**CASE OF EDMUNDO CAMANA *et al.,*
PICHICHA AND ORÍFUNA PEOPLES**

***v.***

**SANTA CLARA**

MEMORIAL FOR THE STATE

1. **Table of Contents**

II. Index of Authorities 3

III. Statement of Facts 11

IV. Legal Analysis 13

A. Preliminary Objections 13

1. Consolidation of the petitions 13

2. Jurisdiction 13

3. Mr. Ricardo Manuín did not exhaust all available domestic remedies according to Art. 46(1)(a), Art. 46(2) and Art. 47(a) ACHR 15

B. Alleged Violations 17

1. The respondent State fulfilled all its legal obligations with regard to Edmundo Camana, his family and Lucía Camana Osorio 17

a) The respondent State fulfilled all its legal obligations with regard to the right to a fair trial in accordance with Art. 8, Art. 1(1) and Art. 2 ACHR 17

b) The respondent State fulfilled all its legal obligations with regard to the right to judicial protection in accordance with Art. 25, Art. 1(1) and Art. 2 ACHR 19

c) The respondent State fulfilled all legal obligations with regard to the right to life in accordance with Art. 4(1) ACHR 20

d) The respondent State fulfilled all its legal obligations with regard to the right to humane treatment in accordance with Art. 5, Art. 1(1) and Art. 2 ACHR 21

e) The respondent State fulfilled all its legal obligations with regard to the right of freedom of association in accordance with Art. 16 ACHR 21

f) The respondent State fulfilled all its legal obligations with regard to the rights of the family in accordance with Art. 17(1), Art. 1(1) and Art. 2 ACHR 22

2. The respondent State fulfilled all its legal obligations with regard to the next of kin of the Camana Osorio family 24

a) The respondent State fulfilled all its legal obligations with regard to the right to humane treatment in accordance with Art. 5(1), Art. 1(1) and Art. 2 ACHR 24

3. The respondent State fulfilled all its legal obligations with regard to the Pichicha people 25

a) The respondent State fulfilled all its legal obligations with regard to the right to humane treatment in accordance with Art. 5 ACHR 25

a) The respondent State fulfilled all its legal obligations with regard to the right to a fair trial in accordance with Art. 8, Art. 1(1) and Art. 2 ACHR 28

b) The respondent State fulfilled all its legal obligations with regard to the right to judicial protection in accordance with Art. 25, Art. 1(1) and Art. 2 ACHR 29

c) The respondent State fulfilled all its legal obligations with regard to the right to property in accordance with Art. 21, Art. 1(1) and Art. 2 ACHR 32

d) The respondent State fulfilled all its legal obligations with regard to the right to progressive development in accordance with Art. 26 ACHR 35

4. The respondent State fulfilled all its legal obligations with regard to the Orífuna people 36

a) The respondent State fulfilled all its legal obligations with regard to the right to a fair trial in accordance with Art. 8, Art. 1(1) and Art. 2 ACHR 36

b) The respondent State fulfilled all its legal obligations with regard to the right to judicial protection in accordance with Art. 25, Art. 1(1) and Art. 2 ACHR 38

V. Request for Relief 39

# **Index of Authorities**

**A. Books and Articles**

Burgorgue-Larsen, Laurence and Úbeda de Torres, Amaya, *“The Inter-American Court of Human Rights: Case law and Commentary”,* Oxford, Oxford University Press, 886, (2011). **(p. 14, 17, 32)**

Haeck, Yves, Ruiz-Chiriboga, Oswald and Burbano-Herrera, Clara, *“The Inter-American Court of Human Rights: Theorie and Practice, Present and Future”*, Cambridge - Antwerp - Portland, Inserentia, 832, (2015). (**p. 27, 36)**

Harris, David and Livingstone, Stephen, *“The Inter-American System of Human Rights”*, Oxford, Clarendon Press, 581, (1998). (**p. 16, 22, 30)**

Medina, Cecilia, *“The American Convention on Human Rights: Crucial Rights and their Theory and Practice”*, Cambridge, Inserentia, 252, (2014). **(p. 13, 18, 28, 30)**

Pasqualucci, Jo M., *“The Practice and Procedure of the Inter-American Court of Human Rights”*, Cambridge, Cambridge University Press, 488, (2003). **(p. 15)**

Rodríguez-Pinzón, Diego and Martin, Claudia, *“The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System: A handbook for victims and their advocates”*, Geneva, World Organisation Against Torture (OMCT), 260, (2014). **(p. 14, 15)**

**B. Case-Law**

**1. Inter-American Court of Human Rights**

*Advisory Opinions*

*Exceptions to the exhaustion of domestic remedies (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights)*, Advisory Opinion OC-11/90, Inter-Am. Ct. H.R., Ser. A, No. 11, (10 August 1990). **(p. 15, 17)**

*Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02, Inter-Am. Ct. H.R., Ser. A., No. 17, (28 August 2002). **(p. 23)**

*Judicial Guarantees in State of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*, Advisory Opinion OC-9/87, Inter-Am. Ct. H.R., Ser. A, No. 9, (6 October 1987). **(p. 16)**

*Contentious Cases*

*Case of* *Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller”) v. Peru (*Judgment), Inter-Am. Ct. H.R., Ser. C, No. 198, (1 July 2009). **(p. 35)**

*Case of Acosta-Calderón v. Ecuador* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 129, (24 June 2005). **(p. 25, 37, 38)**

*Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 270, (30 November 2013).

**(p. 29)**

*Case of Albán-Cornejo et al. v. Ecuador* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 171, (22 November 2007). **(p. 24)**

*Case of Baldeón-García v. Peru* (Judgment), Inter-Am. Ct. H.R., Ser. C, No 147, (6 April 2006). **(p. 18)**

*Case of Blake v. Guatemala* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 36, (24 January 1998). **(p. 24)**

*Case of Cantoral-Huamaní and García-Santa Cruz v. Peru* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 167, (10 July 2007). **(p. 22, 24)**

*Case of Cabrera García and Montiel Flores v. Mexico* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 220, (26 November 2010). **(p. 14)**

*Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 170, (21 November 2007). **(p. 15)**

*Case of Chitay Nech et al. v. Guatemala* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 212, (25 May 2010). **(p. 23)**

*Case of Constitutional Court v. Peru* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 71, (31 January 2001). **(p. 19, 37)**

*Case of Expelled Dominicans and Haitians v. Dominican Republic* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 282, (28 August 2014). **(p. 23)**

*Case of Godínez Cruz v. Honduras* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 5, (20 January 1989). **(p. 19)**

*Case of Goiburú et al. v. Paraguay* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 153, (22 September 2006). **(p. 24)**

*Case of Gómez-Palomino v. Peru* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 136, (22 November 2005). **(p. 24)**

*Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 253, (20 Novemer 2012). **(p. 18, 22)**

*Case of Heliodoro Portugal v. Panama* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 186, (12 August 2008). **(p. 24)**

*Case of Herrera-Ulloa v. Costa Rica* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 107, (2 July 2004). **(p. 14, 19)**

*Case of Huilca-Tecse v. Peru* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 121, (3 March 2005). **(p. 22)**

*Case of Human Rights Defender et al. v. Guatemala* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 283, (28 August 2004). **(p. 38)**

*Case of Juan Humberto Sánchez v. Honduras* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 99, (7 June 2003). **(p. 18, 24)**

*Case of Kawas-Fernández v. Honduras* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 196, (3 April 2009). **(p. 22)**

*Case of Kichwa Indigenous People of Sarayaku v. Ecuador* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 245, (27 June 2012). **(p. 16, 34, 38)**

*Case of “Las Dos Erres” Massacre v. Guatemala* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 211, (24 November 2009). **(p. 23)**

*Case of Las Palmeras v. Colombia* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 90, (6 December 2001). **(p. 15)**

*Case of Loayza-Tamayo v. Perú* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 33, (17 September 1997). **(p. 25)**

*Case of “Mapiripán Massacre” v. Colombia* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 122, (15 September 2005). **(p. 18, 24)**

*Case of Massacres of El Mozote and nearby places v. El Salvador* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 252, (25 October 2012). **(p. 18)**

*Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 79, (31 August 2001). **(p. 30, 31)**

*Case of the Moiwana Community v. Suriname* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 124, (15 June 2005). **(p. 25, 26)**

*Case of Myrna Mack Chang v. Guatemala* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 101, (25 November 2003). **(p. 18)**

*Case of Neira-Alegría et al. v. Peru* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 20, (19 January 1995). **(p. 21)**

*Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 279, (29 May 2014). **(p. 23)**

*Case of Pacheco Tineo Family v. Plurinational State of Bolivia* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 272, (25 November 2013). **(p. 22)**

*Case of Pueblo Bello Massacre v. Colombia* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 140, (31 January 2006). **(p. 18)**

*Case of Saramaka People v. Suriname*(Judgment), Inter-Am. Ct. H.R., Ser. C, No. 172, (28 November 2007). **(p. 17, 26, 30, 32, 33, 34)**

*Case of Sawhoyamaxa Indigenous Community v. Paraguay* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 146, (29 March 2006). **(p. 29, 31, 32, 37)**

*Case of Suárez-Rosero v. Ecuador* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 35, (12 November 1997). **(p. 19)**

*Case of Velásquez-Rodríguez v. Honduras* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 4, (29 July 1988). **(p. 19, 20, 30)**

*Case of “White Van” Paniagua-Morales et al. v. Guatemala* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 37, (8 March 1998). **(p. 19)**

*Case of the Xákmok Kásek Indigenous Community v. Paraguay* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 214, (24 August 2010). **(p. 36)**

*Case of the Yakye Axa Indigenous Community v. Paraguay* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 125, (17 June 2005). **(p. 27, 28, 35, 37)**

**2. Inter-American Commission of Human Rights**

*Contentious Cases*

*Carlos García Saccone v. Argentina*, IACHR, OEA/Ser.L/V/II. 98, Doc. 6, Report No. 8/98, (2 March 1998). **(p. 14)**

*Coard et al. v. United States*, IACHR, Report No. 109/99, (29 September 1999). **(p. 14)**

*Communities of the Sipakepense and Mam Mayan People of the Municipalities of Sipacapa and San Miguel Ixtahuacán v. Guatemala*, IACHR, Petition 1566-07, Report No. 20/14, (3 April 2014). **(p. 15)**

*Felipe Matías Calmo, Faustino Mejía Bautista et al. v. Guatemala*, IACHR, Petition 818-06, Report No. 55/14, (21 July 2014). **(p. 17)**

*Hugo Armendariz v. United States*, IACHR, Petition 526-03, Report No. 57/06, (20 July 2006). **(p. 13)**

*José Miguel Gudiel Álvarez and Ohters (“Diario Militar”) v. Guatemala*, Report No. 116/10, (22 October 2010). **(p. 13)**

*Ricardo Urbano Poma v. Peru*, IACHR, Petition 445-99, Report No. 3/08, (4 March 2008).

**(p. 16)**

*Wayne Smith v. United States*, Petition 8-03, Report No. 56/06, (20 July 2006). **(p. 13)**

*Country Reports*

*The Human Rights Situation in Mexico*, IACHR, OEA/Ser.L/V/II., Doc. 44/15, (31 December 2015). **(p. 39)**

**3. European Court on Human Rights**

*Case of Banković and Others v. Belgium and Others,* ECtHR, App. No. 52207/99, (12 December 2001). **(p. 14)**

**4. Other Human Right Bodies**

*Reports*

U.N. Human Rights Committee, *Apirana Mahuika v. New Zealand*, Communication No. 547/1993, Doc. CCPR/C/55/D/547/1993, (13 October 1995). **(p. 26)**

U.N. Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*, (6 July 2012). **(p. 33)**

U.N. Office of the United Nations High Commissioner for Human Rights, *Individual Report on the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights,* Report No. 13, (December 2013). **(p. 25)**

# **Statement of Facts**

The respondent State of Santa Clara (hereinafter “the respondent State”) fosters multiculturalism through its policies having ratified all inter-American human rights instruments as well as many fundamental universal human rights treaties. Moreover, the respondent State has not made any reservations to, or denounced, any international human rights instrument.[[1]](#footnote-1)

In 1994, two unknown individuals in the neighbor Republic of Madruga (hereinafter “Madruga”) killed Edmundo Camana, the president of the Madrugan Confederation of Mineworkers, and his family.[[2]](#footnote-2) His daughter, Lucía Camana Osorio, was the only survivor of the attack. The respondent State granted her asylum until 1998, when she decided to return to her native country.[[3]](#footnote-3) She was killed by an unknown person in 2002, also in Madruga.[[4]](#footnote-4) Although these events took place in a foreign country, the next of kin of the Camana Osorio family brought a criminal complaint against both the respondent State’s former President of the Upper Chamber, Mr. Eliot Klein and Army Colonel David Nelson.[[5]](#footnote-5) In order to further the ongoing criminal investigation conducted by the Madrugan authorities and in compliance with the Bilateral Extradition Treaty between the respondent State and Madruga, the respondent State did not admit the Applicant’s criminal complaint against Mr. Klein and Colonel Nelson.[[6]](#footnote-6) Dissatisfied with this decision, the next of kin of the Camana Osorio family submitted a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission”).[[7]](#footnote-7)

In 2007, the respondent State announced its plans to start the exploration and exploitation of the “Wirikuya” mining project and launched a three-year, exhaustive and comprehensive consultation process with its indigenous Pichicha people, who agreed for the project to take place within their territory.[[8]](#footnote-8) Bearing in mind its obligations under Convention 169 of the International Labor Organization (hereinafter “ILO Convention 169”), the respondent State also consulted the Madrugan authorities.[[9]](#footnote-9) In February 2011, the company Silverfield S.A. obtained the license to begin exploration activities.[[10]](#footnote-10) Following the rupture of a small containment dam in May 2011, the respondent State rapidly decontaminated the affected Pampulla Lagoon. During a very brief period and in order to ensure water supply for the Pichicha people, the respondent State collected water from the streams located in the area, including the Mandí Stream.[[11]](#footnote-11) As a result of the measures taken by the respondent State, all members of the indigenous Pichicha people and the communities surrounding the Pampulla Lagoon were supplied with potable water throughout the decontamination process.[[12]](#footnote-12) In spite of the respondent State’s fast response, Mr. Ricardo Manuín filed a petition with the Commission on behalf of the Pichicha people.[[13]](#footnote-13) The Human Rights Clinic of the University of Toronga (hereinafter “the Applicant”) filed another petition with the Commission on behalf of the Orífuna people of Madruga, alleging that the respondent State did not comply with its obligation to engage in prior consultation with the political authorities of the Orífuna people.[[14]](#footnote-14) On December 5, 2015, the Commission referred the matter to the Inter-American Court of Human Rights (hereinafter “the Court”), previously naming the Applicant the joint petitioner on behalf of the alleged victims of the three mentioned petitions.[[15]](#footnote-15)

# **Legal Analysis**

## **Preliminary Objections**

### **Consolidation of the petitions**

In its Admissibility Report No. 20/14, the Commission consolidated all three petitions naming one single joint petitioner on behalf of all alleged victims.[[16]](#footnote-16) Pursuant to Art. 29(5) Rules of Procedure of the Commission, this consolidation is invalid since the three petitions do not address similar facts, involve the same persons or reveal the same pattern of conduct.[[17]](#footnote-17) The erroneous consolidation disadvantages the respondent State, and, therefore, hinders the respondent State’s right to respond to the petitions appropriately.[[18]](#footnote-18)

Consequently, the respondent State moves the Court not to hear the present case and to refer it back to the Commission for procedural and substantive review of the erroneously consolidated petitions.

### **Jurisdiction**

The Court lacks jurisdiction for the following reasons.

Firstly, the Court lacks territorial jurisdiction over the petition since both the events concerning the Camana Osorio family and the Orífuna people took place in Madruga, a foreign state.

The jurisdiction of a state is primarily territorial. Any possible extra-territorial jurisdiction is limited by the sovereign rights of other states.[[19]](#footnote-19) The exercise of extra-territorial jurisdiction by a state is exceptional, and may occur through the effective control over foreign territory as a consequence of military occupation, consent, invitation or acquiescence of another government.[[20]](#footnote-20) In *Coard et al. v. United States*, the Commission concluded that while Art. 1 ACHR most commonly refers to persons within a state's territory, state parties can be held liable for acts perpetrated in another country if committed by their agents in areas effectively controlled by the state in question.[[21]](#footnote-21)

In the present case, there is no connection whatsoever to the respondent State for any possible violation of the ACHR in Madruga. Hence, the respondent State is not responsible for any violation alleged in the two above-mentioned petitions. Furthermore, the respondent State objected to the alleged territorial jurisdiction at the earliest opportunity. Therefore, it filed its objection in due time, and moves the Court to recognize its lack of jurisdiction.[[22]](#footnote-22)

Secondly, the Court is not a court of “fourth instance” empowered to overturn judgments handed down by the highest courts of the state parties to the ACHR, unless there has been a violation of rights protected by the ACHR.[[23]](#footnote-23) The Court has established in *Cabrera García and Montiel Flores v. Mexico* that its jurisdiction is of a subsidiary, reinforcing and complementary nature.[[24]](#footnote-24)

Therefore, the inter-American supervisory organs do not act as appellate bodies.[[25]](#footnote-25) A petition must state facts that establish a violation of the rights guaranteed by the ACHR.[[26]](#footnote-26) If the petition only alleges that the domestic court’s decision was erroneous, the Commission must apply the fourth instance formula and declare the petition inadmissible *ratione materiae*.[[27]](#footnote-27)

“*Dissatisfied*” with the inadmissibility ruling of the respondent State of May 3, 2010, the Camana Osorio’s next of kin directly submitted a petition to the Commission without alleging any violation of the ACHR.[[28]](#footnote-28) Hence, should the Court hear the aforementioned petition, it would act as a court of fourth instance.[[29]](#footnote-29) Consequently, the respondent State moves the Court to recognize its lack of jurisdiction over the aforementioned petition.

### **Mr. Ricardo Manuín did not exhaust all available domestic remedies according to Art. 46(1)(a), Art. 46(2) and Art. 47(a) ACHR**

Mr. Manuín directly filed a petition with the Commission on the grounds that the respondent State ruled his amparo action not to be a suitable mechanism for asserting compensatory claims.[[30]](#footnote-30)

Art. 46(1)(a) ACHR requires the exhaustion of all domestic remedies.[[31]](#footnote-31) A remedy must be adequate and effective, i.e. it must be appropriate to address the infringement of a legal right and be capable of producing the result for which it is designed.[[32]](#footnote-32) In *Judicial Guarantees in State of Emergency (Arts. 27(2), 25 and 8 ACHR)*, the Court pointed out thatArt. 25(1) ACHR embodies the amparo action, which offers a simple and prompt recourse designed for the protection of all fundamental rights.[[33]](#footnote-33) The Commission stated in *Ricardo Urbano Poma v. Peru* that it is not up to it to analyze whether the amparo action is the appropriate legal means for claiming compensatory damages, and, therefore, found that the petition does not meet the admissibility requirement set forth in Art. 46(1)(a) ACHR.[[34]](#footnote-34)

After Mr. Manuín filed the amparo action, the First Federal Civil Court of Toronga issued an injunction eleven days later, ordering the immediate evacuation of government personnel from the area surrounding the Mandí Stream.[[35]](#footnote-35) Despite having obtained all necessary judicial protection, Mr. Manuín then filed a constitutional appeal before the Supreme Court of the respondent State, alleging error of the lower court and claiming compensatory damages. The appeal was ruled inadmissible on the grounds that the amparo action serves the sole purpose of restoring fundamental rights and not asserting compensatory claims.[[36]](#footnote-36) According to the laws of the respondent State, the suitable mechanism for filing compensatory claims against the government is adversarial administrative litigation.[[37]](#footnote-37) Furthermore, even though the respondent State pointed out to Mr. Manuín that he was using the wrong domestic remedy, the latter willingly chose to disregard the available legal venues and filed a petition with the Commission instead. Additionally, as stated in *Saramaka People v. Suriname*, the fact that the petition lodged by Mr. Manuín did not have a favorable outcome for him does not in and of itself denote either lack of domestic remedies or an exhaustion thereof.[[38]](#footnote-38)

Only under the exceptional circumstances of Art. 46(2) ACHR, applicants are allowed not to exhaust all domestic remedies.[[39]](#footnote-39) In the instant case, the respondent State’s domestic legislation afforded Mr. Manuín all means to file an amparo action and an adversarial administrative litigation, and, therefore, the exceptional circumstances of Art. 46(2) ACHR do not apply.[[40]](#footnote-40)

Consequently, the respondent State requests the Court to declare Mr. Manuín’s claim inadmissible since he did not exhaust all available domestic remedies provided by the respondent State.

## **Alleged Violations**

### **The respondent State fulfilled all its legal obligations with regard to Edmundo Camana, his family and Lucía Camana Osorio**

#### **The respondent State fulfilled all its legal obligations with regard to the right to a fair trial in accordance with Art. 8, Art. 1(1) and Art. 2 ACHR**

The respondent State respected the Applicant’s right to a fair trial under Art. 8, Art. 1(1) and Art. 2 ACHR by ensuring effective access to justice and the right to present its case without obstacles.

Art. 8 ACHR requires a fair hearing for everyone by a competent, independent, and impartial tribunal, previously established by law. Such hearing must be in compliance with due guarantees and proceed in a timely manner. Further, Art. 8 ACHR obliges states to create agencies and proceedings respecting the due process requirements, as well as to provide individuals with the opportunity of accessing these agencies and proceedings. A court must have a real opportunity to exercise the judicial authority assigned to it.[[41]](#footnote-41) The right to a hearing requires that judicial decisions are issued by a competent, independent and impartial court.[[42]](#footnote-42) Parties must be able to pursue their cases without obstacles.[[43]](#footnote-43) Therefore, states are obliged to launch an impartial investigation intoalleged violations as soon as states know thereof.[[44]](#footnote-44) The main question is whether the decision of the domestic courts complies with the principles of due process of law.[[45]](#footnote-45)

In the present case, the Camana Osorio’s next of kin had full and unadulterated access to the respondent State’s Federal Courts and Civil divisions.[[46]](#footnote-46) There is no evidence that the courts of the respondent State caused difficulties for the Applicant to advance its claims. On May 3, 2010, the respondent State’s Supreme Court ruled the criminal charges inadmissible, while at the same time reversing the decision in the civil matter and ruling in favor of the Applicant. The Applicant pursued its criminal complaint and civil actions, without any restrictions or obstructions, in impartial and independent tribunals duly established by law.[[47]](#footnote-47) Additionally, multiple levels of the national judiciary reviewed the cases impartially.

Therefore, since the Applicant had full access to the domestic courts of the respondent State and could present its cases without obstacles, the respondent State protected the Applicant’s right to a fair trial pursuant to Art. 8, Art. 1(1) and Art. 2 ACHR.

#### **The respondent State fulfilled all its legal obligations with regard to the right to judicial protection in accordance with Art. 25, Art. 1(1) and Art. 2 ACHR**

The State respected the Applicant’s right to simple and prompt recourse in accordance with Art. 25, Art. 1(1) and Art. 2 ACHR by guaranteeing an effective remedy capable of producing the result for which it was designed.[[48]](#footnote-48)

The Court emphasized in *Herrera Ulloa v. Costa Rica* that the aim of the right to appeal a judgment is to protect the right of defense by establishing a remedy to avoid an improper ruling from becoming final.[[49]](#footnote-49) The mere formal existence of a remedy is not enough.[[50]](#footnote-50) Rather, the remedies must be effective and materially able to redress the alleged violations.[[51]](#footnote-51) A remedy is considered adequate if it is able to address the claims in an effective manner, and produces the result for which it was designed.[[52]](#footnote-52) An unsuccessfully pursued domestic remedy can be in compliance with the word “effective”, therefore a remedy must not necessarily result in a favorable decision for the Applicant.[[53]](#footnote-53)

In the instant case, the Applicant filed a criminal action and civil complaints before the Federal Courts and Civil Divisions of the respondent State.[[54]](#footnote-54) These remedies were not decided in favor of the Applicant. The Applicant then appealed to the Supreme Court of the respondent State, which reviewed all claims, declared the criminal complaint inadmissible, reversed the ruling in the civil matter and ordered the Third Federal Civil Court to adjudicate the civil claim for damages.

Consequently, the remedies were adequate and effective despite the fact that they did not produce an entirely favorable result for the Applicant.[[55]](#footnote-55) Therefore, the respondent State granted the Applicant adequate and effective remedies in accordance with Art. 25, Art. 1(1) and Art 2 ACHR.

#### **The respondent State fulfilled all legal obligations with regard to the right to life in accordance with Art. 4(1) ACHR**

The respondent State respected the Applicant’s right to life in accordance with Art. 4 ACHR and was not involved in any way in the incidents, which took place in Madruga.

Art. 4(1) ACHR establishes that no person can have his or her life taken arbitrarily. Both Edmundo Camana and his family and later Lucía Camana Osorio were killed in Madruga.[[56]](#footnote-56) In June 1999, the judiciary of Madruga shelved the criminal proceedings in the matter of Edmundo Camana and his family, following the death of the alleged perpetrators.[[57]](#footnote-57) The respondent State had no connection to Edmundo Camana and his family until granting asylum to Lucía Camana Osorio in 1994.[[58]](#footnote-58) Both killings of Edmundo Camana and his family and then Lucía Camana Osorio, however regrettable, took place outside the respondent State’s jurisdiction and were committed without its involvement, acquiescence or mere knowledge. The respondent State acknowledges the pain and suffering of the Applicant. Nevertheless, the instant case does not contain facts or evidence, which could connect the respondent State to the murders in Madruga. Therefore, the respondent State did not violate the Applicant’s right to life pursuant to Art. 4 ACHR.

#### **The respondent State fulfilled all its legal obligations with regard to the right to humane treatment in accordance with Art. 5, Art. 1(1) and Art. 2 ACHR**

The respondent State respected the right to humane treatment of Edmundo Camana, his family and Lucía Camana Osorio under Art. 5, Art. 1(1) and Art. 2 ACHR.

According to Art. 5 ACHR, nobody should be subject to torture, or to cruel, inhuman, or degrading punishment or treatment. This rule is particularly relevant in case a person is deprived of its liberty and held in state custody.[[59]](#footnote-59)

In the present case, neither Edmundo Camana, his family nor Lucía Camana Osorio were ever held in the respondent State’s custody or, in any other form, subjected to cruel, inhuman, or degrading treatment by the respondent State.

Therefore, the respondent State did not violate the right to humane treatment pursuant to Art. 5, Art. 1(1) and Art. 2 ACHR.

#### **The respondent State fulfilled all its legal obligations with regard to the right of freedom of association in accordance with Art. 16 ACHR**

The respondent State respected the right of freedom of association according to Art. 16 ACHR.

Art. 16 ACHR includes the “right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes”. The same provision establishes that those who are under the jurisdiction of state parties to the ACHR have the right and the freedom to associate freely with others, without any interference from the public authorities. Moreover, Art. 16(1) ACHR obliges states to prevent attacks on those making use of their right and to investigate measures restricting such right.[[60]](#footnote-60)

At the time of his death in 1994, Edmundo Camana was the president of the Madrugan Confederation of Mineworkers.[[61]](#footnote-61) Lucía Camana Osorio was killed in 2002 while delivering a speech at the National March against Impunity in Madruga.[[62]](#footnote-62) Both murders took place outside the jurisdiction of the respondent State. There is no evidence that the respondent State was aware of any threat against the victims, which could oblige it to take positive measures in order to prevent the attacks. Hence, the respondent State was not subject to any positive obligation under Art. 16 ACHR and respected the Applicant’s right to freedom of association.

#### **The respondent State fulfilled all its legal obligations with regard to the rights of the family in accordance with Art. 17(1), Art. 1(1) and Art. 2 ACHR**

The respondent State by far exceeded its obligations to protect family rights according to Art. 17(1), Art. 1(1) and Art. 2 ACHR by granting asylum to Lucía Camana Osorio and then giving her free passage to her native Madruga. Therefore, the respondent State protected her from persecution by foreign actors and upheld her family life.

Art. 17(1) ACHR recognizes the central role of the family and family life for both individuals and society. Therefore, states have to create the conditions to protect his family.[[63]](#footnote-63) The Court asserted that everyone shall receive protection from arbitrary or illegal interference with its family life.[[64]](#footnote-64) Furthermore, states must also encourage as comprehensively as possible the development and strengthening of the family as a unit.[[65]](#footnote-65) Therefore, children have the right to live with their family to meet their material, affective and psychological needs.[[66]](#footnote-66) The Court decided in *Expelled Dominicans and Haitians v. Dominican Republic* that states have the positive obligation to take measures regarding family reunification so that minors live with their families.[[67]](#footnote-67)

In the present case, after Lucía Camana Osorio’s family died in 1994, the respondent State granted her asylum, hence protecting her life.[[68]](#footnote-68) At that time, Lucía Camana Osorio was a minor.[[69]](#footnote-69) Therefore, the respondent State acted in compliance with Art. 27 of the American Declaration of the Rights and Duties of Man, which provides the right to seek and receive asylum in accordance with domestic laws and international agreements. The respondent State granted Lucía Camana Osorio asylum until 1998, when she voluntarily decided to return to Madruga to reunite with her remaining family.[[70]](#footnote-70) In compliance with its positive obligations under Art. 17 ACHR and acknowledging Lucía Camana Osorio’s own wishes, the respondent State granted her the necessary freedom of movement.

The respondent State, thus, met its positive obligations to develop and strengthen Lucía Camana Osorio’s family ties by affording her free movement to Madruga to reunite with her family in accordance with Art. 17(1), Art. 1(1) and Art. 2 ACHR.

### **The respondent State fulfilled all its legal obligations with regard to the next of kin of the Camana Osorio family**

#### **The respondent State fulfilled all its legal obligations with regard to the right to humane treatment in accordance with Art. 5(1), Art. 1(1) and Art. 2 ACHR**

The respondent State respected the right to humane treatment of the next of kin of the Camana Osorio family under Art. 5(1), Art. 1(1) and Art. 2 ACHR by granting them access to all judiciary proceedings to seek justice for the deaths of Edmundo Camana and his family, and by deciding all legal actions in a timely manner to help them avoid further suffering.

In order to determine a violation of Art. 5(1) ACHR, the Court assesses whether the alleged victims have been involved in seeking justice in the specific case, and whether they have endured special suffering as a result of the facts of the case or of subsequent acts or omissions of the state’s authorities.[[71]](#footnote-71) Moreover, a continued refusal of the state’s authorities to conduct an effective investigation into the facts violates the right to mental and moral integrity of the victim’s next of kin pursuant to Art. 5(1) ACHR.[[72]](#footnote-72)

In the present case, the respondent State granted the Applicant effective legal means within its jurisdiction, providing the Applicant full access to all levels of the judiciary proceedings in accordance with Art. 8 ACHR.[[73]](#footnote-73) There is no evidence that the proceedings before the Federal Courts, Civil Divisions and Supreme Court of the respondent State had caused a sense of insecurity, frustration or impotence, which could violate the Applicant’s right to personal integrity.[[74]](#footnote-74) The Applicant does also not claim a violation of the ACHR but merely expresses its dissatisfaction with the inadmissibility decision regarding the criminal investigations in the respondent State.[[75]](#footnote-75) Therefore, the respondent State did not violate the right to humane treatment pursuant to Art. 5(1), Art. 1(1) and Art. 2 ACHR.

### **The respondent State fulfilled all its legal obligations with regard to the Pichicha people**

#### **The respondent State fulfilled all its legal obligations with regard to the right to humane treatment in accordance with Art. 5 ACHR**

The respondent State fulfilled its obligations under Art. 5(1) ACHR by rapidly decontaminating the Pampulla Lagoon without displacing the Pichicha people and providing them with potable water.[[76]](#footnote-76)

According to Art. 5(1) ACHR, every person has the right to have its physical, mental, and moral integrity respected.[[77]](#footnote-77) The right to physical integrity is a right intrinsically connected to the right to life and can also be invoked in the context of environmental harm.[[78]](#footnote-78)

The Court decided in *Loayza Tamayo v. Peru* that the violation of the right to physical and psychological integrity of a person has several gradations. Therefore, not every interference with Art. 5 ACHR is necessarily a violation thereof.[[79]](#footnote-79) In *Moiwana Community v. Suriname*, the Court stated that a long-standing absence of effective remedies is typically considered a source of suffering and anguish for the involved individuals.[[80]](#footnote-80)

The Court has also confirmed that the indigenous community’s connection to its traditional land is of vital spiritual, cultural and material importance.[[81]](#footnote-81) Therefore, the community members must be able to maintain a fluid and multidimensional relationship with their ancestral lands.[[82]](#footnote-82)

Clean water is a natural resource essential for the Pichicha people to carry out certain economic, social and cultural activities, like hunting and fishing.[[83]](#footnote-83) Following the rupture of a small containment dam built by Silverfield S.A. on May 15, 2011, the respondent State rapidly decontaminated the Pampulla Lagoon to ensure the community’s well-being and safety.[[84]](#footnote-84) The respondent State also undertook expert technical studies in order to determine whether Silverfield S.A. met the requirements set forth in the construction license for the dam. However, the results are still pending.[[85]](#footnote-85) Essentially, in light of the fast measures the respondent State took, the lagoon was successfully decontaminated and all indigenous communities surrounding it had potable water at all times.[[86]](#footnote-86) The Pichicha people further remained in their ancestral territory throughout the whole decontamination process and were consistently able to continue with their traditional way of life. Considering all these positive measures the respondent State took for the indigenous Pichicha people and bearing in mind their unimpeded presence within their own territory, the aforementioned decontamination process cannot under any circumstances be classified as inhumane.

The main impact on the health of the affected individuals consisted of the rationing of the potable water supply for a few days until the respondent State could make alternative sources available.[[87]](#footnote-87) The provisional collection of water from sources other than the Mandí Stream would have taken at least five additional days, and would have entailed building a pipeline and storage system through Pichicha territory.[[88]](#footnote-88) Thus, the respondent State was compelled to temporally collect water from streams located in the area, including the aforementioned stream.[[89]](#footnote-89) Otherwise, the living conditions of the members of the Pichicha community would have rapidly deteriorated. In accordance with its duty to provide water to citizens where not otherwise available, the respondent State supplied its indigenous people with freshwater from the streams located in the area.[[90]](#footnote-90) As a result, the respondent State effectively protected its indigenous people’s health.[[91]](#footnote-91)

Finally, the respondent State respected the mental and moral integrity of its indigenous people since it took all the above-mentioned measures to supply them with potable water in good faith and as effectively and non-intrusively as possible. It further honored the agreement it had with the Pichicha People’s Assembly that no employee of Silverfield S.A. should enter the area surrounding the Mandí Stream, and issued an injunction ordering the immediate evacuation of civil defense personnel from the Pichicha people’s sacred territory in order to reduce the personnel’s inevitable presence to a minimum period of time.[[92]](#footnote-92) Therefore, the respondent State respected its obligations towards its indigenous people and their connection to the ancestral lands. For these reasons, the respondent State respected the Pichicha people’s right to humane treatment according to Art. 5 ACHR.

#### **The respondent State fulfilled all its legal obligations with regard to the right to a fair trial in accordance with Art. 8, Art. 1(1) and Art. 2 ACHR**

The respondent State respected the Applicant’s right to a fair trial under Art. 8, Art. 1(1) and Art. 2 ACHR by ensuring effective access to justice and the right to present its case without any obstacles.

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.[[93]](#footnote-93) Art. 8 ACHR obliges states to establish agencies and proceedings that meet the requirements of due process, as well as to provide individuals with the opportunity of accessing them. Furthermore, the corresponding judges and courts must have a real opportunity to exercise the judicial authority assigned to them.[[94]](#footnote-94) The right to a hearing requires that a competent, independent and impartial tribunal hands down the ruling.[[95]](#footnote-95) It is also relevant for the tribunal to give the parties the opportunity to present their case without obstacles based on the principle of equality.[[96]](#footnote-96)

In addition, the Court reiterated in *Yakye Axa Indigenous Community v. Paraguay* that to establish whether the term of a legal proceeding can be considered reasonable, it is necessary to take into account (1) the complexity of the matter, (2) the procedural initiative of the interested party, and (3) the conduct of the judicial authorities.[[97]](#footnote-97) As stated in *Sawhoyamaxa Indigenous Community v. Paraguay*, the state is obliged to provide for appropriate mechanism in its national legal system to process land claim proceedings of indigenous people by respecting the rights established in Art. 1(1) and Art. 2 ACHR.[[98]](#footnote-98)

In the instant case, the first amparo action was filed before the First Federal Civil Court of Toronga on July 30, 2011. This court issued an injunction order on August 10, 2011, thus only eleven days after the action was filed.[[99]](#footnote-99) The second amparo action was filed before the respondent State’s Supreme Court, which ruled on the matter in November 2011.[[100]](#footnote-100) Therefore, both judicial decisions were delivered within a reasonable time andthe respondent State adopted adequate measures through quick and efficient proceedings.[[101]](#footnote-101) There is no evidence that the national courts were ineffective or biased. The Pichicha people were thus granted the opportunity to present their case without obstacles, and had access to the relevant legal proceedings to advance their claims.[[102]](#footnote-102)

Consequently, since the proceedings before the national courts of the respondent State were concluded within a very short period of time and the Applicant had the opportunity to present its case without any obstructions, the respondent State protected the Applicant’s right to fair trial pursuant to Art. 8, Art. 1(1) and Art. 2 ACHR.

#### **The respondent State fulfilled all its legal obligations with regard to the right to judicial protection in accordance with Art. 25, Art. 1(1) and Art. 2 ACHR**

The respondent State afforded the Applicant all necessary judicial protection under Art. 25, Art. 1(1) and Art. 2 ACHR by providing it with adequate and effective recourse in front of a court of law.

Art. 25 ACHR guarantees the protection of the most fundamental human rights by domestic authorities through an effective judicial remedy.[[103]](#footnote-103)

In *Saramaka People v. Suriname* the Court made clear that states are obliged to adopt positive measures to guarantee that the remedies they provide through their judicial system are“truly effective in establishing whether there has been a violation of human rights and in providing redress”[[104]](#footnote-104). The Court held that Art. 25 ACHR is closely linked to both Art. 1(1) and Art. 2 ACHR, making the state party responsible to provide effective remedy and to adopt protective measures by issuing norms and developing practices which result in effective respect for guarantees set forth in the ACHR.[[105]](#footnote-105) Furthermore, the Court stated that, in order to ensure members of indigenous peoples their right to communal property, states must establish “due process guarantees [...] for them to claim traditional lands”[[106]](#footnote-106).

In *Velásquez Rodriguez v. Honduras*, the Court ruled that a remedy is “effective” if it is “capable of producing the result for which it was designed”[[107]](#footnote-107). The Commission clarified that this did not mean that all remedies must necessarily be granted, but rather that there must be at least a serious possibility that they will be.[[108]](#footnote-108) An adequate remedy is one appropriate to address an infringement of a legal right.[[109]](#footnote-109)

In the present case, the national courts of the respondent State handed down their ruling within four months from the first legal action taken by Mr. Manuín, thus acting in a timely manner regarding the allegations concerning the Pichicha people.[[110]](#footnote-110) The inadmissibility ruling of the respondent State’s Supreme Court was based on the fact that the amparo action brought before the lower court serves the sole purpose of restoring a fundamental right, and is not a suitable mechanism for asserting compensatory claims.[[111]](#footnote-111) The suitable action for filing compensatory claims against the government authorities is adversarial administrative litigation.[[112]](#footnote-112) Therefore, there are effective legal means within the respondent State’s national law, which allow any individual to apply to the judiciary in case of an alleged infringement of its property rights, including alleged violations by the respondent State itself. Furthermore, the respondent State expressly advised Mr. Manuín that he was pursuing the wrong domestic remedy.[[113]](#footnote-113) Nevertheless, Mr. Manuín did not act upon the ruling and instead filed a petition with the Commission. The respondent State also issued an injunction ordering the immediate evacuation of the area surrounding the Mandí Stream and, thus, adopted adequate domestic legal measures to protect the inviolability of indigenous community lands.[[114]](#footnote-114) The respondent State adopted all necessary and effective legal mechanisms in its domestic law in order to ensure the judicial protection of the Pichicha people in accordance with Art. 1(1) and Art. 2 ACHR..[[115]](#footnote-115)

Hence, the respondent State afforded the Applicant all necessary legal remedies, ensuring its right to judicial protection in accordance with Art. 25,Art. 1(1) and Art. 2 ACHR.

#### **The respondent State fulfilled all its legal obligations with regard to the right to property in accordance with Art. 21, Art. 1(1) and Art. 2 ACHR**

The respondent State ensured the Applicant’s right to the use and enjoyment of its property under Art. 21, Art. 1(1) and Art. 2 ACHR by upholding the Pichicha people’s right to communal property and actively consulting with them according to their customs and traditions.

According to Art. 21(1) ACHR, everyone has a right to the use and enjoyment of his property. Property can be defined as material objects and rights, which are legally owned and possessed by an individual or a group of people.[[116]](#footnote-116) Hence, property rights can be of an individual or collective nature, both enjoying equal protection[[117]](#footnote-117)

In *Saramaka People v. Suriname*, the Court stated that the use and enjoyment of the indigenous peoples’ lands and natural resources necessary for their survival are also subject to certain limitations and restrictions. The enjoyment to the right of property can particularly be restricted for reasons of public utility and in the interest of society, such as in emergency situations.[[118]](#footnote-118) A state may restrict the use and enjoyment of the right to property if such restrictions are (1) previously established by law, (2) necessary, and (3) proportional.[[119]](#footnote-119)

Clean water is a natural resource essential for the indigenous Pichicha people.[[120]](#footnote-120) When the small containment dam ruptured, the lack of potable water was the main impact on the health of the affected Pichicha people.[[121]](#footnote-121) Therefore, the respondent State was compelled to restrict the Pichicha’s property rights in order to conduct the necessary decontamination of the Pampulla Lagoon and to supply them with potable water from alternative sources.[[122]](#footnote-122) This exceptional and temporary restriction of the Pichicha people’s property rights over the Mandí Stream was absolutely necessary and proportional due to the emergency situation and not to complete the Wirkikuya mining project.[[123]](#footnote-123) Moreover, the Pichicha people themselves benefited from the provisional collection of the water from the area surrounding the Mandí Stream. The respondent State further restored the Pichicha people’s property rights by issuing an injunction order and immediately evacuating the civil defense personnel from the area.[[124]](#footnote-124)

Furthermore, the respondent State must ensure the effective participation of the members of the Pichicha people in any development, investment, exploration or extraction plan within their territory in conformity with their customs and traditions.[[125]](#footnote-125) U.N. Special Rapporteur James Anaya determined that “free, prior and informed consent is essential for the protection of human rights of indigenous peoples in relation to major development projects”[[126]](#footnote-126). It became clear in *Saramaka v. Suriname* that states have duties to actively consult with the indigenous communities according to their customs and traditions.[[127]](#footnote-127) Art. 6(1)(a) ILO Convention 169 provides that “governments shall [...] consult the peoples concerned, through appropriate procedures and in particular through their representative institutions”, and take “measures [...] to ensure that members of these peoples can understand and be understood in legal proceedings”, taking into account their linguistic diversity.[[128]](#footnote-128) In *Apirana Mahuika et al. v. New Zealand,* the U.N. Human Rights Committee ruled that the right to culture of an indigenous population under Art. 27 International Covenant on Civil and Political Rights could be restricted where the community itself participated in the decision to restrict such right.[[129]](#footnote-129) States must ensure that members of the affected community are aware of possible risks, including environmental and health risks for the proposed plan to be accepted knowingly and voluntarily by them.[[130]](#footnote-130)

From the very beginning of the Wirikuya project in January 2007 and in accordance with its domestic laws, the respondent State conducted a Social and Environmental Impact Study (SEIS) and translated it into Pichicha language.[[131]](#footnote-131) Furthermore, the respondent State has presented studies and technical reports to show the possible effects on the property of the Pichicha and Orifuna people within both the respondent State and Madruga’s territory.[[132]](#footnote-132) The respondent State gained and shared, through a three-year consultation process with the Pichicha people, specific information of the project’s potential effects on their territory.[[133]](#footnote-133) The first year of the extensive consultation process with the Pichicha people consisted of the detailed explanation of the scope of the project and its potential environmental and social impact. The explanation was provided by a multidisciplinary group, made of professional engineers, geologists, anthropologists, physicists, lawyers, and others, who held more than one hundred meetings with the Pichicha people, all of which were translated into the Pichicha people’s language.[[134]](#footnote-134) At no point during the consultation, did any member of the Pichicha community oppose the project nor the consultation process itself.[[135]](#footnote-135) The respondent State, in consequence, had the full and informed prior consent of the indigenous Pichicha people inhabiting the area.

Therefore, the respondent State ensured the Applicant’s right to the use and enjoyment of its property under Art. 21, Art. 1(1) and Art. 2 ACHR by upholding the Pichicha people’s right to communal property and actively consulting with them according to their customs and traditions.

#### **The respondent State fulfilled all its legal obligations with regard to the right to progressive development in accordance with Art. 26 ACHR**

By decontaminating the polluted Pampulla Lagoon without displacing the Pichicha people from their traditional territory and supplying them with potable water, the respondent State fully complied with the Applicant’s right to progressive development under Art. 26 ACHR.

According to Art. 26 ACHR, states parties have to adopt measures, with a view to progressively achieving the full realization of all economic, social and cultural rights set forth in the Charter of the Organization of American States.[[136]](#footnote-136)

In *Yakye Axa Indigenous Community v. Paraguay*, the Court considered it a fundamental obligation of all state parties to further minimum living conditions, which are compatible with human dignity.[[137]](#footnote-137) Along the same lines, the Court established that the lack of access to clean water is especially detrimental to a community’s health condition, thus having a significant impact on their ability to exercise other human rights, such as the right to education.[[138]](#footnote-138) In the case of indigenous peoples, access to their ancestral lands and the use and enjoyment of the natural resources found on their territory is closely tied to access to clean water.[[139]](#footnote-139)

Considering the difficulties of planning and adopting public policies based on priorities and resources, the positive obligations of states must be interpreted in such a way, which do not place an impossible or disproportionate burden on state authorities.[[140]](#footnote-140) Furthermore, the Court indicated that a state could not be held responsible for all situations in which human rights are at stake.[[141]](#footnote-141) To comply with the aforementioned positive obligations, states must be aware of the existence of a real risk to indigenous people’s life and take all the necessary measures within their power to prevent the realization of that risk.[[142]](#footnote-142)

In the instant case, the respondent State did not restrict the access of indigenous peoples to their ancestral lands, but took additional positive measures to supply them with potable water to guarantee their usual standard of living.[[143]](#footnote-143) The lack of potable water would have had a detrimental effect upon the whole community.[[144]](#footnote-144) Since the restriction of the Pichicha people’s property rights was exceptional and only temporary, this imposed no burden on the Pichicha people’s right to progressively develop their economic, social and cultural rights.

The respondent State thus ensured the Pichicha’s people right to progressive development according to Art. 26 ACHR.

### **The respondent State fulfilled all its legal obligations with regard to the Orífuna people**

#### **The respondent State fulfilled all its legal obligations with regard to the right to a fair trial in accordance with Art. 8, Art. 1(1) and Art. 2 ACHR**

The respondent State protected the Applicant’s right to a fair trial under Art. 8, Art. 1(1) and Art. 2 ACHR, affording it access to independent and impartial courts of justice within a reasonable time.

Art. 8 ACHR guarantees the individual’s right to due process.[[145]](#footnote-145) In *Acosta-Calderón v. Ecuador*, the Court stated that “the reasonability of the time period (…) must be analyzed with regard to the total duration of the process, from the first procedural act up to the issuing of a definitive judgment”[[146]](#footnote-146). The Court reiterated in *Yakye Axa Indigenous Community v. Paraguay* that to establish a reasonable term in a proceeding it is necessary to take into account (1) the complexity of the matter, (2) the procedural initiative of the interested party, and (3) the conduct of the judicial authorities.[[147]](#footnote-147)

In the present case, the Applicant filed an action with the courts of the respondent State in August 2011, asking for the exploration license of the Wirikuya project to be declared null and void. The Applicant alleged that neither the exploration license nor the SEIS had been subject to prior consultation with the Orífuna people living on Madruga’s territory.[[148]](#footnote-148) The respondent State handed down a decision on the matter in January 2012, thus only a couple of months later.[[149]](#footnote-149) Taking into account that two different states are involved and the issue concerns complex foreign policy decisions, the respondent State acted in a timely manner.[[150]](#footnote-150) Furthermore, the Applicant was able to freely exercise its rights to defense and had full access to the courts of the respondent State, which were impartial and upheld the Applicant’s right to due process.

For all aforementioned reasons, the respondent State protected the Applicant’s right to a fair trial under Art. 8, Art. 1(1) and Art. 2 ACHR, affording it access to independent and impartial courts of justice within a reasonable time.

#### **The respondent State fulfilled all its legal obligations with regard to the right to judicial protection in accordance with Art. 25, Art. 1(1) and Art. 2 ACHR**

The respondent State respected the Applicant’s right to judicial protection under Art. 25, Art. 1(1) and Art. 2 ACHR by providing the Applicant with effective judicial remedies against acts allegedly violating its fundamental rights.

Art. 25(1) ACHR obliges states to offer all people under their jurisdiction an effective judicial recourse against acts that violate their fundamental rights.[[151]](#footnote-151) In *Human Rights Defender et al. v. Guatemala*, the Court determined that, according to Art. 25 ACHR, the state has to provide effective legal remedies in accordance with the rules of due process.[[152]](#footnote-152)

Additionally, the legal recourses shall not only exist formally, they must also be effective. Thus, everyone must have a real opportunity to present a simple and prompt recourse leading to the judicial protection required.[[153]](#footnote-153) The Court also stated in *Kichwa Indigenous People of Sarayaku v. Ecuador* that the state must guarantee effective mechanisms to execute the judicial decisions so that the rights are effectively protected by the proper application of that ruling. Therefore, the effectiveness of the judgments and the judicial orders depend on their execution.[[154]](#footnote-154) In addition, with regard to indigenous peoples, it is fundamental that states grant effective protection that takes into account the inherent particularities of indigenous peoples, their economic and social characteristics, as well as their customary law, values, practices and customs.[[155]](#footnote-155)

In the instant case, the indigenous Orífuna people are not inhabitants of the respondent State and live in the neighboring territory of Madruga. The Supreme Court of the respondent State ruled the Applicant’s claim unfounded, underscoring that even though the Orífuna people are considered as tribal people under ILO Convention 169, prior consultation surrounding foreign policy decision-making is not regulated in domestic or international law.[[156]](#footnote-156) Therefore, the respondent State takes specific characteristics of indigenous peoples into account, but refers to the fact that it is not the responsible body to examine this matter. Nevertheless and in compliance with Art. 6(1)(a) ILO Convention 169, the respondent State fulfilled its international obligation by comprehensively informing the Madrugan authorities of the potential effects the Wirikuya project could have on Madrugan territory.[[157]](#footnote-157)

Therefore, the respondent State respected the Applicant’s right to judicial protection under Art. 25, Art. 1(1) and Art. 2 ACHR by providing the Applicant with effective judicial remedies.

# **Request for Relief**

Based on the foregoing considerations, the respondent State of Santa Clara respectfully requests this Honorable Court to:

1. Establish that the Court has no jurisdiction over the case given the reasons set forth in chapter IV. A.;

2. Declare the Applicant’s petitions inadmissible;

3. Alternatively, to hold that:

 a. The respondent State protected all the rights as established in Art. 4, 5, 8, 16, 17, 25 ACHR in conjunction with Art. 1(1) and 2 ACHR with regard to Edmundo Camana and his family.

 b. The respondent State protected all the rights as established in Art. 5 (1) ACHR in conjunction with Art. 1(1) and 2 ACHR with regard to the Edmundo Camana’s and his family’s next of kin.

 c. The respondent State protected all the rights as established in Art. 5, 8, 21, 25 and 26 in conjunction with Art. 1(1) and 2 ACHR with regard to the Pichicha people;

 d. The respondent State protected all the rights as established in Art. 8 and 25 in con- junction with Art. 1(1) and 2 ACHR with regard to the Orífuna people.

Respectfully,

 The respondent State of Santa Clara

1. Hypothetical, p. 2, § 9. [↑](#footnote-ref-1)
2. Hypothetical, p. 4, § 17. [↑](#footnote-ref-2)
3. Hypothetical, p. 4, § 17. [↑](#footnote-ref-3)
4. Hypothetical, p. 5, § 23. [↑](#footnote-ref-4)
5. Hypothetical, p. 4, § 19; Hypothetical, p. 5, § 27. [↑](#footnote-ref-5)
6. Clarification Questions, no. 23; Hypothetical, p. 6, § 29. [↑](#footnote-ref-6)
7. Hypothetical, p. 7, § 32. [↑](#footnote-ref-7)
8. Hypothetical, p. 7, §§ 33, 35, 36. [↑](#footnote-ref-8)
9. Art. 6(1)(a) ILO Convention 169; Hypothetical, p. 8, § 42; Hypothetical, p. 10, § 47. [↑](#footnote-ref-9)
10. Hypothetical, p. 7, § 36. [↑](#footnote-ref-10)
11. Hypothetical, p. 7, § 37; Hypothetical, p. 8, § 38. [↑](#footnote-ref-11)
12. Clarification Questions, no. 57; Hypothetical, p. 8, § 38. [↑](#footnote-ref-12)
13. Hypothetical, p. 8, § 41. [↑](#footnote-ref-13)
14. Hypothetical, p. 10, § 48. [↑](#footnote-ref-14)
15. Hypothetical, p. 10, §§ 49, 50, 52. [↑](#footnote-ref-15)
16. Hypothetical, p. 10, §§ 49, 50. [↑](#footnote-ref-16)
17. *Hugo Armendariz v. United States*, IACHR, Report No. 57/06, 20 July 2006, § 46; *José Miguel Gudiel Álvarez and Ohters (“Diario Militar”) v. Guatemala*, Report No. 116/10, 22 October 2010, § 10; *Wayne Smith v. United States*, Report No. 56/06, 20 July 2006, § 53. [↑](#footnote-ref-17)
18. C. Medina, The American Convention on Human Rights, Cambridge, Cambridge - Antwerp - Portland, 2014, p. 198. [↑](#footnote-ref-18)
19. *Banković and Others v. Belgium and Others,* ECtHR, App. No. 52207/99, 12 December 2001, § 59. [↑](#footnote-ref-19)
20. *Banković and Others v. Belgium and Others,* *supra* note 19, § 71. [↑](#footnote-ref-20)
21. *Coard et al. v. United States*, IACHR, Report No. 109/99, 29 September 1999, § 37; D. Rodríguez-Pinzón and C. Martin, The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System, Geneva, World Organisation Against Torture (OMCT), 2014, p. 67. [↑](#footnote-ref-21)
22. *Herrera Ulloa v. Cosa Rica,* IACtHR, 2 July 2004, § 81; Hypothetical, p. 10, § 49. [↑](#footnote-ref-22)
23. *Carlos García Saccone v. Argentina*, IACHR, Report No. 8/98, 2 March 1998, § 53; L. Burgorgue-Larsen & A. Ubeda de Torres, The Inter-American Court of Human Rights, Oxford, Oxford University Press, 2011, p. 60. [↑](#footnote-ref-23)
24. *Cabrera García and Montiel Flores v. Mexico*, IACtHR, 26 November 2010, § 16. [↑](#footnote-ref-24)
25. *Las Palmeras v. Colombia*, IACtHR, 6 December 2001, § 33; Jo M. Pasqualucci, The Practice and Procedure of the Inter-American Court of Human Rights, Cambridge, Cambridge University Press, 2003, p. 93. [↑](#footnote-ref-25)
26. D. Rodríguez-Pinzón and C. Martin, *supra* note 21, p. 66. [↑](#footnote-ref-26)
27. D. Rodríguez-Pinzón and C. Martin *supra* note 21, p. 66; Jo M. Pasqualucci, *supra* note 25, p. 93. [↑](#footnote-ref-27)
28. Hypothetical, p. 6, § 29; Hypothetical, p. 7, § 32. [↑](#footnote-ref-28)
29. Jo M. Pasqualucci, *supra* note 25, p. 93. [↑](#footnote-ref-29)
30. Hypothetical, p. 8, §§ 40, 41. [↑](#footnote-ref-30)
31. *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, IACtHR, 21 November 2007, § 16; *Communities of the Sipakepense and Mam Mayan People of the Municipalities of Sipacapa and San Miguel Ixtahuacán v. Guatemala*, IACHR, Report No. 20/14, 3 April 2014, § 30; *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights)*, Advisory Opinion OC-11/90, IACtHR, 10 August 1990, § 16. [↑](#footnote-ref-31)
32. D. Harris and S. Livingstone,*“The Inter-American System of Human Rights”*, Oxford, Clarendon Press, 1998, p. 91. [↑](#footnote-ref-32)
33. *Judicial Guarantees in State of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights),* Advisory Opinion OC-9/87, IACtHR, 6 October 1987, § 23; *Kichwa Indigenous People of Sarayaku v. Ecuador, IACtHR, 27 June 2012,* § 272. [↑](#footnote-ref-33)
34. *Ricardo Urbano Poma v. Peru*, IACHR, Report No. 3/08, 4 March 2008, §§ 29, 30. [↑](#footnote-ref-34)
35. Hypothetical, p. 8, § 39. [↑](#footnote-ref-35)
36. Hypothetical, p. 8, § 40. [↑](#footnote-ref-36)
37. Clarification Questions, no. 5. [↑](#footnote-ref-37)
38. *Saramaka People v Suriname,* IACtHR, 28 November 2007, § 41. [↑](#footnote-ref-38)
39. *Felipe Matías Calmo, Faustino Mejía Bautista et al. v. Guatemala*, IACHR, Report No. 55/14, 21 July 2014, § 26; L. Burgorgue-Larsen & A. Ubeda de Torres, *supra* note 23, p. 138. [↑](#footnote-ref-39)
40. *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights),* *supra* note 31, § 28. [↑](#footnote-ref-40)
41. C. Medina, *supra* note 18, p. 178; *Gudiel Álvarez et al. (Diario Militar) v. Guatemala*, IACtHR, 20 November 2012, § 327. [↑](#footnote-ref-41)
42. Art. 8 ACHR; C. Medina, *supra* note 18, p. 191. [↑](#footnote-ref-42)
43. C. Medina, *supra* note 18, p. 198; *Gudiel Álvarez et al. (Diario Militar) v. Guatemala*, *supra* note 41, §§ 326-330; *Massacres of El Mozote and nearby places v. El Salvador*, IACtHR, 25 October 2012, § 317; *Myrna Mack Chang v. Guatemala*, IACtHR, 25 November 2003, § 277. [↑](#footnote-ref-43)
44. *Baldeón-García v. Perú*, IACtHR, 6 April 2006, § 93; *“Mapiripán Massacre” v. Colombia*, IACtHR, 15 September 2005, § 223; *Pueblo Bello Massacre v. Colombia*, IACtHR, 31 January 2006, § 143. [↑](#footnote-ref-44)
45. *Juan Humberto Sánchez v. Honduras*, IACtHR, 7 June 2003, § 120*.* [↑](#footnote-ref-45)
46. Hypothetical, p. 5, § 27; Hypothetical, p. 6, § 28. [↑](#footnote-ref-46)
47. Hypothetical, p. 5, § 27. [↑](#footnote-ref-47)
48. *Godínez Cruz v. Honduras*, IACtHR, 20 January 1989, § 69; *Velásquez-Rodriguez v. Honduras*, IACtHR, 29 July 1988, § 66. [↑](#footnote-ref-48)
49. *Herrera Ulloa v. Costa Rica*, *supra* note 22, § 158. [↑](#footnote-ref-49)
50. *Bámaca-Velásquez v. Guatemala,* IACtHR, 25 November 2000, § 191; *Constitutional Court v. Peru*, IACtHR, 31 January 2001, § 90; *Suarez-Rosero v. Ecuador*, IACtHR, 12 November 1997, § 63; *“White Van” Paniagua-Morales et al. v. Guatemala*, IACtHR, 8 March 1998, § 164. [↑](#footnote-ref-50)
51. *Suarez-Rosero v. Ecuador*, *supra* note 50, § 63. [↑](#footnote-ref-51)
52. *Godinez Cruz v. Honduras*, *supra* note 48, § 69; *Velásquez-Rodriguez v. Honduras*, *supra* note 48, § 66. [↑](#footnote-ref-52)
53. *Godinez Cruz v. Honduras*, *supra* note 48, §§ 70, 71. [↑](#footnote-ref-53)
54. Hypothetical, p. 6, § 28. [↑](#footnote-ref-54)
55. *Velásquez-Rodríguez v. Honduras, supra* note 48, § 67. [↑](#footnote-ref-55)
56. See chapter *IV.A.2* above, p. 14. [↑](#footnote-ref-56)
57. Hypothetical, p. 6, § 29. [↑](#footnote-ref-57)
58. Hypothetical, p. 4, § 17. [↑](#footnote-ref-58)
59. *Neira-Alegría et al. v. Peru*, IACtHR, 19 January 1995, § 86. [↑](#footnote-ref-59)
60. *Cantoral-Huamaní and García-Santa Cruz v. Peru*, IACtHR, 10 July 2007, § 141; *Huilca-Tecse v. Peru*, IACtHR, 3 March 2005, § 76; *Kawas-Fernández v. Honduras*, IACtHR, 3 April 2009, § 144. [↑](#footnote-ref-60)
61. Hypothetical, p. 4, § 17. [↑](#footnote-ref-61)
62. Hypothetical, p. 5, § 23. [↑](#footnote-ref-62)
63. D. Harris and S. Livingstone, *supra* note 32, p. 271. [↑](#footnote-ref-63)
64. *Gudiel Álvarez et al. (Diario Militar) v. Guatemala*, *supra* note 41, § 312; *Pacheco Tineo Family v. Plurinational State of Bolivia*, IACtHR, 25 November 2003, § 226. [↑](#footnote-ref-64)
65. *Expelled Dominicans and Haitians v. Dominican Republic*, IACtHR, 28 August 2014, § 414; Juridical Condition and Human Rights of the Child (Advisory Opinion OC-17/02), IACtHR, 28 August 2002, § 47; *“Las Dos Erres” Massacre v. Guatemala,* IACtHR, 24 November 2009, § 189; *Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, IACtHR, 29 May 2014, § 404. [↑](#footnote-ref-65)
66. *Chitay Nech et al. v. Guatemala*, IACtHR, 25 May 2010, § 157; *Expelled Dominicans and Haitians v. Dominican Republic, supra* note 65, § 414; Juridical Condition and Human Rights of the Child (Advisory Opinion OC-17/02), *supra* note 67, § 71. [↑](#footnote-ref-66)
67. *Expelled Dominicans and Haitians v. Dominican Republic, supra* note 65, § 418. [↑](#footnote-ref-67)
68. Hypothetical, p. 4, § 17. [↑](#footnote-ref-68)
69. Clarification Question, no. 34. [↑](#footnote-ref-69)
70. Hypothetical, p. 4, § 17. [↑](#footnote-ref-70)
71. *Albán-Cornejo et al. v. Ecuador*, IACtHR, 22 November 2007, § 46; *Cantoral-Huamaní and García-Santa Cruz v. Peru*, *supra* note 60, § 112; *Heliodoro Portugal v. Panama*, IACtHR, 12 August 2008, § 163; *Goiburú et al. v. Paraguay*, IACtHR, 22 September 2006, §§ 96, 97. [↑](#footnote-ref-71)
72. *Blake v. Guatemala*, IACtHR, 24 January 1998, §§ 113, 114; *Gómez-Palomino v. Peru*, IACtHR, 22 November 2005, § 61; *“Mapiripán Massacre” v. Colombia*, *supra* note 44, §§ 144, 146. [↑](#footnote-ref-72)
73. *Juan Humberto Sánchez v. Honduras*, *supra* note 45, § 186; see also chapter *IV.B.1.a)* above [↑](#footnote-ref-73)
74. *Blake v. Guatemala*, IACtHR, *supra* note 72, § 114. [↑](#footnote-ref-74)
75. Hypothetical, p. 7, § 32. [↑](#footnote-ref-75)
76. Hypothetical, p. 8, § 38. [↑](#footnote-ref-76)
77. *Acosta-Calderón v. Ecuador*, IACtHR, 24 June 2005, § 141; U.N., Report No. 13, December 2013, § 27. [↑](#footnote-ref-77)
78. U.N., *supra* note 77, § 28. [↑](#footnote-ref-78)
79. *Loayza-Tamayo v. Peru*, IACtHR, 17 September 2000, § 57. [↑](#footnote-ref-79)
80. *Moiwana Community v. Suriname*, IACtHR, 15 June 2005,§ 94. [↑](#footnote-ref-80)
81. *Moiwana Community v. Suriname,* *supra* note 80, § 195; *Saramaka People v. Suriname,* *supra* note 38, § 90. [↑](#footnote-ref-81)
82. *Moiwana Community v. Suriname,* *supra* note 80, § 101. [↑](#footnote-ref-82)
83. *Saramaka People v. Suriname,* *supra* note 38, § 126; U.N. Human Rights Committee, Apirana Mahuika v. New Zealand, 13 October 1995, § 3.1. [↑](#footnote-ref-83)
84. Hypothetical, p. 7, § 37; Hypothetical, p. 8, § 38. [↑](#footnote-ref-84)
85. Clarification Question, no. 14. [↑](#footnote-ref-85)
86. Clarification Question, no. 57. [↑](#footnote-ref-86)
87. Clarification Question, no. 57. [↑](#footnote-ref-87)
88. Hypothetical, p. 8, § 38. [↑](#footnote-ref-88)
89. Hypothetical, p. 8, § 38. [↑](#footnote-ref-89)
90. Y. Haeck, O. Ruiz-Chiriboga and C. Burbano-Herrera, *“The Inter-American Court of Human Rights”*, Cambridge - Antwerp - Portland, 2015, pp. 257, 258; *Yakye Axa Indigenous Community v. Paraguay*, IACtHR, 17 June 2005, § 221. [↑](#footnote-ref-90)
91. Clarification Question, no. 57. [↑](#footnote-ref-91)
92. Hypothetical, p. 7, § 36; Hypothetical, p. 8, §§ 38, 39. [↑](#footnote-ref-92)
93. *Yakye Axa Indigenous Community v. Paraguay*, *supra* note 90, § 55. [↑](#footnote-ref-93)
94. C. Medina, *supra* note 18, p. 178. [↑](#footnote-ref-94)
95. C. Medina, *supra* note 18, p. 191. [↑](#footnote-ref-95)
96. C. Medina, *supra* note 18, p. 198. [↑](#footnote-ref-96)
97. *Yakye Axa Indigenous Community v. Paraguay*, *supra* note 90, § 65. [↑](#footnote-ref-97)
98. *Sawhoyamaxa Indigenous Community v. Paraguay,* IACtHR, 29 March 2006, §§ 109, 110. [↑](#footnote-ref-98)
99. Hypothetical, p. 8, § 39. [↑](#footnote-ref-99)
100. Hypothetical, p. 8, §§ 40, 41. [↑](#footnote-ref-100)
101. *Sawhoyamaxa Indigenous Community v. Paraguay,* *supra* note 98, § 164; *The Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, IACtHR, 30 November 2013, § 21. [↑](#footnote-ref-101)
102. C. Medina, *supra* note 18, p. 198. [↑](#footnote-ref-102)
103. C. Medina, *supra* note 18, p. 235. [↑](#footnote-ref-103)
104. *Saramaka People v. Suriname,* *supra* note 38, § 177. [↑](#footnote-ref-104)
105. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, IACtHR, 31 August 2001, §§ 135, 136. [↑](#footnote-ref-105)
106. *Saramaka People v. Suriname,* *supra* note 38, § 178. [↑](#footnote-ref-106)
107. *Velásquez-Rodríguez v. Honduras*, *supra* note 48, § 66. [↑](#footnote-ref-107)
108. *Velásquez-Rodríguez v. Honduras*, *supra* note 48, §§ 64, 72. [↑](#footnote-ref-108)
109. D. Harris and S. Livingstone, *supra* note 32, p. 91. [↑](#footnote-ref-109)
110. Hypothetical, p. 8, §§ 39, 40, 41; *Sawhoyamaxa Indigenous Community v. Paraguay,* *supra* note 98, § 164. [↑](#footnote-ref-110)
111. Hypothetical, p. 8, § 40. [↑](#footnote-ref-111)
112. Clarification Questions, no. 5. [↑](#footnote-ref-112)
113. Hypothetical, p. 8, § 40. [↑](#footnote-ref-113)
114. Hypothetical, p. 8, § 39. [↑](#footnote-ref-114)
115. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, IACtHR, 31 August 2001, §§ 135, 136. [↑](#footnote-ref-115)
116. L. Burgorgue-Larsen & A. Ubeda de Torres, *supra* note 23, p. 624; *Sawhoyamaxa Indigenous Community v. Paraguay,* *supra* note 98, § 121. [↑](#footnote-ref-116)
117. L. Burgorgue-Larsen & A. Ubeda de Torres, *supra* note 23, p. 624; *Saramaka People v. Suriname,* *supra* note 38, § 91; *Sawhoyamaxa Indigenous Community v. Paraguay,* *supra* note 98, § 120. [↑](#footnote-ref-117)
118. *Saramaka People v. Suriname,* *supra* note 38, § 127. [↑](#footnote-ref-118)
119. *Saramaka People v. Suriname,* *supra* note 38, § 127. [↑](#footnote-ref-119)
120. *Saramaka People v. Suriname,* *supra* note 38, § 126. [↑](#footnote-ref-120)
121. Clarification Questions, no. 57. [↑](#footnote-ref-121)
122. Hypothetical, p. 8, § 38; *Saramaka People v. Suriname,* *supra* note 38, § 127. [↑](#footnote-ref-122)
123. Hypothetical, p. 8, § 38. [↑](#footnote-ref-123)
124. Hypothetical, p. 8, § 39. [↑](#footnote-ref-124)
125. *Saramaka People v. Suriname,* *supra* note 38, § 129. [↑](#footnote-ref-125)
126. U.N., Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, 6 July 2012, §§ 62, 80. [↑](#footnote-ref-126)
127. *Saramaka People v. Suriname,* *supra* note 38, § 133. [↑](#footnote-ref-127)
128. *Kichwa Indigenous People of Sarayaku v. Ecuador*, *supra* note 33, § 201. [↑](#footnote-ref-128)
129. *Saramaka People v. Suriname,* *supra* note 38, § 130. [↑](#footnote-ref-129)
130. *Saramaka People v. Suriname,* *supra* note 38, § 133. [↑](#footnote-ref-130)
131. Clarification Questions, no. 30; Hypothetical, p. 7, §§ 34, 35. [↑](#footnote-ref-131)
132. Hypothetical, p. 7, § 34. [↑](#footnote-ref-132)
133. Hypothetical, p. 7, § 35. [↑](#footnote-ref-133)
134. Hypothetical, p. 7, §§ 34, 35. [↑](#footnote-ref-134)
135. Hypothetical, p. 7, § 36. [↑](#footnote-ref-135)
136. *Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller”) v. Peru*, IACtHR, 1 July 2009, § 92. [↑](#footnote-ref-136)
137. *Yakye Axa Indigenous Community v. Paraguay*, *supra* note 90, § 162. [↑](#footnote-ref-137)
138. *Yakye Axa Indigenous Community v. Paraguay*, *supra* note 90, § 167. [↑](#footnote-ref-138)
139. *Ibid.* [↑](#footnote-ref-139)
140. *Xákmok Kásek Indigenous Community v. Paraguay*, IACtHR, 24 August 2010, § 188; Y. Haeck, O. Ruiz-Chiriboga and C. Burbano-Herrera, *supra* note 90, p. 301. [↑](#footnote-ref-140)
141. *Xákmok Kásek Indigenous Community v. Paraguay*, *supra* note 140, § 188. [↑](#footnote-ref-141)
142. *Ibid.* [↑](#footnote-ref-142)
143. Hypothetical, p. 8, § 38. [↑](#footnote-ref-143)
144. Clarification Questions, no. 57. [↑](#footnote-ref-144)
145. *Acosta-Calderón v. Ecuador*, *supra* note 77, § 103; *Constitutional Court v. Peru*, *supra* note 50, § 66. [↑](#footnote-ref-145)
146. *Acosta-Calderón v. Ecuador*, *supra* note 77, § 104. [↑](#footnote-ref-146)
147. *Yakye Axa Indigenous Community v. Paraguay*, *supra* note 90, § 65. [↑](#footnote-ref-147)
148. Hypothetical, p. 9, § 46. [↑](#footnote-ref-148)
149. Hypothetical, p. 10, § 47. [↑](#footnote-ref-149)
150. *Sawhoyamaxa Indigenous Community v. Paraguay,* *supra* note 98, § 164; *Yakye Axa Indigenous Community v. Paraguay*, *supra* note 90, § 65. [↑](#footnote-ref-150)
151. *Acosta-Calderón v. Ecuador*, *supra* note 77, § 92; *Kichwa Indigenous People of Sarayaku v. Ecuador*, *supra* note 33, § 262. [↑](#footnote-ref-151)
152. *Human Rights Defender et al. v. Guatemala*, IACtHR, 28 August 2004, § 199; *Kichwa Indigenous People of Sarayaku v. Ecuador*, *supra* note 33, § 260. [↑](#footnote-ref-152)
153. *Acosta-Calderón v. Ecuador*, *supra* note 77, § 93. [↑](#footnote-ref-153)
154. *Kichwa Indigenous People of Sarayaku v. Ecuador*, *supra* note 33, § 263. [↑](#footnote-ref-154)
155. *Kichwa Indigenous People of Sarayaku v. Ecuador*, *supra* note 33, § 264. [↑](#footnote-ref-155)
156. Hypothetical, p. 10, § 47. [↑](#footnote-ref-156)
157. *The Human Rights Situation in Mexico*, IACHR, Doc. 44/15, 31 December 2015, § 253. [↑](#footnote-ref-157)