. 84; and Case of Carpio Nicolle et al. Judgment of November 22, 2004. Series C No. 117, para. 84.

56. However, taking into account the responsibility the State has to protect human rights and in view of the nature of the instant case, the Court considers that rendering judgment determining the truth of the facts and the merits of the case, as well as their consequences, does constitute a form of reparation for Bernabé Baldeón-García and his next of kin, and at the same time, it constitutes a way to prevent that similar events may ever happen again. [FN5]

[FN5] Cf. Case of the “Mapiripan Massacre”, supra note 1, para. 69.

57. Consequently, the Court considers it proper to open a chapter regarding the facts involved in the instant case, to cover both the facts acknowledged by the State and the facts that have been proven through the different pieces of evidence appearing on the records of the case.

58. Likewise, notwithstanding the acknowledgment of the violations of Article 4 (Right to Life) and Article 5 (Right to Humane Treatment) of the Convention, regarding Article 1(1) (Obligation to Respect Rights) of the same, in detriment of Bernabé Baldeón-García (supra para. 46), the Court considers that it is essential to make some precise determinations about certain matters related to the obligations stated in said Articles. As regards the arrest of Bernabé Baldeón-García, the Court considers that the same was made without a warrant issued by a competent judge and not in flagrante delicto.

IV. EVIDENCE

59. Before examining the evidence offered, the Court will, in the light of the provisions set forth in Articles 44 and 45 of the Rules of Procedure, make some considerations that arise from the prior cases heard by the Court and which are applicable to the instant case.

60. As regards the weighing of evidence, the contradictory principle is applied, in order to respect the right of defense of the parties. Such principle is embodied in Article 44 of the Rules of Procedure regarding the time for offering the evidence, in order for the parties to stand on an equal footing. [FN6]

[FN6] Cf. Case of Acevedo-Jaramillo et al. Judgment of February 7, 2006. Series C N°. 144, para. 183; Case of López-Álvarez. Judgment of February 1, 2006. Series C No. 141, para. 36; and Case of the Pueblo Bello Massacre. Judgment of January 31, 2006. Series C No. 140, para. 61.

61. According to the usual practice of the Court, at the commencement of each procedural stage, the parties must state the evidence they intend to offer in the first written submission they make. Furthermore, exercising the discretionary powers granted by Article 45 of the Rules of Procedure, the Court or its President may request the parties to provide any additional evidence that may be used to facilitate the adjudication of the case, and this shall not be considered as a new opportunity for the parties to extend or supplement the arguments, except that the Court may expressly so allow. [FN7]

[FN7] Cf. Case of Acevedo-Jaramillo et al, supra note 6, para. 184; Case of the Pueblo Bello Massacre, supra note 6, para. 62; and Case of Blanco-Romero et al. Judgment of November 28, 2005. Series C No. 138, para. 38.

62. The Court has pointed out, as regards the admission and weighing of evidence, that the procedure followed in Court is not subject to the same formalities as domestic court proceedings are, and further, that the incorporation of certain elements to the body of the evidence must be made taking into account the circumstances surrounding the case and considering the limitations imposed to ensure legal certainty and procedural equality for the parties. Furthermore, the Court has taken into account that international Case Law, when considering that international courts have the power to weigh and make an assessment on the basis of sound judgment, has not established a strict determination as to the quantum of evidence that is necessary to constitute the foundation of a judgment. This criterion is specially valid regarding international human rights courts, which, for the purpose of the determination of the international responsibility of a State for the violation of the rights of a person, are flexible in the assessment and weighing of the evidence submitted for their consideration, regarding any incumbent matters of fact, following the rules of logic and based on experience. [FN8]

[FN8] Cf. Case of Acevedo-Jaramillo et al, supra note 6, para. 185; Case of López-Álvarez, supra note 6, para. 37; and Case of the Pueblo Bello Massacre, supra note 6, para. 63.

63. On the basis of the aforesaid, the Court will proceed to examine and weigh the documentary evidence filed by the Commission, the representatives and the State in the different procedural stages or as evidence to facilitate the adjudication of the case which has been requested by the President, all of which constitutes the body of evidence in the instant case. To such end, the Court shall abide by the principle of assessment on the basis of sound judgment, within the incumbent legal frame.

A) DOCUMENTARY EVIDENCE

64. The Commission and the representatives sent affidavits with the testimony of two witnesses and the opinion of three expert witnesses, as a response to the Order issued by the President on December 13, 2005 (supra para. 27). Such testimonies of witnesses and expert witnesses are summarized as follows:

TESTIMONY OF WITNESSES

1. Crispín Baldeón-Yllaconza, son of Bernabé Baldeón-García

Due to the armed conflict, he emigrated to the city of Lima where he now lives, in extreme poverty, with 7 of his 8 siblings and his mother. He is now 55 years old and has temporary jobs. His six children are also temporary workers and contribute to maintain the family home.

Since 1985, when a military base was established in the district of Accomarca, the soldiers stationed there established that it would be “mandatory” to surrender, on a monthly basis, animals and other supplies to feed the soldiers stationed in the said base. This obligation was not fulfilled during the month prior to the events that occurred on September 25, 1990.

The day on which his father was taken by the soldiers, he was in the city of Lima, and had been working there since two months before as a temporary worker. On September 28, 1990, three days after his father had been killed, he received a telegram from a home-town neighbor informing him about the events.

Nobody dared report the events for fear of reprisals by the armed forces. Likewise, the court authorities of that time disregarded peasants’ complaints daily submitted reporting alleged disappearances, tortures and murders, as well as alleged damages to property. On October 30, 1990, the Federación de Instituciones de la Provincia de Vilcashuamán (Federation of Institutions of the Province of Vilcashuamán) filed a complaint before the Cámara de Senadores de la República (Senate of the Republic). Afterwards, on November 16, 1990, together with his brother Vicente Baldeón-Yllaconza, he filed a petition for an investigation before an investigating committee of the Senate. On that same year he filed complaints before human rights entities such as APRODEH and Amnesty International.

The complaints filed before the Fiscalía de la Nación (General Prosecutor’s Office of Peru) in 1991 and before the Comisión de Derechos Humanos y Pacificación del Congreso (Committee of Human Rights and Pacification of the Congress) on October 1, 1993, were not seriously investigated. The investigation commenced after the filing of the complaint before the Prosecutor’s office at Vilcashuamán in July 2000, was referred to a “Fiscalía Especializada en Desapariciones Forzadas, Ejecuciones Extrajudiciales y Exhumación de Fosas Clandestinas de Ayacucho” (Prosecutor’s Office Specialized in Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Graves of Ayacucho). In 2001, the Fiscalía Especializada (Specialized Prosecutor’s Office) started an investigation within the scope of the Ministerio Público (Office of the Attorney General) and on August 25, 2005, the judicial investigation was started. It was not until 2005 that a serious investigation commenced in order to solve the case.

Since the beginning of the judicial investigation in 2005, the testimonies of Guadalupe Yllaconza-Ramirez, victim’s mother, of himself, and of Santos Baldeón-Palacios, Fernando Baldeón-Flores, Benigno Urquiza-Rivera, Juan Urquiza-Flores, Feliciano Urquiza-Rivera and Aurea Baldeón-Ocaña were provided, and a judicial inspection was also made in Pacchauhua,

District of Independencia, a place where “his father and [...] other two persons had been detained.”

On January 13 and 14, 2005 the Equipo Peruano de Antropología Forense (hereinafter “EPAF”) (Peruvian Team of Forensic Anthropology) within the scope of the investigation carried on by the prosecutor, conducted a medical examination on the corpse of his father. The witness and his sister Fidela Baldeón-Yllaconza were present during said examination, also made “in the presence of the municipal authorities of the district of Accomarca.” The Coordinadora Nacional de Derechos Humanos (National Coordination Office of Human Rights) and APRODEH provided them with a coffin and transportation to the cemetery of Ñuñunhuaynlyocccucho, District of Independencia, Province of Vilcashuamán, where it was buried.

Up to this date, the authorities have not arrested the perpetrators. He will not give up until justice is done. Furthermore, he expects that the Inter-American Court may be the “means that all his family has striven for in their quest for justice, that has not been successful so far, and he further expects that it may fix the amount of a reparation that may be proportional to the suffering caused to him and his family.”

2. Guadalupe Yllaconza-Ramirez de Baldeón, wife of Bernabé Baldeón-García

She is 83 years old and she is a housewife. Her children are: Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, Baldeón-Yllaconza. They are her only “source of income”, given her age, health, and taking into account that she does not have a job and that the State has not granted her any pension.

Two days after the events, on September 27, 1990, Santos Baldeón-Palacios and Jesús Baldeón-Zapata informed her about the death of her husband, who was 68 years old by the time he was taken and executed by the armed forces.

This was a great shock for her, she was deeply affected by the absence of her husband, not only “for the love she had for him [...] but also because he was the main provider to maintain the family.” Due to that situation, she had to move to the “capital” in view of the reprisals of the armed forces, leaving behind her “small piece of land” in her home-town and the rest of her property; she also had to make a new start together with her family in a city such as Lima, where “she has not got accustomed to living in until this date.”

She led a “peaceful” life, together with her family in her home-town, and all family members contributed “to maintain” the home. They lived on what they could grow in their fields and therefore, they do not have any skills other than farming, and thus, it is very difficult for them to get a job.

EXPERT REPORTS

1. María Dolores Morcillo-Méndez, Specialist in Forensic Medicine and Criminal Judicial Institutions.

The record drawn upon the recognition of the victim’s corpse does not show any information regarding the circumstances in which the death occurred, nor does it contain any data regarding the age, aspect and position of the corpse at the time of such recognition. There is not either any description of “cadaverous phenomena.” There is a description of the skull, as “it may be inferred that corresponds to the head since the corpse was not dissected.” A haematoma on the

face is described without details. Thus, the injury was interpreted by a “person not qualified for such task.” In the rest of the description it is stated that “it does not show any signs,” without any clear explanation of the kind of signs to which reference is made, “specifically, reference as to whether or not they correspond to signs of trauma.”

At the end of the record, under the heading “SUMMARY” it is stated that the probable cause of the death was a “CARDIAC ARREST,” though, strictly speaking, it is not a “cause of death.” By such denomination, it is understood that the heart stops beating, which is something that occurs in all deaths. Therefore, the record of the examination does not show any cause of death whatsoever.

From the information that was available, studied and analyzed, the expert drew the following conclusions as regards the forensic experts performance in the instant case: a) no medico-legal autopsy had been performed; b) there is no information about the methodology applied to draw the record of the medical examination of the corpse, and such examination does not exactly conform to the basic principles and procedures established for this kind of investigation of deaths occurring when there is a situation of custody by the State, or for deaths occurring in violent circumstances in general; c) the main deficiencies have been detected in the description of the corpse during the examination, when determining the probable cause of the death, and also due to the lack of the mandatory medicolegal autopsy which was necessary to determine the cause of the death or, at least, to establish the probable cause of death with more certainty. No thorough and detailed independent medical examination performed by a qualified physician was made either; d) there is an insufficient description of the findings in the record of the examination of the corpse and the lack of an autopsy does not allow to make scientifically based representations to determine with certainty the time, cause or manner in which the death occurred, nor does it establish the presence or absence of signs that might suggest or indicate torture or inhumane treatment; e) it is not possible to determine the cause of the death; however, “it is possible to conclude that the injuries observed in the bone remains are consistent with traumatic wounds that might suggest torture;” f) as regards the handling of the pieces of evidence, there is no information recorded; and g) no photographic evidence was recorded during the examination of the corpse, “which evidence is necessary and appropriate.”

Lastly, she made reference to the general recommendations for all medico-legal investigations of deaths, such as the implementation of processes that may guarantee scientific-criminal guidelines; the application of principles of “documentation” and “preservation”, which constitute the basis for medico-legal investigation, the design and implementation of guides or manuals, as well as the creation of checklists, designed to standardize the processes for gathering information.

2. José Pablo Baraybar-Do Carmo, forensic anthropologist and archaeologist

According to the first case of torture documented from bone remains, the following conditions must be determined to make a differential diagnosis of torture on the basis of bone remains: a) the wounds in the thoracic cavity and vertebral column; b) the wounding mechanism must typically be of a low charge, and the non-costal wounds must be attributable to specific agents, such as, for example, fractures in the arms or legs that might suggest defense; c) presence of fibrous bone proliferation in the areas surrounding the fractures that indicate the incipient formation of callum, conferring certain diachrony to the wounds; and d) the above described wounds, when they can be associated, allow to affirm the existence of torture as the most

probable scenario; if not all of them can be associated, the scenario becomes possible and not conclusive. Only a fraction of the wounds caused by torture or mistreatment affect the bones. Therefore, it is important to make a detailed observation of the structures of the body that are more exposed, such as the ribs, which seem to be the favorite of those who commit torture.

The Expert's opinion was based on the revision of the report "Expert opinion in the case of Bernabé Baldeón-García" prepared by the EPAF.

Pursuant to the description made in such report, in the instant case two kinds of wounds were found, firstly, wounds to the thoracic cavity affecting ribs and sternum, and secondly wounds in the neck and cranial base area. Regarding the first group of wounds, the report describes a series of wounds around the sternum and ribs that is associated to "anterior-posterior compression of the thorax in the right area next to the fractures." Upon the observation of the photographs attached to the report, it can be seen that there are also "fractures of the left rib curves, at chondrocostal level and in the curves of the second to sixth rib."

The fractures of the thoracic cavity are caused by low charge and it is not possible to associate specific activities to each of them, rather, it can be stated that there are a number of causes. These may include thoracic compression, where the body of the victim is pressed against the ground or a wall, or produced by kicking and hitting the affected area "with an undefined blunt and hard object."

The wounds described in the expert report of the EPAF are "indicative of torture," as this term is defined in Article 1 of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment.

The wounds found in the victim's corpse could have been caused by "anterior-posterior compression of the thorax, causing, among others, sternum fractures and also by inflicting the same or similar degree of force to the ribs at both sides." Though it is not possible to determine the kind of force inflicted, "it can be inferred that it could have taken different forms, including but not limited to kicks and blows with unidentified blunt and hard objects."

The report informs about a "possible wound caused by a firearm" (referred to as PAF, for its abbreviation in Spanish) through the neck towards the cranial area. In this case there is an "association between the fracture of the posterior arch of the Atlas (first cervical vertebra), the cranial base and the spinal apophysis of C3 and C4 (third and fourth cervical vertebrae). Empirically, this set of elements does not allow discarding a lacerating wound, most probably caused by a short weapon (such as a gun or revolver), through the neck and entering the skull through its base." The report also states that the wound is possible, fact, which indicates that there is a 50 per cent possibility that such wound had been caused by a firearm.

The medium or low speed bullets (less than 350 m/s) "tend to lose most part of their energy when they impact against intermediate targets, such as in this case for example, the spinal apophysis of C3-C4, the arch of the Atlas and/or the occipital squama (in case the bullet has not entered the skull through the foramen magnum). In such case, the bullet would not have sufficient force to exit the skull. Therefore, it can be inferred that the absence of a bullet in the exhumated remains does not suffice to exclude the possibility of a wound caused by a firearm."

The victim's remains "might have suffered peri-mortem wounds which are compatible with torture" and "the wounds in the neck and the cranium base are compatible with a possible wound caused by a firearm."

3. Viviana Frida Valz-Gen Rivera, Psychotherapist

In spite of the fact that the death of the victim took place many years ago, it was something “totally unexpected” for the next of kin. The fact that an event is unexpected turns it more difficult to be accepted and elaborated. One of the aspects most pointed out by the next of kin is the surprise it caused and the feeling they had of facing a situation that they could not accept as real. This is coupled with the opinion they had of Bernabé Baldeón-García as a person who was highly respected and appreciated by the community and known for the services he offered of “healing with natural herbs.” The lack of acceptance is increased by the deep feeling of indignation and pain they had to endure because of the death of their father. The impact that violence had in the family has been increased by the lack of response by the State to the complaints they have made. All the suffering derived from such impunity increased their mourning and the sensation of vulnerability and despair. Furthermore, they suffered pecuniary damages and their lifestyle was impoverished.

The impact caused to the family was very huge and it has changed their lives “radically.” Along these 15 years they have lived “tortured” by the images associated to the circumstances surrounding the murder of their father. Due to the said circumstances, all the family, except the elder sister, has left the community to move to Lima. They have not only lost their father, but they have also lost their place of reference, they were outcasts, whereas their sister remained in the community leading an extremely sad and desolate life. In addition, the lack of social support increased the suffering of the next of kin, for whom their father was the family referent and support.

The family managed to file a complaint some days after the occurrence of the events. This placed them in a very dangerous position, they were menaced by the armed forces. These events and their consequences led the next of kin to “question the feeling of safety and protection by the State (sic),” in view of the lack of response to their complaints, within an environment of fear and insecurity, causing them to run away, heading towards Lima, for fear that something might happen to them as well.

It can be observed that the family has emotional traits rather than severe psychological alterations, that is to say, the murder of their father has caused an emotional impact in all of them. All the family members have shown “a high level of pain and traumatic remembrances, with frequent bursts of tears.” For them this is a matter that they have not overcome yet. The women have been forced to develop “strategies to cover their grief,” and this has caused further damage to their personalities, since it takes up a great deal of “emotional energy.”

Likewise, there are several other manifestations of strong “emotional inhibition” that can be considered as a manner to face suffering, such as silence and social isolation. This is caused by the “lack of social spaces where to seek support,” the sense of impunity, the feeling of frustration in the quest for justice, the loss of collective support and of “community referents.” They have lost all that when they moved in isolation to a city which they found “threatening”, and where they have been “constantly discriminated and disregarded.”

Guadalupe, wife of the alleged victim, does not seem to have any interest in learning to speak Spanish; she lives in her own world of remembrances and is only interested in her relationship with her children and grandchildren. She strongly misses the life in her community. Furthermore, according to her children, she has got ill due to the events occurred. Currently, she is 83 years old and has an advanced osteoporosis condition, arthritis, and has “TB” recurrence. Living in Lima is very hard for her, coupled with the suffering for the fate of her late husband.

As regards the rest of the family members, the condition and poverty in which they live, turns them “vulnerable.” They have had to overcome several difficulties to survive along all these

years, in very critical conditions, such as malnutrition. They have had psychosomatic symptoms mainly associated to the stress caused by the events. Several members of the family have reported to suffer difficulty to get asleep. Crispín Baldeón has shown severe difficulty in this respect, “suffering from insomnia, always associated to his concerns about the judicial process.” There are also symptoms such as frequent headaches. Two of his sisters have reported to have experienced chokes when thinking or speaking about their father’s case.

An important moment for all of them was the exhumation and subsequent burial of the remains of the alleged victim; this was something “moving for all the family.” It has provided certain relief. It is important to know that all they had claimed for has been acknowledged, that his father is buried in his community and that they can visit his grave on death celebration festivities, which are very important for them.

In spite of the experience they had to endure, the family shows persistency and strength to continue in their quest for justice. This has brought about the impossibility of taking care of the children in order to follow up the legal process. For example, the children of Crispín have repeatedly requested their father to give up, they say they are tired. For them, the time elapsed is discouraging. They warn their father that something wrong, such as disappearing, might happen to him too.

The family lived in a rural community growing crops in their “farm” and taking seasonal jobs in the coast to increase their income. After the events, they had to live in extreme poverty; they lost everything, their land and the possibility to work in any other “farm”, since they moved to the city.

Bernabé Baldeón-García was very important for his grandchildren too. Several of his grandchildren were very little when the events took place. Bernabé provided maintenance for some of them, becoming a paternal figure for them. One of his grandchildren has stated the following: “I lived with my grandpa, I cried a lot, I was very sad, I missed my school classes. I could not return to school. My grandpa bought me all the things I needed for school as if I were his son. He looked after us.”

A key factor for the “family disintegration” has been the fact that the family had to leave the community. Weeks after the event happened, they left the place and they slept in the woods for fear of reprisals. This fact caused the fracture of the “community cohesion and the permanent family separation,” and this is a stress factor affecting all outcasts and refugees. In addition, this situation became worse given the threats they received after the first complaint was filed.

The facts in the instant case have not only directly affected the family, but they have also affected the community where they lived. Nobody could accept that something like this could have happened to Bernabé Baldeón-García, a man who was considered to be a good person. This generates a questioning of the basic beliefs of the community, of the sense of confidence and justice.

To sum up, in the case of the next of kin of Bernabé Baldeón-García there are several chronic conditions that have contributed to the subsistence of emotional sequels, such as: a) the impact of an unexpected loss; b) the knowledge about the details of how he was allegedly tortured, which in turn amounts to a permanent torture for them; c) the impact of the displacement and the loss of community referents; d) in the case of Fidela Baldeón and her family, the loss of all family referents due to the displacement of the rest of the family; e) the length of the process in their quest for justice; f) the lack of social and institutional support; g) the fear they have lived with; and h) the undermining of their lifestyle.

Lastly, the reparation measures may significantly reduce the permanent effects of the damages they had suffered. The next of kin state that there is no way to bring Bernabé Baldeón back, but they express their wish to have justice done and to see that those responsible for his death are punished. They also state the need for a public acknowledgment of responsibility by the State and the military authorities. The suppression of impunity and the social punishment of those institutional conducts that have proved to be contrary to human dignity are measures that may help to regain confidence and contribute to social integration. They also consider that it is important to provide reparation for the possibilities of studying that they, particularly the grandchildren, were denied, as a consequence of the events. They point out that there is a need to have both an individual and a collective reparation, the former to cater for their basic needs so that they may overcome the critical situation of poverty they are undergoing, and the latter, for the community, since they are worried for the thousands of cases of persons that will never find their next of kin. The case of Bernabé Baldeón-García is “emblematic [and has a] great impact on the community.”

A program of “psycho-social care” would be extremely beneficial for the next of kin.

B) EVIDENCE ASSESSMENT

Documentary Evidence Assessment

65. The Court admits in this case, as in others, [FN9] the evidentiary value of the documents filed by the parties in due time during the proceeding, and of those documents submitted as evidence to facilitate the adjudication of the case that were not contradicted or contested, and whose authenticity was not questioned.

[FN9] Cf. Case of Acevedo-Jaramillo et al, supra note 6, para. 189; Case of López-Álvarez, supra note 6, para. 41; and Case of the Pueblo Bello Massacre, supra note 6, para. 71.

66. As regards the sworn statements containing the testimony of Crispín Baldeón-Yllaconza and Guadalupe Yllaconza-Ramirez de Baldeón, alleged victims in the instant case, this Court admits the same to the extent they agree with their purpose, as stated in Order of December 13, 2005 (supra para. 27) and weighs the same together with the body of evidence, on the basis of sound judgment. In other cases, the Court has admitted certain sworn statements not executed before a notary public, but only when legal certainty and procedural balance between the parties are not impaired. [FN10] Furthermore, the Court considers that since these persons are next of kin of the alleged victim and they have a direct interest in the instant case, their testimony cannot be weighed in isolation and should be considered on the basis of sound judgment, together with the other evidence provided in the case. The testimonies of the alleged victims and their next of kin are useful as regards the merits of the case and the possible reparations as long as that they may provide more information about the alleged violations and their consequences. [FN11]

[FN10] Cf. Case of Acevedo-Jaramillo et al, supra note 6, para. 191; Case of García-Asto and Ramírez-Rojas. Judgment of November 25, 2005. Series C No. 137, para. 92; and Case of Palamara-Iribarne. Judgment of November 22, 2005. Series C No. 135, para. 57.

[FN11] Cf. Case of Acevedo-Jaramillo et al, supra note 6, para. 203; Case of López-Álvarez, supra note 6, para. 51; and Case of the Pueblo Bello Massacre, supra note 6, para. 69.

67. As regards the expert testimonies rendered by expert witnesses María Dolores Morcillo-Méndez and Viviana Frida Valz-Gen Rivera, proposed by the Commission and the representatives of the victim and his next of kin, respectively, the Court admits the same and weighs them as a whole together with the body of evidence pursuant to the rules of sound judgment. In other cases the Court has admitted statements that had not been sworn to before a Notary Public, whenever legal certainty and procedural balance between the parties were not impaired. [FN12]

[FN12] Cf. Case of Acevedo-Jaramillo et al, supra note 6, para. 191; Case of García-Asto and Ramírez Rojas, supra note 10, para. 92; and Case of Palamara-Iribarne, supra note 10, para. 57.

68. Likewise, the Court admits the expert report of José Pablo Baraybar-Do Carmo, expert witness proposed by the representatives of the alleged victim and his next of kin, which testimony has not been executed before a notary public, but the signature on that report has been certified by the General Consular Office of Peru in Rio de Janeiro, thus conforming to the purpose stated in Order of December 13, 2005 (supra para. 27) and weighs such report together with the body of evidence, on the basis of sound judgment.

69. The Court considers that the Appendixes to the expert report rendered by Viviana Frida Valz-Gen Rivera (supra para. 29), which have not been contradicted or contested and whose authenticity has not been questioned, are useful; therefore, the Court incorporates the same to the body of evidence, pursuant to Article 45(1) of the Rules of Procedure.

70. As regards the press articles submitted by the Commission, the Court has considered that they could be taken into account if they make reference to matters of fact that are apparent and publicly known or to statements made by public officers, or else when they may corroborate aspects related to the instant case. [FN13]

[FN13] Cf. Case of Acevedo-Jaramillo et al, supra note 6, para. 199; Case López-Álvarez, supra note 6, para. 49; and Case of the Pueblo Bello Massacre, supra note 6, para. 74.

71. By virtue of the foregoing premises, the Court will assess, in the instant case, the evidentiary value of the documents, sworn statements and expert reports submitted by the parties. Furthermore, the evidence filed during all the stages of the proceeding has been added to the body of evidence, which is considered as a whole.

VII. PROVEN FACTS

72. Pursuant to the partial acknowledgment of international responsibility made by the State (supra para. 20) and pursuant to the body of evidence in the instant case, the Court finds the following facts to be proved: [FN14]

[FN14] Paragraphs 72(1) through 72(19), 72(21), 72(25) through 72(29) and 72(38) through 72(44) of this Judgment are undisputed facts that this Court considers established on the basis of the partial acknowledgment of international responsibility made by the State.

a) Violations of Human Rights in Peru

72(1) The State created the Comisión de la Verdad y Reconciliación del Perú (“CVR”) (Truth and Reconciliation Commission of Peru), which issued its Final Report on August 28, 2003, in order to clarify the process, the matters of fact and the responsibility for the terrorist violence and the violation of human rights that had occurred since May 1980 and extended until November 2000, attributable both to terrorist organizations and State agents, and also to promote initiatives intended to consolidate peace and harmony among Peruvian citizens. [FN15]

[FN15] The Comisión de la Verdad (Commission for the Truth) was created by the President of the Republic of Peru by means of a Decreto Supremo (Superior Executive Order) No. 065-2001-PCM of June 4, 2001. Its name was later changed to Comisión de la Verdad y Reconciliación (Truth and Reconciliation Commission) by means of Decreto Supremo (Superior Executive Order) No. 101-2001-PCM.

72(2) During the period of time extending from the early 80’s through mid-90’s, Peru experienced a conflict that developed between armed groups and police and military forces. According to the report of the CVR, during those years, there was a “generalized pattern” of violations of human rights by the State as a mechanism to fight terrorism, in which extrajudicial executions and torture were applied. [FN16]

[FN16] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: 2003, Book VI, Patterns for the perpetration of Crimes and Violations of Human Rights, pages. 93, 115, 139 and 167 (Record of Appendixes to the application, Appendix 2).

72(3) The CVR has found evidence that the forced disappearance of persons in Peru was systematic, particularly during 1983 and 1984, and 1989 through 1993. This implies the existence of a standardized modus operandi: a set of procedures established for the identification,

selection and processing of the victims, and the subsequent elimination of any evidence of the crimes perpetrated, particularly, the corpses of the people that had been tortured to death. [FN17]

[FN17] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: 2003, Book VI, Patterns for the perpetration of Crimes and Violations of Human Rights, page 94 (Record of Appendixes to the application, Appendix 2). In that same sense, see CIDH, Report about the Situation of Human Rights in Peru, OEA/Ser.L/V/II.83/Doc. 31, of March 12, 1993, para. 37.

72(4) Once identified, the victims were violently arrested, notwithstanding their age, [FN18] generally in their homes, in public places, at road checkpoints, in public entities, or in raids by armed men wearing masks to cover their faces and generally outnumbering the victims so as to quash any possible attempt of resistance. In those cases where the detentions were performed at the homes of victims or at checkpoints, there had previously been a follow-up or location of the suspects. Subsequently, the victims were carried to a public, police or military facility where they were interrogated, under torture, and then it was arbitrarily decided whether victims would be released or executed. [FN19]

[FN18] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: CVR, 2003, Book VI, paragraph 8, Violence against boys and girls, page. 451 (Record of Appendixes to the application, Appendix 2).

[FN19] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: 2003, Book VI, Patterns for the perpetration of Crimes and Violations of Human Rights, page 94 (Record of Appendixes to the application, Appendix 2).

72(5) As regards the treatment of detainees, in some cases, the intention was to lead them to exhaustion: they were obliged to stand up for long hours (with their backs to the wall, their eyes covered, in a corridor, etc.) or in awkward positions (squatting on their haunches, with their arms held back, sitting and with their heads between their legs, etc.). [FN20] One of the most frequent torture forms by asphyxia was known as the “submarine,” which consisted of introducing the victims with their hands and feet tied up, headfirst, into a tank containing liquid mixed with intoxicating substances. [FN21]

[FN20] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: 2003, Book VI, Patterns for the Perpetration of Crimes and Violations of Human Rights, page 180 (Record of Appendixes to the application, Appendix 2).

[FN21] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: 2003, Book VI, Patterns for the perpetration of Crimes and Violations of Human Rights, page 182 (Record of Appendixes to the application, Appendix 2).

72(6) The CVR received thousands of reports of acts of torture and cruel and inhumane or degrading treatment or punishment that occurred during the period extending from 1980 to 2000. Out of the 6,443 (six thousand, four hundred and forty-three) acts of torture and cruel and inhumane or degrading treatment or punishment reported, the highest percentage (75 %) of cases correspond to acts attributable to State officers or persons acting under its authority or acquiescence. [FN22]

[FN22] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: 2003, Book VI, Patterns for the Perpetration of Crimes and Violations of Human Rights, page 141 (Record of Appendixes to the application, Appendix 2).

72(7) Part of the responsibility for the extended practice of torture was the lack of control over the Armed Forces, the Police Forces or other State authorities, particularly by the judiciary. [FN23]

[FN23] Cf.. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: 2003, Book VI, Patterns for the Perpetration of Crimes and Violations of Human Rights, page 165 (Record of Appendixes to the application, Appendix 2).

b) Status of rural communities in the Department of Ayacucho.

72(8) Ayacucho, one of the most impoverished departments of the country, has the greatest number of deaths and disappearances reported to the CVR. [FN24]

[FN24] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: CVR, 2003, Book I, Aspects and Profiles of Violence, pages 123, 124 et seq. (Record of Appendixes to the application, Appendix 2).

72(9) In the department of Ayacucho, peasants represent 51.9 % of the population, and 71.7 % of the population has quechua or aymara as their mother tongue.

72(10) During the violent years, “quechua-speaking peasants” were at a crossfire, between the public forces and the terrorist groups, since they “did not have any civil rights.” [FN25]

[FN25] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report) Lima: CVR, 2003, Book VIII, The Differentiated Impact of Violence, page 104 (Record of Appendixes to the application, Appendix 2).

72(11) The death of quechua speakers was not noticed by Peruvian public opinion, due to the discrimination that they had suffered, among other things, due to their ethnic origin and their financial standing. [FN26]

[FN26] Cf. Comisión de la Verdad (Commission for the Truth), Informe Final (Final Report), Lima: CVR, 2003, Book I, Aspects and Profiles of Violence, page 119; and Book VIII, The Differentiated Impact of Violence, page 90 (Record of Appendixes to the application, Appendix 2).

72(12) The CVR received multiple complaints reporting the discrimination by the members of the armed forces against indigenous people and peasants that resided in the conflictive areas. In several rural mountain areas of Ayacucho, Apurímac, Junín and Huancavelica, the abuses by the armed forces were driven by a profound racial and ethnical hatred. [FN27]

[FN27] Cfr. Comisión de la Verdad y Reconciliación (Truth and Reconciliation Commission), Informe Final (Final Report), Lima: CVR, 2003, Book VIII, El Impacto Diferenciado de la Violencia. (The Differentiated Impact of Violence), pp. 94, 97, 98 and 102 (Record of Appendixes to the application, Appendix 2).

72(13) The Peruvian armed forces took control over the Department of Ayacucho on December 29, 1982. In 1985, a military base was established in Accomarca, Province of Vilcashuamán, Department of Ayacucho. Those responsible for such base imposed on all Appendixed villages and communities in the area the “obligation” to monthly provide animals and other supplies to feed the soldiers stationed there. This “obligation” had not been fulfilled during the month prior to the occurrence of the events.

c) Arrest and subsequent execution of Mr. Bernabé Baldeón-García

72(14) Mr. Bernabé Baldeón-García was born in 1992, in the community of Pucapaccana Lambrasniyocc, District of Independencia, Province of Vilcashuamán, Department of Ayacucho, where he resided, together with his family, until September 25, 1990. Agriculture was his sole means of livelihood.

72(15) At the time of the events, Mr. Bernabé Baldeón-García was 68 years of age.

72(16) On September 25, 1990, as part of a counterinsurgency operation in the Department of Ayacucho, soldiers from Accomarca Military Base arrived at Pucapaccana.

72(17) When they arrived at the above-mentioned rural community, the soldiers fired shots into the air, gathered the community at the main square and forced them to hand over rams and other supplies. At that moment, one of the officers in charge, holding a list in his hands, called the name of Eustaquio Baldeón, but as he was not there, the officer proceeded to call and arrest some

of his next of kin: Bernabé Baldeón-García, Santos Baldeón-Palacios and Jesús Baldeón-Zapata, among others.

72(18) At the same time, soldiers searched several houses, stealing money and supplies, and forced a member of the community to collect food house-to-house and give it to them. After threatening the community members with death, the soldiers left the community taking the three detainees with them and headed for the community of Pacchahuallhua.

72(19) Later that day, the military group arrived in Pacchahuallhua, where they met with other soldiers who were transporting some people who had also been arrested during similar operations conducted in neighboring communities. Detainees were first locked up and then taken to another room for interrogation and torture.

72(20) During his arrest, Mr. Bernabé Baldeón-García was beaten, tied up with a wire and hung upside down from a beam and then submerged in a tank of cold water. [FN28]

[FN28] Cf. statement made by Santos Baldeón-Palacios before the local authorities of Pucapaccana on June 30, 2000 (record of Appendixes to the complaint, Appendix 13, pages 79 and 80); statement made by Feliciano Urquizo-Rivera before the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales, y Exhumación de Fosas Clandestinas (Special Prosecutor's Office for Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves) on September 2, 2004 (record of Appendixes to the complaint, Appendix 31, pages 116 and 117); statement made by Aurea Baldeón-Ocaña before the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales, y Exhumación de Fosas Clandestinas (Special Prosecutor's Office for Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves) on September 3, 2004 (record of Appendixes to the complaint, Appendix 30, page 114); statement made by Melanio Pulido-de la Cruz before the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales, y Exhumación de Fosas Clandestinas (Special Prosecutor's Office for Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves) on September 2, 2004 (record of evidence to facilitate adjudication of the case submitted by the State, pages 734 and 735); statement made by Juan Urquizo-Flores before the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales y Exhumación de Fosas Clandestinas (Special Prosecutor's Office for Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves) on September 3, 2004 (record of evidence to facilitate adjudication of the case submitted by the State, page 746); statement by Venancio Víctor Medina-Lizarbe before the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales y Exhumación de Fosas Clandestinas (Special Prosecutor's Office for Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves) on October 27, 2004 (record of evidence to facilitate adjudication of the case submitted by the State, pages 772 to 776); statement made by Fernando Baldeón-Flores before the Juez Supraprovincial encargado de los delitos de terrorismo y lesa humanidad de Huamanga (Supraprovincial Court in charge of Terrorist Crimes and Crimes against Humanity of Huamanga on November 24, 2005 (record of

evidence to facilitate adjudication of the case submitted by the State, pages 1155 to 1161); expert report issued by José Pablo Baraybar on January 5, 2006 (record of affidavits, pages 673 to 678); and expert report issued by María Dolores Morcillo-Méndez on January 3, 2006 (record of affidavits, pages 630 to 641).

72(21) Mr. Bernabé Baldeón-García died in the early morning of September 26, 1990 in Pacchahuallua while in military custody.

72(22) Mr. Bernabé Baldeón-García's body was buried the same day without his next of kin being present. [FN29]

[FN29] Cf. order to commence investigation proceedings issued by the Juez Penal Supraprovincial Especializado en Derechos Humanos de la Corte Superior de Justicia de Ayacucho (Supraprovincial Criminal Court Specialized in Human Rights of the Supreme Court of Ayacucho) on August 25, 2005 (record of documents submitted by the State on October 19, 2005, Appendix B, pages 589 to 617); information issued by the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales y Exhumación de Fosas Clandestinas (Special Prosecutor's Office for Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves) on July 12, 2005 (record of documents submitted by the State on October 19, 2005, Appendix A, pages 558 to 576); and statement made by Aurea Baldeón-Ocaña before the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales y Exhumación de Fosas Clandestinas (Special Prosecutor's Office for Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves) on September 3, 2004 (record of Appendixes to the complaint, Appendix 30, page 114).

d) Investigations into the death of Mr. Bernabé Baldeón-García

72(23) On September 26, 1990, the record of the post-mortem examination of Mr. Bernabé Baldeón-García's body was drawn up in the presence of the Justice of the Peace and two medical expert witnesses. The post-mortem examination record includes a description of the clothes and the "race" of the victim. The description of the body indicates that the skull "shows no signs of trauma" and there is a "simple haematoma" on the face, which was considered to have been probably caused after death, during the transportation of the dead body. Said record indicated that "no signs [sic]" were found on the back, the back of the lower extremities, buttocks, upper extremities, anterior part of the trunk, abdomen and genitalia. On the right waist area, the record indicated that there was "abrasion of the superficial epidermis." Furthermore, the document described the anterior aspect of the lower extremities as "normal". As a conclusion, the report states that the probable cause of death was "CARDIAC ARREST". [FN30]

[FN30] Cf. record of the post-mortem examination of Bernabé Baldeón-García, dated September 26, 1990 (record of Appendixes to the complaint, Appendix 27, page 109); and expert witness

report issued by María Dolores Morcillo-Méndez on January 3, 2006 (record of affidavits, pages 630 to 641).

72(24) No medico-legal autopsy was performed on Mr. Bernabé Baldeón-García's body. [FN31]

[FN31] Cf. expert witness report issued by María Dolores Morcillo-Méndez on January 3, 2006 (record of affidavits, page 635).

72(25) On November 15, 1990, Crispín and Vicente Baldeón-Yllaconza, sons of the victim, filed a complaint with a Senate Investigating Committee.

72(26) On February 20, 1991, Crispín Baldeón-Yllaconza and APRODEH (Human Rights Organization) filed a complaint with the Fiscalía de la Nación (General Prosecutor's Office of Peru).

72(27) On October 1, 1993, Bernabé Baldeón-García's next of kin filed a complaint with the Comisión de Derechos Humanos y Pacificación del Congreso (Congress Human Rights and Pacification Committee).

72(28) None of the aforementioned complaints were adequately processed. [FN32]

[FN32] Peru failed to submit evidence to facilitate adjudication of the case, as requested by the Court on February 21, 2006) (supra para. 33 and 34).

72(29) On July 21, 2000, Mr. Crispín Baldeón filed an additional complaint with the Fiscalía Provincial de Vilcashuamán (Vilcashuamán Province General Attorney's Office).

72(30) On December 26, 2001, the Fiscalía Provincial de Vilcashuamán (Vilcashuamán Province General Attorney's Office) issued Resolution No. 030-2001, ordering the temporary suspension of the investigation for failure to obtain information on the real name of the soldier identified by the complainants as the perpetrator of the killing. [FN33]

[FN33] Cf. order for temporary suspension issued by the Fiscal Provincial de la Provincia de Vilcashuamán (Vilcashuamán Province General Attorney) on December 26, 2001 (record of Appendixes to the complaint, Appendix 22, page 101).

72(31) On September 30, 2002, the inspector of the Second Military Region sent information to the Secretaría General de la Comandancia General del Ejército (General Secretariat of the Peruvian Army Forces Command) regarding some pseudonyms associated with the investigation

that appeared on the records of the 34th Infantry Division, which oversees Vilcashuamán. [FN34] Despite having obtained this information, the investigation was not reopened.

[FN34] Cf. letter by the inspector of the Second Military Region, Brigadier General Felipe Villagra-Barriga, dated September 30, 2002 (record of Appendixes to the complaint, Appendix 24, page 104).

72(32) On December 7, 2004, the “Fiscalía Superior Decana de Ayacucho” (Ayacucho Superior Attorney’s Office) ordered that the record of the investigation into the facts of the case be referred to the Fiscalía Especializada en Derechos Humanos (Special Prosecutor’s Office for Human Rights) and to the Comisión Distrital Descentralizada de Control Interno del Distrito Judicial de Ayacucho (Decentralized District Commission for the Internal Control of the Judicial District of Ayacucho). [FN35]

[FN35] Cf. resolution issued by the Fiscalía Superior Decana de Ayacucho (Ayacucho Superior Attorney’s Office) on December 7, 2004 (file before the Inter-American Commission, pages 418 and 419).

72(33) On January 14, 2005, the body of Mr. Bernabé Baldeón-García was exhumed in the presence of Crispín and Fidela Baldeón-Yllaconza, the victim’s children. [FN36]

[FN36] Cf. article published in “La República” newspaper on January 17, 2005, entitled “Peritos confirman muerte por tortura” (Medical Experts Confirm Death by Torture) (record of Appendixes to the complaint, Appendix 25, page 105); sworn statement made by Crispín Baldeón-Yllaconza on January 4, 2006 (record of affidavits, pages 619 to 624); and expert witness report issued by the Peruvian Team of Forensic Anthropology in the case of Bernabé Baldeón-García (record of Appendixes to the submission of requests and arguments, Appendix 1, pages 475 to 501).

72(34) On the same day, the EPAF (the Peruvian Team of Forensic Anthropology) issued an expert report, [FN37] stating that the body of the victim, “a man, probably over 60 year of age,” was fully “skeletonized” and complete, except for some missing bones in his feet and hands, and a rib. The aforementioned report described injuries involving fractures of the sternum and ribs. The report also described injuries in the “skull, atlas, and third and fourth cervical vertebrae, which might suggest the passage of a firearm projectile.” “Multiple fractures” were observed “in the costal arches, whose etiology could not be determined because of the state of the remains.” The report also describes “postmortem injuries to the scapulae, pelvis, and thoracic vertebrae.” [FN38]

[FN37] Cf. expert witness report issued by the Peruvian Team of Forensic Anthropology in the case of Bernabé Baldeón-García (record of Appendixes to the submission of requests and arguments, Appendix 1, pages 475 to 501).

[FN38] Cf. Expert witness report issued by the Peruvian Team of Forensic Anthropology in the case of Bernabé Baldeón-García (record of Appendixes to the submission of requests and arguments, Appendix 1, pages 474 to 501); and expert witness report issued by María Dolores Morcillo-Méndez on January 3, 2006 (record of affidavits, pages 630 to 641).

72(35) On July 26, 2005, the Fiscalía Especializada en Derechos Humanos (Special Prosecutor's Office for Human Rights) filed an information against two soldiers of the Peruvian Army for their alleged involvement in the events that are the subject of the instant case. [FN39]

[FN39] Cf. information filed by the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales y Exhumación de Fosas Clandestinas (Special Prosecutor's Office for Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves) on July 26, 2005 (record of documents submitted by the State on October 19, 2005, Appendix A, pages 557 to 575).

72(36) On August 25, 2005, the Juzgado Penal Supraprovincial Especializado en Derechos Humanos de la Corte Superior de Justicia de Ayacucho (Supraprovincial Criminal Court Specialized in Human Rights of the Supreme Court of Ayacucho) ordered the commencement of criminal proceedings against the accused on charges of "torture followed by death" and issued a writ of indictment against them, ordering their arrest, a ban on leaving the country, and the levy of an attachment upon their property. [FN40]

[FN40] Cf. order to commence investigation proceedings issued by the Juez Penal Supraprovincial Especializado en Derechos Humanos de la Corte Superior de Justicia de Ayacucho (Supraprovincial Criminal Court Specialized in Human Rights of the Supreme Court of Ayacucho) on August 25, 2005 (record of documents submitted by the State on October 19, 2005, Appendix B, pages 589 to 617); and information issued by the Fiscalía Especializada en Derechos Humanos, Desapariciones Forzadas, Ejecuciones Extrajudiciales, y Exhumación de Fosas Clandestinas (Special Prosecutor's Office for Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves) on July 12, 2005 (record of documents submitted by the State on October 19, 2005, Appendix A, page 564).

72(37) Up to the date of this judgment, only two persons have been indicted and none has been punished for the events giving rise to this case. [FN41]

[FN41] Cf. case docketed as Case No. 2005-00987-0-0501-JR-PE-02 in the Segundo Juzgado Penal del Distrito Judicial de Ayacucho (Second Criminal Court for the Judicial District of

Ayacucho) submitted to the Court by the State as evidence to facilitate adjudication of the case on March 15, 2006 (record of evidence to facilitate adjudication of the case submitted by the State, pages 679 to 1288).

e) Bernabé Baldeón-García's family and the consequences they suffered as a result of the events

72(38) At the time of his death, Mr. Baldeón-García's nuclear family was composed of his wife, Guadalupe Yllaconza-Ramírez de Baldeón, and his children Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, all bearing the last name "Baldeón-Yllaconza."

72(39) Mr. Crispín Baldeón-Yllaconza has sought justice for the death of his father. He is currently 55 years of age. He has six children and works sporadically as he has no stable job.

72(40) Mrs. Guadalupe Yllaconza-Ramírez de Baldeón is 83 years of age and is a housewife. Mrs. Yllaconza-Ramírez de Baldeón grieved the loss of her husband, not only due to the loving bond they shared but also because her husband was the breadwinner of the family. As a result, she had to move to Lima, leaving all her property and the plot of land she owned behind. She now suffers from osteoporosis and lives in deprived conditions.

72(41) The whole family has suffered because of what happened to their beloved one and also because justice has not been served in this case. Their suffering is partly based on the unexpected nature of the events, which makes it more difficult to cope with them. In relation to the death of Mr. Baldeón-García, his next of kin have expressed feelings of anger, grief, despair, vulnerability and hopelessness.

72(42) As a result of the events described herein, the whole family, except for the oldest sister, Fidela, left the community to move to Lima. Therefore, the family has lost not only their beloved one but also their home ground, thus becoming de facto displaced people. On account of this displacement, their standard of living has worsened and they have had difficulty finding a stable job.

72(43) The lack of justice has raised questions in their minds about the safety and protection provided by the Government.

f) Representation before domestic courts and the Inter-American System for Human Rights Protection

72(44) Mr. Baldeón-García's next of kin have been represented by APRODEH (Human Rights Organization) in domestic proceedings as well as before the Commission and the Court; therefore, said organization has incurred certain expenses in connection with such proceedings. In addition, Mr. Baldeón-García's family has incurred a number of expenses in connection with the complaints and other proceedings before several Peruvian courts.

VIII. ARTICLE 4 OF THE AMERICAN CONVENTION (RIGHT TO LIFE) IN RELATION TO ARTICLE 1(1) THEREOF

Argument of the Commission

73. With respect to Article 4 of the Convention, in relation to Mr. Bernabé Baldeón-García, the Commission stated, *inter alia*, that:

- a) the alleged victim died while in the custody of the State, at a time when a “scheme of extralegal executions was in place in the Department of Ayacucho attributable to State officials;”
- b) the circumstances surrounding his death “required that the relevant authority establish, by applying the principles and techniques of forensic science, the cause, manner, time and place of death, through an autopsy performed by a physician and duly recorded in the relevant register;”
- c) the State failed to take the minimum steps required by international standards to investigate into the facts and find out the truth behind the events leading up to the suspicious death of the victim;
- d) none of the “alleged ‘tests’ were performed with the scientific rigor that should characterize this kind of practices;” and
- e) the examination of the corpse was performed by a person that had no “formal training in medicine or related science.”

Argument of the representatives

74. In the submission of requests and arguments, the representatives raised the same arguments offered by the Commission regarding Article 4 of the Convention, in connection with the death of Mr. Bernabé Baldeón-García.

Argument of the State

75. The State acknowledged its international liability for the violation of Article 4 of the Convention to the detriment of Mr. Bernabé Baldeón-García (*supra* para. 20).

Considerations of the Court

76. The Court considers that the acquiescence by the State to the violation of Article 4 (Right to Life) of the American Convention, to the detriment of Mr. Bernabé Baldeón-García, in relation to the events of September 25 and 26, 1990 (*supra* para. 20), constitutes a positive contribution to the development of these proceedings and to the enforcement of the principles underlying the American Convention [FN42] (*supra* para. 55).

[FN42] Cf. Case of Gutiérrez-Soler, *supra* note 4, para. 59; Case of Huilca-Tecse, *supra* note 3, para. 84; and Case of Carpio-Nicolle et al, *supra* note 4, para. 84.

77. Notwithstanding the foregoing, and given the disturbing circumstances surrounding the death of Mr. Bernabé Baldeón-García and the alleged lack of due diligence on the part of State authorities to ensure effective protection and respect for the human rights of the victim, the Court considers it relevant to analyze certain aspects related to the violation of Article 4 (Right to Life) of the Convention (supra para. 58).

78. Article 1(1) of the Convention sets forth:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

79. Article 4(1) of the Convention provides that:

[E]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

80. First, the Court deems it is important to address the issue of the duties imposed by said treaty upon the States Parties. In this regard, the Court has established that the international liability of the States, within the framework of the American Convention, arises from the violation of the general obligations, erga omnes in nature, to respect and enforce respect for - guarantee- the protection standards and to ensure the effectiveness of the rights enshrined therein, in all circumstances and in respect to all persons under their jurisdiction, embodied in Articles 1(1) and 2 of said treaty. [FN43]

[FN43] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 111; Case of the “Mapiripán Massacre”, supra note 1, para. 111; and Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 140.

81. Special duties derive from these general obligations which are ascertainable on the basis of the particular protection needs of the subject of rights, whether on account of his personal situation or the specific circumstances pertinent to him. In this regard, Article 1(1) is essential in determining whether a violation of the human rights embodied in the Convention may be entirely attributable to a State Party. Indeed, said Article charges the States Parties with the fundamental duties to respect and safeguard the rights so that any impairment of the human rights enshrined in the Convention which, pursuant to International Law, may be attributable to the act or omission of any State authority, irrespective of hierarchy, constitutes an act attributable to the State, which compromises its international liability. [FN44]

[FN44] Cf. Case of the Pueblo Bello Massacre, *supra* note 6, para. 111 and 112; Case of the “Mapiripán Massacre”, *supra* note 1, para. 108 and 110; and Case of the Gómez-Paquiyaury brothers. Judgment of July 8, 2004. Series C No. 110, para. 71.

82. The right to life is a fundamental right, the full exercise of which is a prerequisite for the enjoyment of all other human rights. [FN45] If this right is violated, all other rights become meaningless. Because of its inherent nature, any restrictive approach to this right is inadmissible. [FN46] In accordance with Article 27(2) of the Convention, this right is part of the fundamental entitlements that cannot be repealed insofar as it is regarded as one of the rights that may not be suspended in time of war, public danger, or other emergency that threatens the independence or security of the States Parties. [FN47]

[FN45] Cf. Case of the Pueblo Bello Massacre, *supra* note 6, para. 120; Case of 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109, para. 153; and Case of Myrna Mack-Chang. Judgment of November 25, 2003. Series C No. 101, para. 152.

[FN46] Cf. Case of the “Street Children” (Villagrán-Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 144. In the same regard, cf. Eur.C.H.R., *Nachova and others v. Bulgaria* [GC], no. 43577/98 and 43579/98 Judgment of 6 July, 2005, para. 94.

[FN47] Cf. Case of the Pueblo Bello Massacre, *supra* note 6, para. 119.

83. Based on the fundamental role ascribed to this right by the Convention, States have the obligation to guarantee the creation of the necessary conditions to ensure that violations of this inalienable right do not occur as well as the duty to prevent its officials, or private individuals, from violating it. [FN48] The object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*). [FN49]

[FN48] Cf. Case of the Pueblo Bello Massacre, *supra* note 6, para. 120, 123 and 124; Case of Huilca-Tecse, *supra* note 2, para. 65; and Case of 19 Tradesmen, *supra* note 45, para. 153; in the same regard, cf. Eur.C.H.R., *Öneryildiz v Turkey*, no. 48939/99, Judgment of November 30, 2004, para. 71.

[FN49] Cf. Case of Hilaire Preliminary Objections. Judgment of September 1, 2001. Series C No. 80, para. 83, Case of the Constitutional Court. Competence. Judgment of September 24, 1999. Series C No. 55, para. 36; and Case of Ivcher-Bronstein. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37. In the same regard, cf. Eur.C.H.R., *McCann and Others v. the United Kingdom*, Judgment of September 27, 1995, Series A No. 324, paras. 146-147.

84. In prior cases, the Court has indicated that compliance with the duties imposed by Article 4 of the American Convention, in relation to Article 1(1) thereof, not only presupposes that no person may be arbitrarily deprived of his life (negative duty) but also requires, pursuant to the

obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction. [FN50]

[FN50] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 120; Case of the “Mapiripán Massacre”, supra note 1, para. 232; and Case of Huilca-Tecse, supra note 2, para. 66. In the same regard, cf. Eur.C.H.R., L.C.B. v. the United Kingdom. Judgment of June 8, 1998, para. 36.

85. Based on the foregoing, the States must adopt all necessary measures to 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; [FN51] and guarantee the right to unimpeded access to conditions for a dignified life. [FN52]

[FN51] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 120; and Case of the “Mapiripán Massacre”, supra note 1, paras. 232, 238 and 239. In the same regard, cf. Eur.C.H.R., Öneriyildiz v Turkey, No. 22492/93, Judgment of March 28, 2000, paras. 62-63; and Eur.C.H.R., Osman v. the United Kingdom, Judgment of October 28, 1998, Reports of Judgments and Decisions 1998-VIII, paras. 115-116.

[FN52] Cf. Case of the Indigenous Community Yakye Axa. Judgment of June 17, 2005. Series C No. 125, para. 161; and Case of the “Juvenile Reeducation Institute”. Judgment of September 2, 2004. Series C No. 112, paras. 152 and 153; and Case of the “Street Children” (Villagrán-Morales et al.), supra note 46, para. 144.

86. In the instant case, as stated earlier, (supra paras. 58 and 77), the Court considers it necessary to elaborate on some aspects related to the violation of Article 4 of the Convention, in accordance with the guarantee obligations stipulated in Article 1(1) thereof: (a) regarding the duties to preserve and protect the right to life; and (b) to establish whether the events were adequately investigated during the domestic proceedings instituted for such purposes.

a) Duties to preserve and protect the right to life

87. As stated above, the States must adopt all necessary measures to prevent arbitrary killings on the part of their own security forces [FN53] (supra para. 83); a situation that becomes even more serious when they conform to a pattern of violations of human rights. [FN54]

[FN53] Cf. Case of Myrna Mack-Chang, supra note 45, para. 153; Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 110; and Case of Bámaca-Velásquez. Judgment of November 25, 2000. Series C No. 70, para. 172.

[FN54] Cf. Case of the Gómez-Paquiyaury brothers, supra note 44, para. 76; and Case of Myrna Mack-Chang, supra note 45, para. 139

88. In the instant case, the State admitted, when acquiescing to the claim, that those who arrested and killed Mr. Bernabé Baldeón-García were soldiers (supra para. 20). In addition, it has been established that during the years of conflict, extrajudicial executions by government forces was standard practice to combat subversive activities (supra para. 72(2)); which had become systematic by the time of the events giving rise to this case (supra para. 72(3)). The Truth and Reconciliation Commission pointed out that the vast majority of dead and missing-person incidents during the conflict took place in the Department of Ayacucho, Mr. Bernabé Baldeón-García's place of residence (supra para. 72(8)).

89. The State deprived Mr. Bernabé Baldeón-García of his life through the act of its officials, which translates into a violation of the right to life enshrined in Article 4 of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Bernabé Baldeón-García.

b) Obligation to conduct an effective investigation derived from the guarantee obligation

90. The Court must determine, pursuant to the guarantee obligations laid down in Article 1(1) of the Convention, whether the events giving rise to this case were adequately investigated in the domestic proceedings.

91. The Court has stated that, in cases of extrajudicial executions, it is essential that the States conduct an effective investigation into a deprivation of life case and punish the perpetrators, especially when state officials are involved; otherwise they would be creating, in a climate of impunity, the conditions that will allow these events to continue, which is contrary to the duty to respect and guarantee the right to life. [FN55] Moreover, if violations of human rights are not vigorously investigated, they would be, to a certain extent, favored by public authorities, which would compromise the State's international liability. [FN56]

[FN55] Cf. Case of Myrna Mack-Chang, supra note 45, para. 156.

[FN56] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 145; and Case of the "Mapiripán Massacre", supra note 1, paras. 137 and 232.

92. In the Case of the Pueblo Bello Massacre, [FN57] the Court asserted that the States' obligation to conduct an effective official investigation in cases of extrajudicial, illegal, arbitrary or summary executions derives from the general obligation to guarantee to all persons under their jurisdiction the human rights enshrined in the Convention laid down in Article 1(1) thereof, together with the right to life, as provided by Article 4 of said Convention. [FN58] In these cases, the authorities of a State must initiate a rigorous, impartial and effective investigation ex officio and as soon as is practicable after they take knowledge of the facts. [FN59]

[FN57] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 142.

[FN58] Cf. Case of the "Mapiripán Massacre", supra note 1, paras. 137 and 145; Case of Huilca-Tecse, supra note 2, para. 66; and Case of the Gómez-Paquiyaury brothers, supra note 44, para.

131. In the same regard, cf. Eur.C.H.R., *Gongadze v. Ukraine*, No. 34056/02, Judgment of November 8, 2005, para. 175; Eur.C.H.R., *Nachova and others v. Bulgaria* [GC], supra note 46, para. 110; and Eur.C.H.R., *Hugh Jordan v. the United Kingdom*, No. 24746/94, Judgment of May 4, 2001, para. 105.

[FN59] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 143; Case of the “Mapiripán Massacre”, supra note 1, para. 219; and Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 145. In the same regard, cf. Eur.C.H.R., *Nachova and others v. Bulgaria* [GC], supra note 46, para. 111.

93. The duty to investigate is a best efforts obligation, rather than an obligation to ensure results. This must be undertaken by the State as its own legal duty rather than as a mere formality doomed to failure from the very beginning, [FN60] or as the pursuit of private interests, dependent on proceedings initiated by the victims or the families themselves or prosecuted on the basis of evidence provided by private individuals. [FN61] This is not contrary to the right of the victims of human rights violations or their families to be heard during investigation and court proceedings as well as to actively participate in such proceedings. [FN62]

[FN60] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 143; Case of the “Mapiripán Massacre”, supra note 1, para. 223; and Case of the Moiwana Community, supra note 59, para. 146.

[FN61] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 144; Case of the “Mapiripán Massacre”, supra note 1, para. 219; and Case of the Moiwana Community, supra note 59, para. 146. In the same regard, cf. Eur.C.H.R., *Nachova and others v. Bulgaria* [GC], supra note 46, para. 111.

[FN62] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 144; Case of the “Mapiripán Massacre”, supra note 1, para. 219; and Case of the Moiwana Community, supra note 59, para. 147.

94. Such investigation must be conducted using all legal means available and should be aimed at establishing the truth and conducting the investigation, search, arrest, trial, and punishment of all masterminds and actual perpetrators of the crimes, especially when State officials are or may be involved. [FN63]

[FN63] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 143; Case of the “Mapiripán Massacre”, supra note 1, para. 237; and Case of the Moiwana Community, supra note 59, para. 203.

95. In order for a death investigation to be effective, it is essential that the persons in charge of such investigation be independent, de jure and de facto, of the ones involved in the case. [FN64] This requires not only hierarchical or institutional independence, but also actual independence. [FN65]

[FN64] Cf. Case of Durand and Ugarte. Judgment of August 16, 2000. Series C No. 68, paras. 125 and 126; and Eur.C.H.R., Nachova and others v. Bulgaria [GC], supra note 46, para. 112.
[FN65] Cf. Eur.C.H.R., Hugh Jordan v. the United Kingdom, supra note 58, para. 106.

96. In this sense, based on the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this Court has specified the guiding principles that must be observed when a death incident is deemed to have been the result of an extrajudicial execution. The State authorities conducting an investigation shall, inter alia, a) identify the victim; b) collect and preserve evidence related to the death in order to assist with any investigation; c) identify possible witnesses and obtain testimonies in relation to the death under investigation; d) determine the cause, manner, place and time of death, as well as any pattern or practice which may have brought about such death, and e) distinguish between natural death, accidental death, suicide and homicide. In addition, it is necessary that a thorough investigation of the crime scene be conducted and rigorous autopsies and analyses of human remains be performed by competent professionals, using the best available procedures. [FN66]

[FN66] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 177; Case of the “Mapiripán Massacre”, supra note 1, para. 224; and Case of the Moiwana Community, supra note 59, para. 149; in the same regard see also Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, United Nations, Doc. E/ST/CSDHA/.12 (1991).

97. Any deficiency or fault in the investigation affecting the ability to determine the cause of death or to identify the actual perpetrators or masterminds of the crime will constitute failure to comply with the obligation to protect the right to life. [FN67]

[FN67] Cf. Eur.C.H.R., Nachova and others v. Bulgaria [GC], supra note 46, para. 113; and Eur.C.H.R., Kelly and others v. the United Kingdom, No. 30054/96, Judgment of May, 2001, para. 96.

98. In the instant case, the Court notices significant omissions in the investigation despite the need to collect and preserve the evidence. The only official document drafted on the day of the victim's death, i.e. the record of the post-mortem examination of the body, indicated “cardiac arrest” as the cause of death.

99. However, expert witness José Pablo Baraybar, in the report submitted to this Court, concluded that “the injuries found in the neck and base of the skull are consistent with a possible firearm injury” (supra para. 64). The Court notices that no photographs of Mr. Bernabé Baldeón-García were taken either. The State officials responsible for his death made sure that the body was immediately buried (supra para. 72(22)).

100. In her report, expert witness María Dolores Morcillo-Méndez stated that the methodology used to perform the post-mortem examination of the body cannot be determined from the documents analyzed. In addition, said record does not entirely conform to the principles and procedures provided for in relation to this kind of activities during investigation of deaths while in the custody of the State or deaths in violent circumstances in general. The expert witness concluded that the examination of the body was performed by an “unqualified or inexperienced person” (supra para. 64).

101. In the Court’s opinion, based on the expert witnesses’ reports submitted to this Court, the examination of the body failed to comply with the requirements of the principles of forensic science and the international law on human rights. This situation becomes even more serious since no autopsy was conducted.

102. Consequently, this Court considers that the deficiencies identified in the examination of the body hindered the possibility of determining with reasonable certainty the probable cause of death of Mr. Bernabé Baldeón-García.

103. From the records submitted to this Court it is also impossible to determine whether adequate measures were taken to obtain testimonies that are essential to uncover the truth, before the year 2005 (supra para. 72(36)).

104. Based on the foregoing, the Court finds that the State has not complied with its obligation to guarantee the right to life enshrined in Article 4 of the Convention, in relation to Article 1(1) thereof, in respect of Mr. Bernabé Baldeón-García, insofar as it has failed to conduct a rigorous, thorough and effective investigation into the facts analyzed herein.

** *

105. Based on the foregoing and taking into account the acquiescence of the State to the claim related to the death of Mr. Bernabé Baldeón-García, the Court finds that, as a result of depriving the victim of his life through the acts of its officials (supra para. 20 and 72(21)) and of failing to comply with its duty to conduct a rigorous, thorough and effective investigation (supra paras. 90 to 104), the State is liable for the violation of Article 4(1) of the Convention, in relation to Article 1(1) thereof, insofar as it has failed to comply with its duty to respect and guarantee the right to life, to the detriment of Mr. Bernabé Baldeón-García.

IX. ARTICLE 5 OF THE AMERICAN CONVENTION (RIGHT TO HUMANE TREATMENT) IN RELATION TO ARTICLE 1(1) THEREOF

Argument of the Commission

106. With respect to Article 5 of the Convention, the Commission pointed out, inter alia, that:

a) As regards Mr. Bernabé Baldeón-García

- i) the circumstances surrounding his arrest “constitute a violation of his mental and moral integrity per se;”
 - ii) from said circumstances, coupled with “his age, the uncertainty over the outcome of his detention in the face of a systematic pattern of extrajudicial executions in place at the time, it can be reasonably assumed that [...] he experienced fear and anguish during the time of his arrest;”
 - iii) the explanations provided by the State of the manner of his death “do not conform to the technical criteria that should guide an examination of a person who died while in the custody of the State and allegedly tortured [...], nor are they the result of a formal investigation into the facts;”
 - iv) evidence of the alleged torture should be “obtained as a result of proceedings conducted by the Fiscalía Especializada en Ejecuciones Extrajudiciales (Special Prosecutor’s Office for Extrajudicial Executions), particularly the exhumation of the body;”
 - v) After the filing of the complaint "scientific evidence" has come to light “which proves the maltreatment suffered by the victim (qualified by experts as torture);” and
 - vi) [...] was subject to “physical maltreatment that may be qualified as torture.”
- b) As regards Bernabé Baldeón-García’s next of kin
- i) their mental and moral integrity was affected “as a direct result of the illegal and arbitrary deprivation of freedom of Mr. Bernabé Baldeón-García, the fact that they had no knowledge of his whereabouts, his subsequent death at the hands of State officials and the lack of investigation into the incidents.”

Argument of the representatives

107. When submitting their requests and arguments, the representatives, in addition to raising the same arguments offered by the Commission regarding Article 5 of the Convention, pointed out that:

- a) As regards Mr. Bernabé Baldeón-García
 - i) he was “cruelly tortured,” as he was tied up with wire, submerged in a water tank and beaten; and
 - ii) the State has also violated Article 2 of the Inter-American Convention to Prevent and Punish Torture. Said Article is “supplemented by Article [3] of the aforementioned Convention.”
- b) As regards Bernabé Baldeón-García’s next of kin
 - i) the violation of their mental and moral integrity “is the direct result of what happened to [Mr.] Bernabé Baldeón-García, who was not only a father and a husband, but a figure of authority, respect and wisdom in his community;”
 - ii) the body of Mr. Bernabé Baldeón-García was buried “immediately without giving notice to his immediate family, denying them the right to give him burial according to their rites;”
 - iii) the events subject matter of the instant case caused them “suffering and a feeling of impotence toward State authorities, despair, displacement, and anguish at the indifference of the authorities who did not comply with their duty to investigate and punish those responsible for such events;”

iv) “throughout the years, they have been seeking a rigorous and impartial investigation;” and

v) their grief stems from the lack of a thorough and effective investigation into the facts surrounding the death of Mr. Bernabé Baldeón-García.

Argument of the State

108. With respect to Article 5 of the American Convention, the State acknowledged its international liability for the "maltreatment" meted out to Mr. Bernabé Baldeón-García. However, the State made no statement regarding the obligations derived from said conventional provision in respect of the alleged victim's next of kin (supra paras. 20 and 54(b)).

Considerations of the Court

109. Article 5 of the Convention sets forth:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

[...]

110. Before embarking on the analysis of the obligations derived from the conventional provisions transcribed hereinabove, the Court notices that the representatives alleged that the State failed to comply with the obligations set forth in Articles 2 (sic) and 3 of the Inter-American Convention to Prevent and Punish Torture (supra para. 19). The Commission raised no arguments on this issue. In this regard, the Court has established that the representatives may allege violations different from those alleged by the Commission provided that those legal arguments are based on the facts set out in the application. [FN68] The alleged victims are the holders of the rights enshrined in the Convention; therefore, depriving them from advancing their own legal arguments would be an undue restriction on their right to justice, which is inherent to their legal standing as subjects of International Human Rights Law. [FN69]

[FN68] Cf. Case of the “Mapiripán Massacre”, supra note 1, paras. 57 and 58; Case of Yatama. Judgment of June 23, 2005. Series C No. 127, para. 183; and Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 88.

[FN69] Cf. Case of the “Mapiripán Massacre”, supra note 1, para. 57; and Case of the Moiwana Community, supra note 59, para. 91; and Case of De La Cruz-Flores. Judgment of November 18, 2004. Series C No. 115, para. 122.

111. The arguments of the representatives regarding the application of the Inter-American Convention to Prevent and Punish Torture are related to the facts that took place on September 25, 1990 (supra para. 19).

112. In this regard, the Court notices that Peru deposited an instrument of ratification of said treaty on March 28, 1991. In accordance with Article 22 thereof, the Convention shall enter into force for each State ratifying or acceding to it “on the thirtieth day following the date on which that State deposits its instrument of ratification or accession.”

113. Based on the foregoing, the Court lacks jurisdiction *ratione temporis* to issue a decision on the allegations made by the representatives regarding Articles 2 and 3 of the Inter-American Convention to Prevent and Punish Torture (*supra* para. 107(a)(ii)).

** *

114. The Court notices that the same facts acknowledged by the State, and to which it acquiesced with respect to the victim’s integrity, were also alleged as torture by the Commission and the representatives. The Commission pointed out that Mr. Bernabé Baldeón-García was subjected to “physical maltreatment that may be qualified as torture” (*supra* para. 106(a)(vi)). And the representatives stated that Mr. Bernabé Baldeón-García was “cruelly tortured” (*supra* para. 107(a)(i)).

115. The Court considers that the acquiescence of the State to the violation of Article 5 of the Convention with respect to the alleged “maltreatment” that was meted out to Mr. Bernabé Baldeón-García during his arrest and before his death (*supra* para. 20), constitutes a positive contribution to the development of these proceedings and the enforcement of the principles underlying the American Convention (*supra* para. 55).

116. Notwithstanding the foregoing, the Court considers it relevant to analyze herein: a) the application of Article 5(2) of the American Convention; and b) the alleged violation of Article 5 to the detriment of Mr. Bernabé Baldeón-García’s next of kin.

a) Application of Article 5(2) of the Convention to the instant case

117. This Court has asserted that torture and cruel, inhuman, or degrading punishment or treatment are strictly forbidden by International Human Rights Law. The absolute prohibition against torture, whether physical or psychological, is now part of the international *jus cogens*. Said prohibition applies even under the most difficult circumstances, such as war, threat of war, fight against terrorism and other crimes, curfew or state of emergency, domestic upheaval or conflict, suspension of constitutional guarantees, domestic political unrest or other public calamities or emergencies. [FN70]

[FN70] Cf. Case of García-Asto and Ramírez-Rojas, *supra* note 10, para. 222; Case of Caesar, *supra* note 3, para. 59; and Case of Lori Berenson-Mejía. Judgment of November 25, 2004. Series C No. 119, para. 100.

118. The right to physical, mental and moral integrity of all persons and the obligation of the State to treat the individuals deprived of their freedom with respect for the inherent dignity of the human person entails the reasonable prevention of situations that may impair protected rights.

119. In this regard, the Court has established that a person that has been illegally detained is in a state of greater vulnerability, and therefore exposed to the potential risk that other rights are violated as well, such as the right to humane treatment and to be treated with respect for their dignity. [FN71] In addition, it has been acknowledged that threats and real danger of physical harm causes, in certain circumstances, such a degree of moral anguish that it may be considered psychological torture. [FN72]

[FN71] Cf. Case of López-Álvarez, supra note 6, para. 104; Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 147; and Case of the Gómez-Paquiyaury brothers, supra note 44, para. 108.

[FN72] Cf. Case of Tibi, supra note 71, para. 147; and Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 92; and Case of Cantoral-Benavides. Judgment of August 18, 2000. Series C No. 69, para. 102.

120. The Court has established that the State, in light of its role as guarantor of the rights enshrined in the Convention, is responsible for the observance of the right to humane treatment of all individuals in its custody. [FN73] As a result, there is a presumption of liability against the State for the torture, cruel, inhuman, or degrading treatment that an individual in the custody of State officials may exhibit, if the authorities have failed to conduct a rigorous investigation into the facts followed by the indictment of those identified as the perpetrators of such acts. [FN74] In such cases, the burden of responsibility is placed on the State to provide a satisfactory and convincing explanation of the events and disprove the allegations against it through adequate proffer of evidence. [FN75]

[FN73] Cf. Case of López-Álvarez, supra note 6, paras. 104 to 106.

[FN74] Cf. Case of the “Street Children” (Villagrán-Morales et al.), supra para. 47, para. 170. In the same regard, cf. Eur.C.H.R., Aksoy v. Turkey, Judgment of December 18, 1996, para. 61; and Eur.C.H.R., Tomasi v. France of August 27, 1992, Series A No. 241, paras. 108-111.

[FN75] Cf. Case of Juan Humberto Sánchez, supra note 53, para. 111.

121. It must now be determined if during his arrest and before his death any violation of Article 5 of the Convention was committed to the detriment of Mr. Bernabé Baldeón-García.

122. It has been proven before this Court that Mr. Bernabé Baldeón-García was arrested by soldiers without a warrant issued by a judge having jurisdiction to do so and under circumstances that do not qualify as flagrancy (supra paras. 58 and 76(17)).

123. During his arrest, Mr. Bernabé Baldeón-García was tied up with wire and hung upside down from a beam to be then beaten and submerged in water tanks (supra para. 72(20)).

124. In this regard, the expert report prepared by María Dolores Morcillo-Méndez indicated that it was “possible to consider that the injuries found in the bone remains are consistent with traumatic wounds that might suggest torture” (supra para. 64). Furthermore, expert witness José Pablo Baraybar concluded that the “remains of the victim might suffered perimortem wounds that are compatible with torture” (supra para. 64).

125. In light of the fact that there is sufficient evidence of the alleged torture in the records, that at the time of the events there was a pattern of extrajudicial executions, cruel, inhuman or degrading treatment and torture, and that the State did not challenge the allegations in this regard, the Court finds 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) of the Convention.

126. Based on the foregoing, and taking into account the acquiescence of the State to the claim in this case, the Court finds that the State violated Article 5(2) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Bernabé Baldeón-García.

b) The alleged violation of Article 5 of the Convention to the detriment of Mr. Bernabé Baldeón-García’s next of kin

127. The representatives also argued that the State violated the right to humane treatment enshrined in Article 5 of the American Convention, to the detriment of Mr. Bernabé Baldeón-García’s next of kin (supra para. 107(a)(i)).

128. This Court has asserted that the next of kin of the victims of human rights violations may, in turn, be victims. In this line of reasoning, the Court has considered that the mental and moral integrity of the victims’ next of kin has been violated as a result of the additional suffering resulting from the specific circumstances surrounding the violations committed against their love ones and from the subsequent acts or omissions by the State authorities with respect to the incidents at issue here. [FN76]

[FN76] Cf. Case of López-Álvarez, supra note 6, para. 119; Case of Caesar, supra note 1, para. 60; and Case of the “Mapiripán Massacre”, supra note 1, paras. 144 and 146.

129. The Court has examined the seriousness of the circumstances surrounding this case, particularly the manner in which he was arrested, the torture meted out to Mr. Bernabé Baldeón-García during his detention, the immediate burial of the body of the victim by the soldiers involved in his death, the deep bond of the family with Mr. Bernabé Baldeón-García as well as the obstacles that said family members encountered in their quest to uncover the truth. Based on such circumstances, the Court finds that the victim’s next of kin have experienced great suffering and impotence at the hands of the State authorities to the detriment of their mental and moral integrity as a result of the arrest, torture and subsequent extrajudicial execution of the victim.

130. Based on the foregoing, the Court considers that the State violated, to the detriment of Guadalupe Yllaconza, Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina Baldeón-Yllaconza, the right to humane treatment enshrined in Article 5(1) of the American Convention, in relation to Article 1(1) thereof.

X. ARTICLES 8 AND 25 OF THE AMERICAN CONVENTION (RIGHT TO A FAIR TRIAL AND RIGHT TO JUDICIAL PROTECTION) IN RELATION TO ARTICLE 1(1) THEREOF AND ARTICLES 1, 6, AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE

Argument of the Commission

131. With respect to the alleged violation of Articles 8 and 25 of the Convention, to the detriment of Mr. Bernabé Baldeón-García's next of kin, the Inter-American Commission alleged that:

- a) in the instant case "the neglect shown by the Peruvian judicial authorities, which contributed to the cover-up of those responsible for the events" has been duly established;
- b) the obligation to investigate and punish all acts that entail a violation of the rights protected by the Convention requires the punishment of not only the actual perpetrators but also the masterminds of human rights violations;
- c) the State "failed to adequately investigate the circumstances surrounding the events from the beginning;"
- d) Mr. Bernabé Baldeón-García's next of kin "have informed the notitia criminis to different authorities by filing several complaints" since 1990. Such complaints "were never adequately processed;"
- e) when in July 2000, the victim's family, "tired of waiting for results, filed a new complaint with the Fiscalía Provincial de Vilcashuamán (Vilcashuamán Province General Attorney's Office), an investigation was undertaken which [...] has not been completed due to lack of collaboration on the part of the State regarding the identity of the soldiers that were part of the troop that committed the [alleged] human rights violations against" Mr. Bernabé Baldeón-García;
- f) this last investigation proceeding "was suspended on December 26, 2001, when the Fiscalía Provincial de Vilcashuamán (Vilcashuamán Province General Attorney's Office) issued Resolution No. 030-2001, stating the impossibility to find information on the real name of Lieutenant EP J. Morán [...]; and was not reopened when, in 2003, the possible identity of the perpetrators was determined;"
- g) the preliminary investigations were aimed at establishing whether the victim had any connections with the subversive group operating in the region;
- h) when the State allows investigations "to be conducted by authorities that are potentially involved, [...] independence and impartiality are clearly compromised;"
- i) the right to justice requires not only that domestic proceedings be instituted but also that such proceedings result in a decision within a reasonable time;

- j) in cases like the one before this Court, it is the duty of the authorities to act on its own motion and initiate and follow through the investigation, thus preventing this burden from being placed on the next of kin;
- k) “fourteen years after the events, the criminal case is still at the investigation stage and no formal charges have been brought against any of the persons responsible for these acts, nor have they been punished. The case has been passed on from one attorney’s office to the next, which has caused unnecessary delays and has made proceedings more burdensome;”
- l) “the omission by the Peruvian State to provide the victim’s next of kin with a judicial investigation conducted by an independent and impartial court has, in practice, turned their right to compensation materially impossible;”
- m) in accordance with Peruvian Law, compensation for damages caused by an illegal act typified under criminal law is subject to the determination of the crime in a criminal proceeding;”
- n) the victim’s family and the society as a whole must be informed of the facts related to human rights violations;
- o) “[t]he prevailing impunity in the instant case is so apparent that more than thirteen years after the death of the victim had to go by for the military authorities to provide information on the possible identities of the soldiers and members of the Peruvian army troop nicknamed ‘moreno’, ‘Lieutenant J. Morán’, and ‘gitano’; and once this information became available, the Peruvian authorities did not reopen the investigation despite the news and the significance of the data provided by the Second Military Region Command;”
- p) the fact that the State argued to have reopened the investigation did not prevent the bodies of the Inter-American system from hearing a case already instituted pursuant to the Convention due to the international liability that arises from an alleged act entailing such liability;
- q) the investigation undertaken in the year 2000 by the Fiscalía Provincial de Vilcashuamán (Vilcashuamán Province General Attorney’s Office) at the insistence of the Baldeón-Yllaconza family “has not been completed nor has it yielded any specific results due to the [alleged] lack of collaboration on the part of the State itself in the identification of the soldiers and members of the troop that have [allegedly] committed the human rights violations against the victim and due to the [alleged] disappearance of essential evidence through the passing of time;”
- r) the terms of the State’s acquiescence do not “prevent the examination of ‘all the judicial proceedings in order to have a clear idea of the same and determine whether such proceedings are contrary to the standards regarding the judicial protection and guarantees and the right to an effective remedy [’];” and
- s) the analysis of the reasonableness of the duration of proceedings must cover the whole process.

Argument of the representatives

132. With respect to the alleged violation of Articles 8 and 25 of the Convention, to the detriment of Mr. Bernabé Baldeón-García’s next of kin, the representatives raised the same arguments offered by the Commission and added that:

- a) the family of the alleged victim “has been, over the years, seeking a rigorous and impartial investigation;”

- b) the State has violated “the right to an effective remedy that protects citizens against human rights violations;”
- c) to date, no proceeding against the alleged perpetrators has been instituted, no effective investigation has been conducted to inform the victim’s family of the truth behind the events, nor have the alleged perpetrators been indicted and punished; and
- d) the State has responded by taking measures designed to “hinder the investigation, such as denying access to the information regarding the soldiers that served in the area at the time of the events.”

Argument of the State

133. With respect to the alleged violation of Articles 8 and 25 of the Convention, to the detriment of Mr. Bernabé Baldeón-García’s next of kin, the State indicated, inter alia, that:

- a) since November 2000, “the conditions of institutional autonomy and independence of the Ministerio Público (Office of the Attorney General) and the Judiciary have been met, enabling the judicial authorities to act free of political interference or pressure;”
- b) at this time, the State makes no statement regarding international liability for the facts alleged by the Commission in the application; and
- c) the Ministerio Público (Office of the Attorney General) is not precluded by amnesty laws or statutes of limitations from investigating and indicting suspects of human rights violations.

Considerations of the Court

134. Article 8(1) of the American Convention sets forth that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

135. Article 25 of the Convention sets forth that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The State Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

136. Furthermore, Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture provide:

Article 1

The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

137. In the present case, the relatives of Mr. Bernabé Baldeón-García have unsuccessfully exercised their right to fair trial in Peru, by repeatedly resorting to the competent judicial authorities to denounce the events involved in this case (*supra* para. 72(23) to 72(37)). Based on these facts, the Commission and the representatives alleged the violation of Articles 8 (Fair Trial) and 25 (Judicial Protection) of the Convention, to the detriment of Guadalupe Yllaconza-Ramírez, Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina; all of them members of the Baldeón-Yllaconza family. In view of the above, it is necessary to examine the proceedings initiated locally to establish the facts and identify the individuals responsible for the arrest, death and torture of the victim, and to provide an appropriate compensation. The aforementioned examination must be carried out in accordance with the provisions of Article 25 of the American Convention and the procedural requirements set forth in Article 8 of the Convention regarding the victim's next of kin.

138. This Tribunal has decided to accept the State's partial acknowledgement of international responsibility regarding the violation of Article 8(1) (Fair Trial) of the American Convention to the detriment of Guadalupe Yllaconza-Ramírez de Baldeón and Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina, all of them members of the Baldeón-Yllaconza family, next of kin of Mr. Bernabé Baldeón-García. Said acknowledgment only covers those violations committed "from the date of the occurrence of such events until the commencement of the transition to democracy" (*supra* para. 47). Thus, as represented by the State, "from November 2000, the conditions of Institutional freedom and autonomy were granted so that the General Attorney's Office and the Judiciary and any competent authorities could

serve in their positions free from any kind of interference whatsoever by any individual or political body;” therefore, after that date the State claimed that no violation of the aforementioned Article and of Article 25 (Judicial Protection) of the American Convention had been committed in the instant case (supra para. 40).

139. Based on the above, this Court considers that the State’s due diligence in conducting the proceedings initiated locally after November 2000, should be analyzed in order to establish whether such proceedings were carried out in compliance with the right to fair trial, within a reasonable time, and whether said proceedings provided the victim’s next of kin a suitable recourse to guarantee the rights to fair trial, to find the truth of the facts and to obtain a remedy.

140. The Court wishes to stress out that one of the key principles of law regarding the international responsibility of States, widely accepted in International Human Rights Law, sets forth that every State bears international responsibility for any acts or omissions by its branches or bodies in violation of internationally protected rights. Article 1(1) of the American Convention is crucial in that respect. [FN77]

[FN77] Cf. Case of the “Mapiripán Massacre”, supra note 1, para. 108; Case of the Gómez-Paquiyaury brothers, supra note 44, para. 72; and Case of the “Street Children” (Villagrán-Morales et al.), supra note 47, para. 220.

141. Articles 25 and 8 of the Convention outline the scope of the aforementioned principle of responsibility for the acts of any governmental body, upon referring to the acts and omissions of domestic judicial authorities. [FN78]

[FN78] Cf. Case of the “Street Children” (Villagrán-Morales et al.), supra note 47, para. 220.

142. In similar cases, this Court has found that the investigation by judicial authorities of a State’s alleged violation of international obligations may face the Court with the need to examine the related domestic proceedings. Based on the above, domestic proceedings must be considered as a whole and the duty of the international tribunal is to find out if all proceedings were carried out in compliance with international provisions. [FN79]

[FN79] Cf. Case of Lori Berenson-Mejía, supra note 70, para. 133; Case of Myrna Mack Chang, supra note 45, para. 200; and Case of Juan Humberto Sánchez, supra note 53, para. 120.

143. Upon performing said analysis, the Court takes into account that, pursuant to the American Convention, State Parties have a duty to provide effective judicial remedies to the victims of human rights violations (Article 25) and that said remedies must be enforced in accordance with the rules of due process of law (Article 8(1)) and, as a general rule, in

compliance with the States' duty to guarantee any person under its jurisdiction free and full exercise of the rights set forth in the Convention (Article 1(1)). [FN80]

[FN80] Cf. Case of López-Álvarez, supra note 6, para. 137; Case of the Pueblo Bello Massacre, supra note 6, para. 169; and Case of Palamara-Iribarne, supra note 10, para. 163.

a) Failure to comply with the Convention upon the criminal proceedings conducted by judicial authorities regarding the deprivation of the right to life of Mr. Bernabé Baldeón-García

144. Article 25(1) of the Convention provides for the obligation of States to guarantee the right of all persons under its jurisdiction to an effective judicial remedy against violations of their fundamental rights. [FN81] Mere availability of said remedies will not suffice; these remedies must be effective; i.e. they must be suitable to offer results or answers to violations of the rights protected under the Convention. [FN82] This safeguard is one of the cornerstones of the American Convention and the democratic Constitutional State itself, as set forth in the Convention. [FN83]

[FN81] Cf. Case of Acevedo - Jaramillo et al., supra note 6, para. 213; Case of López-Álvarez, supra note 6, para. 137; and Case of García-Asto and Ramírez-Rojas, supra note 10, para. 113.

[FN82] Cf. Case of Acevedo-Jaramillo et al., supra note 6, para. 213; Case of López-Álvarez, supra note 6, para. 137; and Case of Palamara-Iribarne, supra note 10, para. 184.

[FN83] Cf. Case of López-Álvarez, supra note 6, para. 138; Case of Palamara-Iribarne, supra note 10, para. 184; and Case of Acosta-Calderón, supra note 3, para. 93.

145. To that respect, this Court has stated that any remedy that is illusory due to the general conditions of the country or the specific circumstances of a given case cannot be deemed an effective remedy. [FN84]

[FN84] Cf. Case of 19 Tradesmen, supra note 45, para. 192; Case of Baena Ricardo et al. Jurisdiction. Judgment of November 28, 2003. Series C No. 104, para. 77; and Case of Maritza Urrutia, supra note 72, para. 116.

146. The effective remedy of Article 25 must be processed in accordance with the rules of due process of law contained in Article 8 of the Convention. This Article provides that the victims of human rights violations or their next of kin must enjoy ample possibilities of being heard and participating in the related proceedings, in order to clearly establish the facts and the punishment applicable to the perpetrators of those acts, and to seek an appropriate relief. [FN85]

[FN85] Cf. Case of the "Street Children" (Villagrán-Morales et al.), supra note 47, para. 227.

147. After the arrest, mistreatment, torture and extra-judicial execution of Mr. Bernabé Baldeón-García, the first remedy the State should have attempted is an efficient investigation and judicial proceedings aimed at clarifying the events, punishing the perpetrators of the acts and granting an appropriate compensation. The family of Mr. Bernabé Baldeón-García denounced the events to various authorities; however, the State failed to carry out an effective investigation.

148. In this respect, the State admitted that it failed to carry out an effective investigation in the instant case, infringing the obligation set forth in Article 8(1) of the American Convention (supra para. 40). However, the State claimed that this situation only lasted until the commencement of the transition to democracy by the end of 2000 (supra para. 40).

149. This Court believes it is necessary to reaffirm that, even though in 2000 the State resumed the investigation of the events –due to the insistence of Mr. Baldeón-García’s family,– the State’s responsibility results from the international illegal act allegedly committed. Nevertheless, those judicial proceedings have been ineffective as explained below. Indeed, the lack of diligence by courts of law to conduct criminal proceedings to clarify the events that resulted in the death of Mr. Bernabé Baldeón-García and to punish the perpetrators of those acts has been ascertained.

150. Article 8(1) of the Convention sets forth that one of the elements of due process of law is that a court must decide any case it takes up within reasonable time. The reasonableness of that time must be assessed in relation to the total time demanded by criminal proceedings. In criminal matters, this time period runs from the first procedural act addressed to a specific person allegedly responsible for a given offense, until final and nonappealable judgment is rendered. [FN86]

[FN86] Cf. Case of López-Álvarez, supra note 6, para. 129; Case of Acosta-Calderón, supra note 3, para. 104; and Case of Tibi, supra note 71, para. 168.

151. To examine the time reasonableness in this proceeding, pursuant to Article 8(1) of the Convention, the Court will consider three elements: a) the complexity of the matter, b) the procedural activities carried out by the interested party, and c) the conduct of judicial authorities. [FN87]

[FN87] Cf. Case of López-Álvarez, supra note 6, para. 132; Case of García-Asto and Ramírez-Rojas, supra note 10, para. 166; and Case of Acosta-Calderón, supra note 3, para. 105.

152. Based on the precedents contained in the section on Proven Facts and the acquiescence of the State, the Court considers that this is not a complex case. It involves only one victim, who has been accurately identified, and there are sufficient grounds to conduct criminal proceedings

against the alleged perpetrators. Moreover, the evidence received in Court does not prove that the family of Mr. Baldeón-García has engaged in dilatory conduct. On the contrary, the family of Mr. Baldeón-García submitted various complaints to several state authorities to progress on proceedings and to establish the truth of the events, and determine the respective responsibility (supra paras. 72(23) to 72(37)). The duration of proceedings is exclusively the result of the attitude of judicial authorities.

153. The time consumed by proceedings is undoubtedly unreasonable since, fifteen years after the occurrence of the events, judicial proceedings are still at criminal enquiry stage. This Court believes that this excessive delay amounts in itself to a violation of the due process of law safeguard, [FN88] which could not be justified by the State.

[FN88] Cf. Case of Moiwana Community, supra note 59, para.160; Case of the Serrano-Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 69; and Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 142.

154. Moreover, the fact that criminal proceedings have not come to an end has especially affected the family of Mr. Baldeón-García since, in Peru, civil reparation for damage sustained as a consequence of acts classified as illegal under criminal law requires that the offense be ascertained under a criminal proceeding. In other words, the denial of justice in the criminal system has prevented the next of kin of Mr. Baldeón-García from obtaining a civil compensation for the events of the instant case, thus impairing their right to be granted an adequate reparation.

155. Based on the foregoing consideration, the Court considers that no effective remedy was available to guarantee the next of kin of Mr. Baldeón-García, within a reasonable time, the right to fair trial in compliance with legal safeguards.

b) Obligation to carry out an investigation in the event of torture or other treatment in violation of Article 5 of the Convention against Mr. Bernabé Baldeón-García

156. The Court understands that, based on the general obligation to guarantee every person subject to its jurisdiction the human rights set forth in Article 1(1) of the Convention, together with the right to personal integrity set forth in Article 5 (Right to Personal Integrity) of the treaty, the State has the obligation to immediately initiate ex officio an effective investigation to identify, prosecute and punish perpetrators when a complaint has been filed or when there are sufficient reasons to believe that an act of torture has been committed. [FN89]

[FN89] Cf. Case of Gutiérrez-Soler, supra note 4, para. 54; and Case of Tibi, supra note 71, para. 159. Likewise, Cf. Eur.C.H.R., Assenov and others v. Bulgaria, no. 90/1997/874/1086, Judgment of October 28, 1998, para. 102; and Eur.C.H.R., İlhan v. Turkey [GC], No. 22277/93, Judgment of June 27, 2000, paras. 89-93.

157. Furthermore, this action is specifically regulated in Articles 1, 6 and 8 of the Inter-American Convention against Torture, which bind State Parties to take all steps that may be effective to prevent and punish all acts of torture within the scope of their jurisdiction, and to guarantee an impartial examination of all torture cases [FN90] (supra para. 136). Otherwise, that would amount to an infringement of the absolute prohibition against torture and other cruel, inhuman or degrading treatment. [FN91] Peru is a State Party to the treaty since April 28, 1991 (supra para. 112).

[FN90] Cf. Case of Gutiérrez-Soler, supra note 4, para. 54; and Case of Tibi, supra note 71, para. 159; and Case of the Gómez-Paquiyaury brothers, supra note 44, para. 114.

[FN91] Cf. Eur.C.H.R., Assenov and others v. Bulgaria, supra note 89, para. 102.

158. Since the obligation to investigate was pending at the time the Inter-American Convention against Torture become effective for the State (supra para. 112), for the purposes of the examination contained herein, the Court will apply Articles 1, 6 and 8 of the Convention, which provide for this obligation.

159. In the instant case, the Court finds that Peru failed to act in compliance with these provisions. The corpse of Mr. Bernabé Baldeón-García had severe injuries (supra para. 72(20)), and that circumstance should have been sufficient ground for competent authorities to initiate an ex officio investigation of the events, which was never carried out.

160. In the section on the right to life, the Court concluded that the post-mortem examination of the victim was deficient (supra para. 101). The expert witness María Dolores Morcillo pointed out that the post-mortem examination performed in the instant case did not include a description of the skull. Moreover, said examination only indicated that the face of Mr. Bernabé Baldeón-García was bruised, but did not provide further details on that matter. As to the description of the corpse, the examination only specified that “there are no signs,” without specifying the type of sign referred to, “specifically, whether it refers to signs of trauma.” Based on the above, the expert witness found that the post-mortem examination was performed by a “person not skilled or qualified for that purpose.”

161. The Court considers that, due to the lack of investigation, the alleged perpetrators escaped punishment even after 16 years of the occurrence of the events. The State itself, upon accepting the claim, admitted that there were procedural defects regarding domestic proceedings before November 2000 (supra para. 20).

162. Therefore, the Court finds that the State failed to comply with its obligation to guarantee the right to personal integrity, set forth in Article 1(1) of the Convention, of Mr. Bernabé Baldeón-García, since no serious, complete and effective investigation of the events referred to in this judgment was carried out after their occurrence or after state authorities learnt of said events. The aforementioned circumstances amount to an infringement of Articles 8 and 25. Furthermore, the Court finds that the State failed to comply with Articles 1, 6 and 8 of the Inter-

American Convention against Torture regarding the obligation to investigate and punish torture in domestic courts after April 28, 1991 (supra para. 157).

c) Impunity in the instant case

163. The Commission sustained that the relatives of the victim and the community as a whole should be aware of the events amounting to violations examined in the instant case.

164. In various opportunities, the Court indicated that the State has a duty to avoid and fight impunity, and the Court has described the characteristics of that duty on various occasions, [FN92] as regards human rights violations as those committed in the instant case.

[FN92] Cf. Case of the “Mapiripán Massacre”, supra note 1, para. 237; Case of Moiwana Community, supra note 59, para. 203; and Case of Huilca Tecse, supra note 2, para. 82.

165. In this case, the lack of an effective remedy and, consequently, the denial of justice to the next of kin of Mr. Bernabé Baldeón-García, evidence said impunity.

166. As pointed out by the Court in prior cases, the next of kin of victims of serious human rights violations are entitled to know the truth about those violations. [FN93] The aforementioned right is embodied in the victim`s or its next of kin`s right to request competent governmental authorities to clarify violations and the corresponding responsibility through appropriate investigation and trial. [FN94]

[FN93] Cf. Case of Gómez-Palomino, supra note 1, para. 78; Case of the “Mapiripán Massacre”, supra note 1, para. 297; and Case of Moiwana Community, supra note 59, paras. 203 and 204.
[FN94] Cf. Case of Blanco Romero et al., supra note 7, para. 62; Case of the Serrano-Cruz Sisters, supra note 88, para. 62; and Case of the Plan de Sánchez Massacre. Reparations (art. 63(1) American Convention on Human Rights). Judgment of November 19, 2004. Series C No. 116, para. 97.

167. Therefore, in the instant case, the next of kin of Mr. Baldeón-García are entitled to, and the State has the duty to procure, an effective investigation of the events involving the victim by state authorities, proceedings against the alleged perpetrators and, if applicable, the appropriate penalties imposed to redress the damage sustained by said next of kin. Notwithstanding the foregoing, the Court deems that the consideration given by the CVR to the case of Mr. Baldeón-García amounts to positive progress on that matter. [FN95] However, despite that preliminary reparation, investigation and judicial punishment of perpetrators is still pending.

[FN95] Cf. Truth and Reconciliation Commission, record of case 1002365 on the detention and execution of the inhabitants of Independencia district, including Mr. Bernabé Baldeón-García

(record of exhibits to the complaint, exhibit 3, folio 35); and public hearing of the Truth and Reconciliation Commission held in Huamanga on April 8, 2002, in the Matter of the case of Mr. Bernabé Baldeón-García (record of exhibits to the complaint, exhibit 6, folios 38 to 43).

168. Regarding said matter, the Court points out that the State has a duty to fight impunity by resorting to all legal means available, as impunity fosters the chronic repetition of human rights violations and renders victims and their next of kin completely defenseless. [FN96]

[FN96] Cf. Case of the “Mapiripán Massacre”, supra note 1, para. 237; Case of Moiwana Community, supra note 59, para. 203; and Case of Huilca Tecse, supra note 2, para. 82.

169. The Court finds that domestic proceedings and processes did not amount to effective remedies to guarantee the right to fair trial, to establish the truth of the facts, to investigate and punish the perpetrators and to redress the consequences of violations. Therefore, the State is responsible for the violation of Articles 8(1) and 25 of the Convention, regarding Article 1(1) of that treaty, to the detriment of Guadalupe Yllaconza, Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina; all of them members of the Baldeón-Yllaconza family. Moreover, the Court considers that the State failed to comply with Articles 1, 6 and 8 of the Inter-American Convention against Torture regarding the obligation to investigate and punish torture in domestic courts after April 28, 1991.

XI. REPARATIONS. APPLICATION OF ARTICLE 63(1) OF THE CONVENTION (DUTY TO MAKE REPARATIONS)

Argument of the Commission

170. As regards reparations, the Commission stated that:

- a) the beneficiaries of the reparations are Guadalupe Yllaconza-Ramírez de Baldeón (wife of the victim); Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina, all of them members of the Baldeón-Yllaconza family (sons and daughters of the victim);
- b) as regards pecuniary damage
 - i. “the victims made significant economic efforts to seek justice in domestic courts and to overcome the physical, psychological and moral trauma sustained as a result of the acts of the Peruvian State;”
 - ii. the relatives of Mr. Baldeón-García lost income and other benefits as a result of the events; and
 - iii. the Court must equitably determine the compensation for the actual and consequential damage sustained.
- c) as regards non pecuniary damage

- i. the next of kin of Mr. Baldeón-García “have been victims of severe psychological suffering, anguish, uncertainty, sorrow [and] life alterations due to the denial of justice for the death of their loved one;” and
 - ii. the suffering endured by the next of kin of Mr. Baldeón-García, “due to his arrest, physical mistreatment and execution, and the lack of a diligent investigation of the events and an appropriate punishment of the perpetrators, among other grievances, justifies that” the Court “should equitably determine the compensation for the non pecuniary damage sustained.”
- d) as regards other types of reparations, the Court must order the State to:
- i. “diligently investigate the facts to identify, prosecute and punish the perpetrators of the arrest, cruel, inhumane and degrading treatment, and execution of Bernabé Baldeón-García,” allowing “(t)he victim’s next of kin to have full access and to participate in all stages and instances of said investigation.” The investigations must be concluded within a reasonable time. The Commission considers that the State has accepted the claim;
 - ii. disclose to the public the results of proceedings to allow the Peruvian community to know the truth;
 - iii. publish the judgment of the Court in nation-wide circulation media;
 - iv. name a street, park or school of the Pucapaccana community in the memory of Bernabé Baldeón-García;
 - v. with the approval of the next of kin of the victim, offer a significant and honorable public acknowledgment and apology, in the presence of high-ranking officers;
 - vi. adapt its forensic procedures to comply with internationally accepted standards and best practices;
 - vii. adopt as a priority a policy to protect peasants from abuses by public authorities and state security forces, while decentralizing –as a matter of public policy– the fight against impunity;
 - viii. promote the conditions necessary for Mrs. Guadalupe Yllaconza-Ramírez to be able to return to Pucapaccana, at her discretion; and
 - ix. offer rehabilitation measures to the next of kin of Mr. Baldeón-García, which must include psychological, occupational and medical rehabilitation.
- e) as regards costs and expenses, the Commission stated that the Court should order the State to pay the costs and expenses actually incurred taking into account the nature of the instant case.

Argument of the representatives

171. As regards reparations, the representatives stated that:

- a) the beneficiaries of the reparations are Guadalupe Yllaconza-Ramírez de Baldeón (wife of the victim); Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina, all of them members of the Baldeón-Yllaconza family (sons and daughters of the victim), in their capacities as “direct and indirect victims;”
- b) as regards pecuniary damage
 - i. Mr. Baldeón-García was 68 years old and was a rural worker; “his monthly income barely reached the minimum legal wage of 57.88 (United States) dollars per month.” The average life expectancy of a Peruvian rural worker was seventy-five years old. Based on the

above, “the average income lost from his rural tasks from September 1990 to December 1997 would total five thousand four hundred and forty-three United States dollars;” and

- ii. as regards consequential damage, the Court was requested to equitably establish the amount to be paid to the victim’s son, Crispín Baldeón-Yllaconza.
- c) as regards non pecuniary damage
 - i. the “next of kin of Bernabé Baldeón were severely affected by the events that led to the death of their husband and father, especially considering that they still struggle to seek justice, almost 15 years after the occurrence of the events;” and
 - ii. the Court must establish the corresponding amount based on equitable standards.
- d) as regards other types of reparation, the Court must order the State to:
 - i. “perform a complete, unbiased, effective and immediate investigation to establish individual responsibility for the torture and extrajudicial execution of Mr. Bernabé Baldeón-García to identify the persons involved at the various decision and execution stages,” to submit them to trial “and to impose the appropriate punishment;”
 - ii. “perform a complete, unbiased and effective investigation of the persons who participated in the ineffective investigations and proceedings carried out [...] for said torture and extrajudicial execution, to establish the corresponding responsibility for the lack of satisfactory results and impunity of the events;”
 - iii. “deliver to the Ombudsman and to the Office of the Attorney General the list of military officials who acted in the emergency areas, with their respective pseudonyms, to fully identify the perpetrators of the events that resulted in those human rights violations;”
 - iv. “adapt its forensic procedure protocols to international standards;”
 - v. provide “to the next of kin of Mr. Bernabé Baldeón-García (his wife and children), unlimited assistance at health centers, fully free of charge, including medical tests and medicines;” and
 - vi. provide psychological assistance to the wife and children of Mr. Bernabé Baldeón-García, as long as they wish to receive said assistance, the expenses of which shall be borne by State,
- e) as regards costs and expenses, the Court must order the Peruvian State to pay the costs and expenses incurred in the prosecution of the case, based on equitable standards.

Arguments of the State

172. As to reparations, and particularly regarding other types of compensation, the State stated that, as part of its acknowledgment of the claim, “it currently has a regulatory and institutional framework that allows for the investigation and prosecution of the alleged perpetrators of human right violations, including the investigation carried out by the Office of the Attorney General for the acts committed in the instant case.”

Considerations of the Court

173. In view of the acknowledgment of liability made by the State (supra para. 20), and based on the consideration of the merits contained in previous chapters, the Court stated that the State is responsible for the violation of Articles 4 (Right to Life), 5 (Right to Personal Integrity) and 7 (Right to Personal Liberty) of the Convention, regarding Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Bernabé Baldeón-García (supra para. 46, 105

and 126). Moreover, the State violated the rights embodied in Articles 5(1) (Right to Personal Integrity), 8(1) (Right to Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, to the detriment of Guadalupe Yllaconza-Ramírez de Baldeón (wife of the victim); Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina, all of them named Baldeón-Yllaconza (children of the victim) (supra paras. 47, 130 and 169). Moreover, the Tribunal considered that the State failed to comply with Articles 1, 6 and 8 of the Inter-American Convention against Torture, regarding the obligation to investigate and punish torture in domestic courts after April 28, 1991.

174. It is a principle of International Law that any violation of international obligations which causes damage purports the duty to make adequate reparations. [FN97] In its decisions on that matter, the Court took into consideration the provisions of Article 63(1) of the American Convention, which sets forth:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the party harmed be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the party harmed.

[FN97] Cf. Case of Acevedo-Jaramillo et al., supra note 6, para. 294; Case of López-Álvarez, supra note 6, para. 179; Case of the Pueblo Bello Massacre, supra note 6, para. 226.

175. Section 63(1) of the American Convention codifies a rule of custom which is one of the fundamental principles of contemporary International Law regarding the responsibility of States. Upon the occurrence of an internationally wrongful act attributable to a State, the international liability of such State arises, with the consequent duty to make reparations and to have the consequences of the violation remedied. [FN98] The obligation to make reparations is governed by International Law and must not be modified or unfulfilled by the State by resorting to its domestic laws. [FN99]

[FN98] Cf. Case of Acevedo-Jaramillo et al., supra note 6, para. 295; Case of López-Álvarez, supra note 6, para. 180; Case of the Pueblo Bello Massacre, supra note 6, para. 227.

[FN99] Cf. Case of Acevedo-Jaramillo et al., supra note 6, para. 296; Case of López-Álvarez, supra note 6, para. 180; Case of the Pueblo Bello Massacre, supra note 6, para. 228.

176. The reparation of the damage caused by the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in returning to the state of affairs prior to the infringement. If this is not feasible, as it happens in most cases – the instant case among others,- the International Court shall determine the measures to be ordered to protect the rights that were affected, as well as to make reparations for the

consequences of the infringements and shall determine a compensation for the damage caused. [FN100] It is necessary to add the positive measures that the State must adopt to prevent repetition of the harmful events such as those that occurred in the instant case. [FN101]

[FN100] Cf. Case of Acevedo-Jaramillo et al., supra note 6, para. 296; Case of López-Álvarez, supra note 6, para. 182; Case of the Pueblo Bello Massacre, supra note 6, para. 228.

[FN101] Cf. Case of López-Álvarez, supra note 6, para. 182; Case of Blanco-Romero et al., supra note 7, para. 69; and Case of García-Asto and Ramírez- Rojas, supra note 10, para. 248.

177. Reparations are measures tending to eliminate the effects of the violations committed. Their nature and amount depend on the characteristics of the violation and, at the same time, on the pecuniary and non pecuniary damage caused. Such reparations shall not lead victims or their heirs to become richer or poorer and they must be consistent with the violations declared in the Judgment of the Court. [FN102]

[FN102] Cf. Case of Acevedo-Jaramillo et al., supra note 6, para. 297; Case of López-Álvarez, supra note 6, para. 181; Case of the Pueblo Bello Massacre, supra note 6, para. 229.

178. In view of the above criteria and the circumstances of the instant case, the Court will analyze the claims submitted by the Commission and the representatives regarding reparations in order to adopt the necessary measures to redress the damage sustained in the instant case.

A) BENEFICIARIES

179. The Court shall now proceed to establish the persons who should be considered “injured parties” pursuant to the provisions of Article 63(1) of the American Convention, who are consequently entitled to the reparations to be defined by the Tribunal. Firstly, the Court considers that Mr. Bernabé Baldeón-García is the “injured party” in the instant case, as victim of the violations of the human rights embodied in Articles 4 (Right to Life), 5 (Right to Personal Integrity) and 7 (Right to Personal Liberty) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of that treaty (supra paras. 46, 105, 126 and 173); therefore, he shall be entitled to the compensation for pecuniary damage and non pecuniary damage established by the Court.

180. Furthermore, this Court considers the next of kin of Mr. Bernabé Baldeón-García, namely Guadalupe Yllaconza-Ramírez de Baldeón, wife of Mr. Baldeón-García, and Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, children of Baldeón-García, are “injured parties” in their capacity as victims of the violation of the rights embodied in Articles 5(1) (Right to Personal Integrity), 8(1) (Right to Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of that treaty (supra paras. 47, 130, 169 and 173).

181. The next of kin of the victims will be beneficiaries of the reparations determined by the Court for pecuniary and/or non pecuniary damage in their capacity as victims per se of the violations of the Convention explained herein, and the reparation established by the Court in their capacity as heirs of Mr. Bernabé Baldeón-García.

182. The distribution of compensation among the relatives of Mr. Bernabé Baldeón-García for the pecuniary and non pecuniary damage sustained by the latter will be as follows: [FN103] a) fifty per cent (50%) of said compensation will be distributed in equal parts among the children of the victim; and b) the remaining fifty per cent (50%) will be delivered to Mrs. Guadalupe Yllaconza-Ramírez, wife of the victim at the time of his death.

[FN103] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 240; Case of Blanco-Romero et al., supra note 7, para. 72; and Case of the “Mapiripán Massacre”, supra note 1, para. 259.

B) PECUNIARY DAMAGE

183. The Court shall herein address the pecuniary damage, which involves the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the events and the pecuniary consequences that may have a cause-effect link with the events in the instant case for which, if applicable, the Court fixes a compensatory amount seeking to redress the economic consequences of the violations that were determined in this Judgment, [FN104] considering the acknowledgment of the claim made by the State, the circumstances of the case, the evidence presented, the Court’s precedents and the arguments of the parties.

[FN104] Cf. Case of Acevedo-Jaramillo et al., supra note 6, para. 301; Case of López-Álvarez, supra note 6, para. 192; Case of the Pueblo Bello Massacre, supra note 6, para. 246.

a) Loss of Income

184. In the instant case, it has already been established that Mr. Baldeón-García was 68 years old at the time of his death and that he was a rural worker (supra paras. 72(14) and 72(15)).

185. This Court notices that the evidence on the records of the case is not adequate to determine with accuracy the income of Mr. Baldeón-García at the time the events occurred. In that respect, and considering the activities carried out by the victim to earn his living, and the circumstances of the case, the Court fixes on equitable grounds the amount of US\$ 5.000,00 (five thousand United States Dollars) to be received by Mr. Baldeón-García as compensation for loss of income. Said amount must be delivered as established in paragraph 182 of this order.

b) Pecuniary damage sustained by the Family

186. This Court has granted compensation for pecuniary damage to the family in those cases where, although there is a suitable method to accurately assess the amount or value of the damage sustained, the nature of the events reflect a pecuniary detriment characterized by: a substantial change in life quality and conditions as a direct consequence of events attributable to the State; expenses incurred as a result of the exile or relocation of the household; expenses incurred upon social reincorporation; expenses incurred to return to employment lost due to the State's violations; expenses related to loss of education opportunities; loss of possessions, and any detriment to the physical, psychical and emotional health of the injured family. [FN105]

[FN105] Cf. Case of Gutiérrez-Soler, *supra* note 4, para. 78; Case of Molina Theissen. Reparations (art. 63(1) American Convention on Human Rights). Judgment of July 3, 2004. Series C No. 108, paras. 59 and 60; and Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 88.

187. The Court notices that, though there is not enough evidence to estimate the amount of the loss sustained by the relatives of Baldeón-García, it is evident that going into exile, constantly relocating their household, changing work, as well as the other consequences arising out of the serious instability to which the next of kin of Mr. Baldeón-García have been subjected since 1990, have had an adverse impact on their family estate (*supra* paras. 72(40) and 72(42)). Since such alterations directly derived from the events of the case, the Court considers appropriate, on equitable grounds, to order the State to pay compensation for family pecuniary damage in the amount of US\$ 100,000.00 (one hundred thousand United States dollars), or its equivalent in Peruvian soles. Such amount shall be paid as follows: US\$ 20,000.00 (twenty thousand United States dollars) to Crispín Baldeón Yllaconza, and US\$ 10,000.00 (ten thousand United States dollars) to each of the following persons: Guadalupe Yllaconza-Ramírez de Baldeón, and Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, all of them members of the Baldeón-Yllaconza family.

C) NON PECUNIARY DAMAGE

188. Non pecuniary damage may include distress and suffering caused directly to the victim or his next of kin, tampering with individual core values, and changes of a non pecuniary nature in the everyday life of the victim or of his next of kin. Since it is impossible to assess the value of the non pecuniary damage sustained in a precise equivalent amount of money, for the purposes of full reparation to the victim, compensation may be made effective by paying an amount of money or by delivering property or services whose value may be established in money, as the Court may reasonably determine at its judicial discretion and based on equitable standards; and on the other hand by public actions or works aimed at acknowledging the victim's dignity and avoiding new violations of human rights. [FN106] The first aspect of the reparation of non pecuniary damage will be analyzed herein and the second aspect will be analyzed in section D) of this chapter.

[FN106] Cf. Case of Jaramillo et al., supra note 6, para. 308; Case of López-Álvarez, supra note 6, para. 199; Case of the Pueblo Bello Massacre, supra note 6, para. 254.

189. Pursuant to international case law, judgments constitute in and of themselves a form of reparation. [FN107] However, owing to the circumstances of the instant case, the suffering the events have caused the victim and his next of kin, the change in their way of living and other consequences of a non pecuniary nature they bore, the Court considers appropriate to order payment of a compensation, assessed on equitable grounds, for the non pecuniary damage sustained.

[FN107] Cf. Case of Acevedo-Jaramillo et al., supra note 6, para. 309; Case of López-Álvarez, supra note 6, para. 200; Case of the Pueblo Bello Massacre, supra note 6, para. 258.

190. Bearing in mind the various aspects of the damage the Commission and the representatives allege, the Court determines, on equitable grounds, the value of compensation for non pecuniary damage according to the following standards:

- a) in order to determine the compensation for the non pecuniary damage suffered by Mr. Baldeón-García, the Court takes into account, inter alia, that the victim was subject to torture (supra paras. 72(19) and 72(20)); and
- b) as regards the rest of the victims, namely Guadalupe Yllaconza-Ramírez de Baldeón, wife of Mr. Baldeón-García, and Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, all of them members of the Baldeón- Yllaconza family, children of Mr. Baldeón-García, this Court considers that various factors contributed to the persistence of the emotional consequences of the events, as follows: a) the impact of the loss due to its unexpected nature; b) the emotional impact caused by the exile and the loss of social references; c) in the case of Fidela Baldeón and her family, the complete loss of family referents due to the going into exile of the rest of her family; d) the anguish and uncertainty caused by the long searching process; e) the impotence caused by the lack of social and institutional support; f) the fear; and g) the sadness of noticing the deterioration of their everyday life conditions (supra paras. 72(40), 72(41), 72(42) and 72(44)).

191. Considering the various aspects of non pecuniary damage, the Court, determines, on equitable grounds, the value of compensations thereof as follows:

- a) US\$ 75,000.00 (seventy-five thousand United States dollars) or its equivalent in the currency of Peru, to Mr. Baldeón-García; and
- b) US\$ 25,000.00 (twenty-five thousand United States dollars) or its equivalent in the currency of Peru, to each of the following persons: Guadalupe Yllaconza-Ramírez de Baldeón, wife of Mr. Baldeón-García, and Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, all of them members of the Baldeón-Yllaconza family, children of Mr. Baldeón-García.

192. The compensation established in the paragraph above to the benefit of Mr. Baldeón-García shall be delivered pursuant to paragraph 182 of this Judgment. The compensation established in the paragraph above to the benefit of the next of kin of Mr. Baldeón-García shall be delivered directly to each beneficiary. Should any of the persons specified above die before receiving the related compensation, the corresponding amount shall be distributed in accordance with applicable domestic legislation. [FN108]

[FN108] Cf. Case of López-Álvarez, *supra* note 6, para. 203; Case of Gómez-Palomino, *supra* note 1, para. 123; and Case of Palamara-Iribarne, *supra* note 10, para. 263.

D) OTHER FORMS OF REPARATION (Measures of Satisfaction and Non-Repetition Guarantees)

193. In this subparagraph, the Court will determine those measures of satisfaction aimed at redressing non pecuniary damage as well as other public or publicly noticeable measures. [FN109]

[FN109] Cf. Case of the Pueblo Bello Massacre, *supra* note 6, para. 264; Case of Blanco-Romero et al., *supra* note 7, para. 93; and Case of García Asto and Ramírez Rojas, *supra* note 10, para. 276.

a) Publication of the judgment

194. As ordered in other cases and as a measure of satisfaction, [FN110] the State shall publish at least once in the official gazette and in another nationwide daily newspaper, the chapter on the proven facts of this Judgment, without the corresponding footnotes, and the operative paragraphs. Said publication shall be made within six months following notice of this Judgment.

[FN110] Cf. Case of Acevedo-Jaramillo et al., *supra* note 6, para. 313; Case of López-Álvarez, *supra* note 6, para. 208; Case of the Pueblo Bello Massacre, *supra* note 6, para. 279.

b) Obligation to investigate the events that resulted in violations in the instant case, and to identify, prosecute and punish the guilty

195. The Court determined that the impunity for the events of the instant case still exists after 15 years of their occurrence. The Court has defined impunity as the overall failure to investigate, arrest, prosecute and convict those responsible for violations of the rights protected under the American Convention. [FN111] The State is obliged to fight said situation by resorting to all

available means, as impunity fosters the chronic repetition of human rights violations and renders victims and their relatives completely defenseless. [FN112]

[FN111] Cf. Case of Blanco - Romero et al., supra note 7, para. 94; Case of Gómez-Palomino, supra note 1, para. 76; and Case of the “Mapiripán Massacre”, supra note 1, para. 237.

[FN112] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 266; Case of Blanco-Romero et al., supra note 7, para. 94; Case of Gómez-Palomino, supra note 1, para. 76.

196. Furthermore, the next of kin of the victims of serious human rights violations are entitled to know the truth. When this right to know the truth is recognized and exercised in a specific situation, it constitutes a relevant means to provide reparation to the victim and his next of kin, and gives rise to expectations that must be fulfilled by the State. Moreover, knowing the truth makes it easier for the Peruvian community to seek ways to prevent this type of violations in the future. [FN113] In this sense, the Court considers as a preliminary reparation, the efforts made by the CVR to clarify the events of the instant case (supra para. 167).

[FN113] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 219; Case of Blanco-Romero et al., supra note 7, para. 95; Case of Gómez-Palomino, supra note 1, para. 78.

197. Therefore, the next of kin of the victims are entitled, -and States are obliged-, to have an effective investigation of the events carried out by State authorities, to prosecute the alleged perpetrators of the wrongful acts and, if applicable, to impose the appropriate punishment. [FN114]

[FN114] Cf. Case of the Pueblo Bello Massacre, supra note 6, para. 219; Case of Blanco-Romero et al., supra note 7, para. 62 and 96; Case of Gómez-Palomino, supra note 1, para. 79.

198. On that matter, upon acknowledging its international liability in the instant case, Peru stated that “the [Peruvian] Office of the Attorney General is not limited by amnesty laws or the statute of limitations to investigate and prosecute those suspected from having committed offenses that violate human rights,” and pointed out that “that applies to the instant case.” Moreover, Peru requested the Court to take into account, upon entering judgment, that “the Peruvian State currently has a regulatory and institutional framework that allows for the investigation and prosecution of the alleged perpetrators of human right violations, including the investigation carried out by the Office of the Attorney General Office for the acts committed in the instant case.”

199. Based on the statements made by the State, this Court considers that, within a reasonable time, the State must seriously adopt any necessary measures to identify, prosecute and punish the physical perpetrators and instigators of the violations committed against Mr. Bernabé Baldeón-

García for the purpose of criminal proceedings and any other purpose resulting from the investigation of the events. The next of kin of the victim or his representatives shall have full access to and participate in all stages and instances of the domestic criminal proceedings initiated in relation to the instant case, in accordance with domestic laws and the American Convention. The findings in such proceedings shall be publicly disseminated by the State in such manner as to enable the Peruvian society to know the truth regarding the facts of the instant case.

200. The aforementioned proceedings shall also be conducted in accordance with international standards for documentation and construction of forensic evidence proving the commission of torture and other cruel, inhuman or degrading treatment or punishment (“the Istanbul Protocol”). [FN115]

[FN115] Cf. U.N.O., United Nations High Commissioner for Human Rights, Geneva, 2001, available at: www.unhcr.ch/pdf/8istprot_spa.pdf.

201. Furthermore, as repeatedly indicated in the Court's precedents [FN116] no domestic law or provision –including statutes of limitations and amnesty laws– may prevent a State from fulfilling the Court’s order to investigate and punish those responsible for human right violations. In particular, amnesty laws, the statute of limitations and rules on limitations of liability aimed at hindering the investigation and punishment of those responsible for serious human rights violations are inadmissible since they affect irrevocable rights protected under International Human Rights Law.

[FN116] Case of Blanco-Romero et al., supra note 7, para. Case of Gómez-Palomino, supra note 1, para. and Case of the “Mapiripán Massacre”, supra note 1, para.304.

202. To fulfill the purpose of proceedings, the actual inequality status of those who are brought before the courts must be taken into account. Thus, the principle of equality before the law and the courts [FN117] and the related prohibition against discrimination shall apply. Said inequality conditions call for the adoption of redressing measures that help reduce or eliminate the obstacles and deficiencies that hinder or reduce the effective protection of individual interests. If these redressing measures, widely recognized at various stages of proceedings, were not available, it would be difficult to sustain that those who suffer disadvantages truly enjoy the right to fair trial and due process of law on an equitable basis compared to those who are not affected by said disadvantages. [FN118]

[FN117] Cf. The Right to Information on Consular Assistance. In the Framework of the Guarantees of the due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 119, quoting the American Declaration, art. II and XVIII; Universal Declaration, arts. 7 and 10; International Covenant on Civil and Political Rights, arts. 2(1), 3 and 26; Declaration on the Elimination of Discrimination against Women, arts. 2 and 15; International

Convention on the Elimination of All Forms of Racial Discrimination, arts. 2,5 and 7; African Charter of Human and Peoples' Rights, arts. 2 and 3; American Convention, arts. 1, 8(2) and 24; Covenant on the Protection of Human Rights and Fundamental Freedoms, art. 14.

[FN118] Cf. *El Derecho a la Información sobre la Asistencia Consular en el Marco de las Garantías del Debido Proceso Legal*, supra note 117, para. 119.

203. The Court finds that the next of kin of Mr. Bernabé Baldeón-García are members of a Quechua-speaking rural community. Based on the foregoing, the State must adopt all measures necessary to procure that any remedies sought by said next of kin are processed on the basis of equality and without discrimination. [FN119]

[FN119] Cf. *El Derecho a la Información sobre la Asistencia Consular en el Marco de las Garantías del Debido Proceso Legal*, supra note 120, para. 119; and *Eur.C.H.R., Nachova and others v. Bulgaria [GC]*, supra note 46, para. 160.

c) Public acknowledgment of liability and apology

204. In order for the acknowledgment made by Peru and the rulings of this Court to be fully effective and provide a remedy to Mr. Bernabé Baldeón-García and his next of kin, and to be deemed non-repetition guarantees, the Court finds that the State shall make a public acknowledgment of liability for the illegal and arbitrary arrest, torture and extrajudicial execution of Mr. Bernabé Baldeón-García and publicly apologize to the victim's next of kin for having covered up the truth for more than 15 years. The public acknowledgment and apology must be made in the presence of the next of kin of the victims and with the participation of the State's highest-ranking authorities. Said public act must be carried out within six months following notice of this Judgment.

d) Street, park or school named in the memory of Mr. Bernabé Baldeón-García

205. The State shall agree with the victim's next of kin on the street, park or school located at a public place of the locality of Pucapaccana (supra para. 170(d)(iv)), where the victim was born, which shall be named after Mr. Bernabé Baldeón-García. The sign placed at the park or school, as applicable, must make reference to the context of violence towards rural workers in which Peru was enmeshed at the time of the events, of which Mr. Bernabé Baldeón-García was a victim. The text of that sign must be discussed with the victim's next of kin. The State must indicate the place to be named after Mr. Bernabé Baldeón-García within one year following notice of this Judgment.

e) Psychological and psychiatric treatment

206. After reviewing the arguments of the representatives, those of the Commission as well as the body of evidence in the instant case, it is inferred that the psychological suffering by the next of kin of Mr. Baldeón-García, derived from the violations analyzed in this judgment, has lasted

through to this day and impaired their respective life projects. On account of the foregoing, the Court, as it has done before, [FN120] is of the opinion that reparations must also include psychological and psychiatric treatment for all the relatives of Mr. Baldeón-García, at their discretion.

[FN120] Cf. Case of the Pueblo Bello Massacre, *supra* note 6, para. 274; Case of García-Asto and Ramírez-Rojas, *supra* note 10, para. 280; Case of Gómez-Palomino, *supra* note 1, para. 143.

207. For the purpose of contributing to the reparation of such damage, the Court orders that the State shall provide free of charge, at the health-care facilities the State may indicate, the psychological and psychiatric treatment, as the case may be, the following parties may require: Guadalupe Yllaconza-Ramírez de Baldeón; Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, whose last name is Baldeón-Yllaconza, provided they wish to undergo such treatment and as long as required. Such treatment shall include, among other things, any necessary medication. The provision of said treatment must take into account the specific conditions of each individual and the needs of each of them in order to provide individual or family treatment as agreed upon with each of them after an individual evaluation.

E) COSTS AND EXPENSES

208. As the Court has stated on previous occasions, costs and fees are contemplated within the concept of reparations as enshrined in Article 63(1) of the American Convention, since the victims' efforts to obtain justice in the domestic as well as in the international level lead to expenses that must be compensated when the State's international responsibility has been determined in a conviction judgment. As regards their reimbursement, the Court must prudently assess their extent, which involve the expenses incurred when acting before the domestic authorities as well as those incurred in the course of proceedings before the Inter-American System, taking into account the particular circumstances of the specific case and the nature of international jurisdiction in the protection of human rights. Such estimate may be made on grounds of equitable principles and in consideration of the expenses reported and evidenced by the parties, provided they are reasonable. [FN121]

[FN121] Cf. Case of Acevedo-Jaramillo et al, *supra* note 6, para. 315; Case of López-Álvarez, *supra* note 6, para. 214; and Case of Pueblo Bello Massacre, *supra* note 6, para. 283.

209. Considering the criteria mentioned in the previous paragraph, the Court orders the State, based on equitable grounds, to reimburse the amount of US\$ 5,000.00 (five thousand United States dollars) or its equivalent in Peruvian soles to Mr. Crispín Baldeón Yllaconza, who will deliver to APRODEH the amount he deems appropriate as compensation for the expenses incurred when acting within the domestic jurisdiction and those resulting from the proceedings conducted within the Inter-American System.

XII. METHOD OF COMPLIANCE

210. The State must pay the compensations for pecuniary and non pecuniary damage, and reimburse the costs and expenses incurred (*supra* paras. 185, 187, 191 and 209) within one year following notice of the Judgment. The remaining reparation measures ordered by the Court must be complied with within reasonable time (*supra* paras. 199 and 207), or within the term specified in this Judgment (*supra* paras. 194, 204 and 205).

211. Payment of the compensations ordered to the benefit of Mr. Baldeón-García shall be made in accordance with paragraph 182 of this Judgment. The compensations established to the benefit of the next of kin of Mr. Baldeón-García shall be delivered directly to each beneficiary. Should any of the persons specified above die before receiving the corresponding compensation, said amount shall be distributed in accordance with applicable domestic legislation.

212. Any payment ordered to cover the costs and expenses resulting from the acts performed by the victim's representatives during domestic proceedings and international proceedings before the Inter-American System of Protection of Human Rights shall be made to the benefit of Mr. Crispín Baldeón-Yllaconza (*supra* para. 209), who will in turn distribute such funds as appropriate.

213. If the beneficiaries of compensations are not able to receive the payments within the specified term due to causes attributable to them, the State shall deposit said amounts in an account to the beneficiary's name or draw a certificate of deposit from a reputable Peruvian financial institution, in United States dollars, under the most favorable financial terms the law in force and customary banking practice allow. If after ten years compensations were still unclaimed, these amounts plus accrued interests shall be returned to the State.

214. The State may discharge its pecuniary obligations by tendering United States dollars or an equivalent amount in the currency of Peru, at the New York, USA exchange rate between both currencies, prevailing in New York, United States of America, on the day prior to the day payment is made.

215. Payments ordered as compensation for pecuniary and non pecuniary damage and for costs and expenses shall not be affected, reduced or conditioned by tax reasons, be they present or future. Therefore, beneficiaries shall receive the total amount as per the provisions herein.

216. Should the State fall into arrears with its payments, Peruvian banking default interest rates shall be paid on the amount owed.

217. In accordance with its constant practice, the Court retains the authority emanating from its jurisdiction and the provisions of Article 65 of the American Convention, to monitor full compliance with this judgment. The instant case shall be closed once the State implements in full the provisions herein set forth. Peru shall, within a year, submit to the Court a report on the measures adopted in compliance with this Judgment.

XIII. OPERATIVE PARAGRAPHS

218. Therefore,

THE COURT,

DECIDES,

unanimously

1. To admit the acknowledgment of its international liability made by the State for the violation of the rights protected in Articles 4 (Right to Life), 5 (Right to Personal Integrity) and 7 (Right to Personal Freedom) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of that treaty, to the detriment of Mr. Bernabé Baldeón-García; and the acknowledgment of its international liability made by the State for the infringement of Article 8(1) (Right to Fair Trial) of the American Convention, relating to Article 1(1) (Obligation to Respect Rights) of that treaty, to the detriment of Guadalupe Yllaconza-Ramírez de Baldeón and Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina, all of them members of the Baldeón-Yllaconza family, for the events involved in the instant case, occurred from September 1990 “to the commencement of the transition to democracy” in November 2000, pursuant to paragraphs 46 and 47 of this Judgment.

DECLARES,

unanimously that:

2. The State violated, to the detriment of Mr. Bernabé Baldeón-García, the right to life enshrined in Article 4(1) (Right to Life) of the Convention, regarding the general duty to respect and guarantee the rights established in Article 1(1) of that treaty, as set forth in paragraphs 80 to 105 of this Judgment.

3. The State violated, to the detriment of Mr. Bernabé Baldeón-García, the right to life enshrined in Article 4(1) (Right to Life) of the Convention, regarding the general duty to respect and guarantee the rights established in Article 1(1) of that treaty, as set forth in paragraphs 80 to 126 of this Judgment.

4. The State violated, to the detriment of Guadalupe Yllaconza-Ramírez de Baldeón, Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina, all of them members of the Baldeón-Yllaconza family, the right to personal integrity established in Article 5(1) (Right to Personal Integrity) of the American Convention, in relation to Article 1(1) of that treaty, as set forth in paragraphs 127 to 130 of this Judgment.

5. The State violated, to the detriment of Guadalupe Yllaconza, Crispín, Fidela, Roberto, Segundina, Miguelita, Perseveranda, Vicente and Sabina, all of them members of the Baldeón-Yllaconza family, the rights to fair trial and judicial protection established in Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of that treaty, as set forth in paragraphs 139 to 169 of this Judgment.

6. The State failed to comply with the duty to investigate and punish torture as set forth in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture after April 28, 1993, pursuant to paragraphs 156 to 162 of this Judgment.

7. This judgment is in and of itself a form of redress, as set forth in paragraph 189 herein.

AND RULES,

unanimously that:

8. The State shall adopt, in full compliance with the right to fair trial and within reasonable time, all measures necessary to identify, prosecute and punish the physical perpetrators and instigators of the violations committed against Mr. Bernabé Baldeón-García, as set forth in paragraphs 195 to 203 and 210 of this Judgment.

9. The State shall publish within six months, at least once, in the official gazette and in another nationwide daily newspaper, the Section of this Judgment entitled Proven Facts, without the corresponding footnotes, and the operating paragraphs of this Judgment, as set forth in paragraphs 194 and 210 hereof.

10. The State shall make, within six months following notice of this Judgment, a public apology and acknowledgment of its international liability regarding the violations referred to herein, in the presence of the highest-ranking State authorities, pursuant to the terms of paragraphs 204 and 210 of this Judgment.

11. The State shall name, within one year following notice of this Judgment, a street, park or school in the memory of Mr. Bernabé Baldeón-García, as set forth in paragraphs 205 and 210 of this Judgment.

12. The State shall provide medical, psychological and psychiatric treatment, as applicable, to Guadalupe Yllaconza-Ramírez de Baldeón; Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, all members of the Baldeón-Yllaconza family, at their discretion and for as long as necessary, as set forth in paragraphs 207 and 210 of this Judgment.

13. The State shall pay to Guadalupe Yllaconza-Ramírez de Baldeón; Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, all members of the Baldeón-Yllaconza family, within one year, the compensation for pecuniary damage established in paragraphs 185 and 187 of this Judgment, as set forth in paragraphs 185, 187, 210, 211 and 213 to 216 hereof.

14. The State shall pay to Guadalupe Yllaconza-Ramírez de Baldeón; Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, all members of the Baldeón-Yllaconza family, within one year, the compensation for non pecuniary damage established in paragraph 191 of this Judgment, as set forth in paragraphs 191, 192, 210, 211 and 213 to 216 hereof.

15. The State shall pay, within one year, the costs and expenses incurred in domestic courts and in the international proceedings carried out within the Inter-American System for Human Rights Protection, pursuant to the amount established in paragraph 209 of this Judgment. Said amount must be delivered to Mr. Crispín Baldeón-Yllaconza, as set forth in paragraphs 209, 210 and 212 to 216 thereof.

16. The State shall monitor full compliance with this Judgment and the instant case shall be closed once the State implements in full the provisions set forth herein. Within a year from the date notice of judgment is served upon it, the State shall submit to the Court a report on the measures taken to comply with this judgment, pursuant to paragraph 217 hereof.

Judge Cançado Trindade informed to the Court his Separate Opinion, which is attached to this Judgment.

Drafted in Spanish and English in the city of Buenos Aires, Argentina, on April 6, 2006. The Spanish version shall prevail.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles
Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have concurred in my opinion, in the city of Buenos Aires, with the Judgment entered by the Inter-American Court of Human Rights in the case of Baldeón-García v. Peru. Given the importance of some of the issues discussed in this Judgment, I believe I should explain my personal analysis thereon to support my position on this matter. Particularly, I am referring to the need to progress on the Court's precedent setting process, in the sense of broadening the material scope of the *jus cogens* (in order to cover also the right to fair trial *lato sensu*), and the acknowledgment of the obligations thereby imposed upon the State to act in a given manner and also to achieve a given result.

2. In this Judgment, the Court considered the arrest and subsequent execution of Mr. Bernabé as proven facts Baldeón-García; events that occurred when the victim was 68 years old. The arrest, made effective on September, 25, 1990, in the locality of Pacchahuallhua, Department of Ayacucho, was part of a "counterinsurgency operation" carried out by military officers who invaded the aforementioned rural community through the use of violence and random shootings (para. 72(14-18)). On that same day,

"The persons arrested were first locked in a room and then transferred to another room to be interrogated and tortured.

[...] During his arrest, Mr. Bernabé Baldeón-García was beaten, tied with metal wires hanged upside down from a beam, and later submerged in a tank filled with cold water.

Mr. Bernabé Baldeón-García died in the early morning of September 26, 1990 (...) while under the custody of military officers.

The dead body of Mr. Bernabé Baldeón-García was buried that same day without the presence of his next of kin" (para. 72(19-22)).

3. The Court found that the arrest and execution of the victim were carried out under a systematic pattern of mistreatment and extrajudicial executions in Peru, as acknowledged by the Truth and Reconciliation Commission of Peru, particularly in the periods 1983-1984 and 1989-1993 (para. 72(1-3)). In the Judgment of the case of Baldeón-García v. Peru (referred to in the Final Report of August 28, 2003 by said Commission), the Inter-American Court duly highlighted the contributions made by the Truth and Reconciliation Commission of Peru (paras. 167 and 196); however, it indicated that justice had not been done and that perpetrators were yet to be punished.

4. I believe, as indicated in my Separate Opinion (paras. 1-43) in the case of Plan de Sánchez Massacre v. Guatemala (Judgment of April, 29, 2004),

[FN1] that the aforementioned systematic pattern of mistreatment and extrajudicial executions constitutes an aggravating circumstance and thus results in the aggravated international responsibility of the respondent government, and all appropriate legal effects. In that context, the Court may –and should- have made progress on the precedent setting process; however, it only repeated what it had already sustained in prior cases.

[FN1] Cf. also my Separate Opinion on the Judgment (of November 25, 2003) in the case of Myrna Mack Chang v. Guatemala (paras. 1-55 of the Opinion).

5. In the Judgment of August 18, 2000, in the case of Cantoral Benavides v. Peru, the Court made significant progress when holding that

"(...) certain acts that were classified as inhuman or degrading in the past, but not as torture, could be classified otherwise in the future, that is, as torture, since the response to the increasing demands for protection of human rights and fundamental freedoms, should be a stricter approach and treatment of the violations of the core values of democratic societies (...). Based on the aforementioned, we can conclude that an international legal regime has been developed which establishes the absolute prohibition of any type of acts of torture" (paras. 99 and 103).

Some years before these significant obiter dicta of the Court, I referred to the need to develop the Court jurisprudence on jus cogens prohibitions, in my Separate Opinions on the case of Blake v. Guatemala (preliminary objections, Judgment of July 02, 1996; [FN2] on the merits, Judgment of January 24, 1998; [FN3] and reparations, Judgment of January 22, 1999; [FN4]); I later issued my reaffirming Concurring Opinion on the Judgment (of March 14, 2001) in the case of Barrios

Altos v. Peru, [FN5] and the Separate Opinion on the Judgment (preliminary exceptions, Judgment of September 01, 2001) in the case of Hilaire v. Trinidad and Tobago; [FN6] in my Concurring Opinion on the Judgment (of November 27, 2003) in the case of Maritza Urrutia v. Guatemala; [FN7] in my Separate Opinion on the Judgment in the case of Gómez-Paquiyaui Brothers v. Peru (of July 08, 2004); [FN8] and my Dissenting Opinion in the case of the Serrano Cruz Sisters v. El Salvador (Judgment on preliminary exceptions of November 23, 2004). [FN9]

[FN2] Paras. 11 and 14 of the Opinion.

[FN3] Paras. 15, 17, 23, 25 and 28 of the Opinion.

[FN4] Paras. 31, 40 and 45 of the Opinion.

[FN5] Paras. 10, 11 and 25 of the Opinion.

[FN6] Para. 38 of the Opinion.

[FN7] Paras. 6, 8- 9 and 12 of the Opinion.

[FN8] Paras. 1, 37, 39, 42 and 44 of the Opinion.

[FN9] Paras. 2, 32 and 39 -41 of the Opinion.

6. In the Judgment of September 07, 2004, in the case of Tibi v. Ecuador, the Court reaffirmed that:

"There is an international legal regime that absolutely prohibits any type of torture, whether physical or psychological; a regime that today is part of the realm of the jus cogens. The prohibition against torture is complete and irrevocable, even under the most difficult circumstances, such as war, threat of war, fight against terrorism or any other offenses, state of siege or emergency, domestic unrest or conflict, suspension of constitutional guarantees, domestic political instability or other public disasters or emergencies" (para. 143). [FN10]

The Court restated this obiter dictum in this Judgment on the case of Baldeón-García (para. 117).

[FN10] In my Separate Opinion in the case of Tibi, I referred to the importance of the absolute nature of said prohibition and I examined the evolution of contemporary international judgments (paras. 26 and 30-32 of the Opinion).

7. The Court broadened the material scope of the jus cogens in its landmark Advisory Opinion No.18 (of September 17, 2003), on the Juridical Condition and Rights of Undocumented Migrants, to include the basic principle of equality and non- discrimination (paras. 97-101 and 110-111). I issued an extensive Concurring Opinion on this significant progress made in the Court's case law (paras. 1-89). In the instant case of Baldeón-García v. Peru, the Court could – and should- have made progress, but it did not; the Court acknowledged the violations of Articles 4(1) and 5(1) and (2) of the Convention (operative paragraphs No. 2-4 of this Judgment), but at the same time, -and unanimously, as in the recent case of Pueblo Bello Massacre v. Colombia (2006)– of Articles 8(1) and 25, considered as a whole, all of them relating to Article 1(1) of the Convention.

8. On this last aspect (operating paragraph no. 5), in this Judgment the Court found that:

“(…) Based on the above, the Court considers that no effective remedy was available to guarantee, within a reasonable time, the right, to fair trial to the next of kin of Mr. Baldeón-García in compliance with legal safeguards” (para. 155).

This obiter dictum of the Court undoubtedly reflects its unanimous understanding of the close and inevitable relation between Articles 8(1) and 25 of the American Convention.

9. In my opinion, the right to fair trial is also part of the realm of the international jus cogens. As I explained in my Separate Opinion on the recent case of Pueblo Bello Massacre v. Colombia (Judgment of January 31, 2006):

"The impossibility to segregate Article 25 from Article 8, both of the American Convention (...), involves the need to consider the right to fair trial, understood as full access to justice, as part of the realm of the jus cogens, i.e. the intangibility of all legal safeguards belong to the realm of the jus cogens as set forth in Articles 25 and 8, considered as a whole. There is no doubt that the fundamental safeguards, common to the International Law of Human Rights and International Humanitarian Law, are universal in nature since they are applicable in any and all circumstances, they embody compulsory laws (as part of the jus cogens), and purport erga omnes obligations to protect.

After that landmark Advisory Opinion no. 18, on the Juridical Condition and Rights of Undocumented Migrants of 2003, the Court could -and should- have made qualitative progress on precedent setting. I dare nurse the hope that the Court will do so as soon as possible if it effectively continues supporting its avant-garde precedents, -instead of attempting to limit them- and will courageously further on the progress made based on the aforementioned Advisory Opinion no. 18 aimed at continuously broadening the material scope of the jus cogens" (paras. 64-65).

10. Also in my recent Separate Opinion (paras. 52-55) in the case of López-Álvarez v. Honduras (Judgment of February 01, 2006), I restated my idea that the right to justice (the right to fair trial lato sensu) is a compulsory element of the jus cogens. The Court could -and should- have established so in the instant case; instead, it repeated prior obiter dicta. Thus, the Court lost the opportunity to step forward regarding its precedent setting process.

11. I will go even further. In my opinion, as I explained above, we are referring to compulsory laws; therefore, the State's obligations to prevent, investigate and punish perpetrators are not mere obligations "to act in a given manner, but not to achieve a given result," as stated by the Court in paragraph 93 of this Judgment. I dissent in this reasoning from the majority of the Court.

12. As I indicated in my Separate Opinion (para. 23) in the recent Judgment of the Court of March 29, 2006, in the city of Brasilia, in the case of Sawhoyamaya Indigenous Community v. Paraguay:

"(...) The State's obligations require it to act diligently and to achieve a given result, not merely to act in a given manner (such as adopting insufficient and ineffective legislative measures). Indeed, the examination of the difference between obligations to act in a given manner and to achieve a given result [FN11] has, in general, been carried out under a theoretical approach, assuming variations in the conduct of the State and even a succession of acts by the latter, [FN12] -without sufficiently and duly considering a situation that suddenly causes irreparable damage to a human being (v.g., deprivation of life due to the State's lack of diligence)."

In other words, the obligations involved are to achieve a given result and not merely to act in a given manner, because, otherwise, they would not refer to compulsory laws and, in addition, they could result in impunity.

[FN11] Especially based on the work of the United Nations Human Rights Commission on the International Responsibility of States.

[FN12] Cf. A. Marchesi, *Obblighi di Condotta e Obblighi di Risultato - Contributo allo Studio degli Obblighi Internazionali*, Milano, Giuffrè, 2003, paras. 50-55 and 128-135.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary