

UIC School of Law

UIC Law Open Access Repository

Court Documents and Proposed Legislation

2015

Amicus Curiae In Support Of The Petitioners, Santa Barbara Campesino Community v. Perú, Inter-American Court of Human Rights, No. 10.932 (2015)

Sarah Dávila-Ruhaak
John Marshall Law School, sdavila@uic.edu

Steven D. Schwinn
John Marshall Law School, schwinn@uic.edu

John Marshall Law School International Human Rights Clinic

Follow this and additional works at: <https://repository.law.uic.edu/courtdocs>



Part of the [Human Rights Law Commons](#), [International Humanitarian Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Amicus Curiae In Support Of The Petitioners, Santa Barbara Campesino Community v. Perú, Inter-American Court of Human Rights, No. 10.932 (2015)

<https://repository.law.uic.edu/courtdocs/84>

This Brief is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in Court Documents and Proposed Legislation by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

Case No. 10.932

INTER-AMERICAN COURT OF HUMAN RIGHTS

SANTA BARBARA CAMPESINO COMMUNITY

v.

PERÚ

AMICUS CURIAE IN SUPPORT OF THE PETITIONERS

Presented by:
The John Marshall Law School
International Human Rights Clinic

Attorneys for Amicus Curiae
Sarah Dávila-Ruhaak
Steven D. Schwinn
The John Marshall Law School
International Human Rights Clinic
315 South Plymouth Ct.
Chicago, IL 60604
U.S.A.
(312) 386-2888
sdavila@jmls.edu
sschwinn@jmls.edu

ACKNOWLEDGMENTS

This *amicus curiae* brief would not have been possible without the participation of professors, students and volunteer attorneys who provided great insight and experience. All members of The John Marshall Law School International Human Rights Clinic provided valuable research, authoring contributions, and editing.

Professors & Directors of International Human Rights Clinic

Sarah Dávila-Ruhaak

Steven D. Schwinn

The John Marshall Law School Students

Sara Schwartz - *Spring 2014*

Ann Daniels – *Spring 2014*

Shayan Davoudi – *Spring 2014*

Yuri Ruiz – *Summer 2014*

Greta Berna – *Fall 2014*

Caitlin Bardill – *Fall 2014*

Volunteer Attorneys

Elizabeth Spellmire Francis – *Summer 2014*

Daniela Reverón – *Fall 2014*

For more information, contact The John Marshall Law School International Human Rights Clinic at (312) 386-2888, or the directors at sdavila@jmls.edu or sschwinn@jmls.edu.

TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE.....2

INTRODUCTION.....2

FACTUAL BACKGROUND.....3

ARGUMENT.....4

 I. Perú Violated its Duty of Special Protection to the Campesinos of Santa Barbara.....4

 A. Campesinos are an Especially Vulnerable Population.....5

 B. Perú Violated the Right to Privacy and the Right to Property of the Santa Barbara Campesino Community When the Peruvian Military Stole Their Property and Burned Their Homes.....7

 C. Perú Violated the Right to Life and the Right to Personal Liberty of the 15 Disappeared Persons.11

 D. Perú Violated the Right to Humane Treatment of the 15 Disappeared Persons.....14

 II. Perú Violated Its Duty of Special Protection to the Children of Santa Barbara.....15

 A. Perú Owes a Duty of Special Protection to Children.....15

 B. Perú violated Its Duty of Special Protection of the Rights to Life and Liberty During a Time of Armed Conflict to the Children of the Santa Barbara Community20

CONCLUSION.....20

INTEREST OF AMICUS CURIAE

Pursuant to Article 44 of the Rules of Procedure of this Honorable Inter-American Court of Human Rights (hereinafter “Court”),¹ the International Human Rights Clinic of The John Marshall Law School (hereinafter “IHRC”) respectfully submits this brief of *Amicus Curiae* in Support of the Petitioners in the case of *Santa Barbara Campesino Community v. Perú*.²

The IHRC is a non-profit, nonpartisan law school legal clinic dedicated to promoting and protecting human rights in the United States and around the world. The IHRC has particular interests in establishing, strengthening, and enforcing duties of special protection for vulnerable populations like campesinos and children.

INTRODUCTION

The IHRC respectfully submits this brief in order to provide a detailed analysis of the duties of special protection that a State like Perú owes to vulnerable populations like campesinos and children. The IHRC argues that the State owes a duty of special protection to both groups, and that it violated that duty here.

First, campesinos are a vulnerable population, and this case offers the Court an opportunity to specify that a State owes a duty of special protection to them. Campesino communities throughout the Americas have been subject to targeted violence. Moreover, they share material characteristics (like ties to their land and natural resources) with other, well recognized vulnerable populations. Finally, international and regional institutions are increasingly supporting the development of special protections for campesino and peasant

¹ Rules of Procedure of the Inter-Am. Ct. H.R., Art. 44 (December 2009); *see also* Case of Kimel v. Argentina, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 177, ¶ 16 (May 2, 2008).

² *Santa Barbara Campesino Community v. Perú*, Case 10.932, Inter-Am. Comm’n H.R., Report No. 77/11 (2011) [hereinafter *Report No. 77/11*].

communities. This case gives this Court an opportunity to recognize that a State owes a duty of special protection to campesinos and thus to develop stronger legal protections for campesinos in the Inter-American system. Perú has violated its duty of special protection here.

With regard to children, this case gives the Court an opportunity to reiterate and strengthen the well-established duty of special protection that a State owes to children. As we argue below, Perú has violated that well established duty here.

FACTUAL BACKGROUND

On July 3 and 4, 1991, members of the Peruvian Army and accompanying civilians invaded the rural campesino community of Santa Barbara, Perú. The soldiers raided homes, damaged and stole property (including livestock), and detained, tortured, and disappeared 15 individuals, including seven children under the age of six.³ The victims were campesinos who relied upon their land and their livestock for their subsistence.

The military justice system found six members of the military responsible for these offenses.⁴ To date, however, none of the perpetrators has been convicted in a final judgment.⁵

On July 26, 1991, the Center of Studies and Action for Peace submitted a petition on behalf of the Santa Barbara community with the Inter-American Commission on Human Rights.⁶ On July 21, 2011, the Commission concluded that Perú was responsible for breach of its obligations to prevent violence and to protect various rights of the Santa Barbara community.⁷

³ Report 77/11, *supra* note 2, at ¶ 1.

⁴ *Id.* at ¶ 2.

⁵ *Id.*

⁶ *Id.* at ¶ 7.

⁷ *Id.* at ¶¶ 172-261.

The Commission also recommended that Perú take remedial actions to provide justice to members of the community.⁸

However, the case lapsed into impunity after the Supreme Court of Perú applied Amnesty Law 26.479, which exonerated members of the military who had taken part in human rights violations between 1980 and 1995. Though the Supreme Court reopened the criminal proceedings in 2005, to date not one of the perpetrators has been convicted of the forced disappearances, killings, and destruction of property of the community.⁹ The Commission submitted this case to this Court on July 8, 2013.¹⁰

ARGUMENT

By forcibly disappearing fifteen members of the Santa Barbara community, Perú violated its duty of special protection to vulnerable populations under the American Convention on Human Rights. In particular, Perú violated its special duty to the campesinos of the Santa Barbara community. Perú also violated its duty of special protection to the children of the Santa Barbara community. In violating these duties, Perú also deprived members of the Santa Barbara community of their rights to an effective remedy.

I. Perú Violated its Duty of Special Protection to the Campesinos of Santa Barbara.

Perú had a duty of special protection to the campesinos of Santa Barbara because of the community's particular vulnerabilities. Perú violated this duty when the Peruvian military stole property, burned houses, and tortured and killed 15 members of the community.

⁸ *Id.* at ¶ 262 (1-6).

⁹ *Id.* at ¶¶ 164, 250.

¹⁰ *Id.* at ¶ 1.

A. Campeños are an Especially Vulnerable Population.

Campeños are a vulnerable group of people due to their close ties to the land, their socio-economic status, and their geographic isolation.¹¹ This case gives the Court an opportunity to recognize that campeños are a vulnerable population and to extend special protections to them.

The term “campeño” applies to rural dwellers that include peasants, small-size farmers, indigenous peoples, agricultural workers, and those employed in a variety of economic activities that have an essential tie to the land.¹² In general, campeños possess a heavy dependence on land, livestock, and household labor, which in turn places them in a resource-poor socio-economic status.¹³ These groups are often marginalized, excluded from the mainstream due to lack of access to resources and decision-making power. The United Nations Millennium Development Project’s Task Force on Hunger reported that seventy-five percent of those who

¹¹ Final Study on the Advancement of the Rights of Peasants and Other People Working in Rural Areas, Human Rights Council Advisory Committee, A/HRC/19/75 (February 12, 2012) pp. 3-9 [hereinafter *Adv. Rights of Peasants*]; see La Via Campesina, the largest global peasants’ movement, categorizes campeños as part of the larger population of their class. Article 1 of the Declaration of Rights of Peasants defines campeños as “a man or woman of the land, who has a direct and special relationship with the land and nature through the production of food and/or other agricultural products. Though campeños are inclusive of indigenous peoples, not all campeños are indigenous.” La Via Campesina, Declaration of Rights of Peasants, Article I, available at <http://viacampesina.org/en/index.php/publications-mainmenu-30/1016-declaration-of-rights-of-peasants-women-and-men> [hereinafter La Via Campesina Declaration]; see International Labour Organization for definition of “indigenous”: Indigenous peoples are “tribal peoples in independent countries whose culture and economic conditions distinguish them from other sections of the national community” within an independent state or those persons whose descendants inhabited the geographical region of a country before conquest or colonialism. Indigenous peoples benefit from special international protection under the International Labor Organization Convention 169 on Indigenous and Tribal Persons of 1989 and the United Nations General Assembly Declaration on the Rights of Indigenous Peoples of 2007). Convention on the Rights of Indigenous and Tribal Peoples in Independent Countries No. 169, June 27, 1989, 72 ILO Official Bull 59, 28 ILM 1382; see Declaration on the Rights of Indigenous Peoples, October, 7, 2007, G.A. Res. 61/295, Annex, U.N. Doc. A/RES/61/295 art. 25, 26, 30; see also “Campeños” and the Crisis of Modernization in Latin America, William M. Locker, 3 J. of Pol. Ecology 69, 71 (1996), available at http://jpe.library.arizona.edu/volume_3/7LOKER.PDF [hereinafter “Locker”].

¹² Other characteristics of campeños can ultimately be traced to their poverty: they often engage in diversified agriculture on relatively small farms, frequently in areas of dense population. Because they are poor in assets and income, there follows a series of social characteristics of campeños, including: (1) a heavy dependence on household labor (self-exploitation), as hiring wage labor cuts into valuable cash reserves; (2) diverse consumption, as well as market-oriented cash crops; (3) diverse income generating strategies on- and off-farm: as land becomes more scarce, there is an increased dependence on off-farm labor. Locker, *supra* note 11, at pp. 71-72.

¹³ *Id.* at pp. 71-72.

work and live in rural areas suffer from extreme poverty, and that their property is all the more essential to their survival.¹⁴

Campesinos face special challenges, they are targets of violence, and they are victims of human rights violations.¹⁵ Campesinos have endured a historical pattern of discrimination and human rights violations as a result of geographic isolation, expropriation of land, forced disappearances and displacement, and state based violence.¹⁶ Significantly, individuals working in rural areas represent a disproportionate number of victims of armed conflict, which further hinders the full realization of campesino rights.¹⁷ The geographic isolation of campesino communities results in a resounding lack of access to justice and creates additional vulnerability to violations of their rights.¹⁸ It is no coincidence that the majority of massacre cases in the Inter-American system happen to affect campesino communities.¹⁹

The Truth and Reconciliation Commission of Perú (hereinafter “CRV”) recognized that isolated social groups, such as those living in rural areas, are particularly vulnerable to human rights violations, such as the right to property.²⁰ The isolation of these groups and their ties to

¹⁴ Halving Hunger, It Can be Done, United Nations Millennium Project 2005, United Nations Task Force on Hunger, pp. 4-6, available at http://www.unmillenniumproject.org/reports/tf_hunger.htm (May 1, 2014) [hereinafter *UN Hunger*].

¹⁵ Adv. Rights of Peasants, *supra* note 11, at pp. 3-17; In the *Case of Vicente and others v. Colombia*, also known as *Arhuaco v. Colombia*, three indigenous leaders were executed after being taken by armed men when they were on their way to meet government officials. The Court considered the case to be a prime example of keeping the indigenous community vulnerable. The Court noted “the State party has a duty to investigate thoroughly alleged violations of human rights, particularly enforced disappearances and violations of the right to life, and to criminally prosecute, trying and punish those deemed responsible of such violations.” *Arhuaco v. Colombia*, Communication No. 612/1995. Judgment, ¶ 8.2 (14 June 1994).

¹⁶ Adv. Rights of Peasants, *supra* note 11, at pp. 8-13; see *UN Hunger*, *supra* note 14, at pp. 13 - 15.

¹⁷ La Via Campesina Declaration, *supra* note 11, at § II.; see also Final Report of the Truth and Reconciliation Commission of Perú. Volume VI, pp. 20-105, available at http://www.usip.org/sites/default/files/file/resources/collections/commissions/Peru01-Report/Peru01-Report_Vol6.pdf (Spanish Publication, July 2, 2014) [hereinafter *Truth and Reconciliation Report*].

¹⁸ Truth and Reconciliation Report, *supra* note 17, at pp. 112-118.

¹⁹ Case of the “Las Dos Erres” Massacre v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 211 ¶ 162 (Nov. 24, 2009).

²⁰ Truth and Reconciliation Report, *supra* note 17, at pp.112-118.

the land correlate to the vulnerability.²¹ As such, campesinos are continuously forced to defend their human rights, land rights, and natural resources, resulting in their exposure to additional danger.²² The CRV notes that victimization increases with a community's isolation, like the isolation of the campesinos.²³

The Santa Barbara Community Case is no different. The then-president Fujimori's government fought the Shining Path guerrillas who threatened Perú's stability. The Santa Barbara community's land was a known conflict zone; the Shining Path attacked it on numerous occasions before the massacre.²⁴ These attacks came amidst an internal armed conflict in Perú between 1980 and 2000 that constituted the most intense, extensive, and prolonged episode of violence in the entire history of the Republic.²⁵ This Court has held that under these conditions the state has the responsibility to provide special protection to vulnerable populations, especially when state agents violate their rights. The campesino community has a right to be protected from this violence and infringements on its rights.

B. Perú Violated the Right to Property and the Right to Privacy of the Santa Barbara Campesino Community When the Peruvian Military Stole Their Property and Burned Their Homes.

Campesinos are most vulnerable to violations affecting their right to property and livelihood, because their land and livestock are essential to their survival.²⁶ The Court should

²¹ *Id.*

²² Henry Saragih, General Coordinator of La Via Campesina warned that, "Even with this progress, peasants still face marginalization, extreme poverty and other violations. We are often criminalized, and represent the second most vulnerable group when it came to the danger of being killed for our activities in the defense of human rights, land rights and natural resources. Moreover, peasants face particular problems in terms of access to justice to protect them from acts that violate their basic rights and this leads to situations of generalized impunity." Victory in Hard-Fought Struggle in Defense of the Human Rights of Peasants, La Via Campesina ¶ 12 (Oct. 5, 2012), *available at* <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights-mainmenu-40/1302-victory-in-hard-fought-struggle-in-defense-of-human-rights-of-peasants>.

²³ Truth and Reconciliation, *supra* note 17, at p. 105.

²⁴ *Id.* at p. 531.

²⁵ *Id.* at pp. 708 – 710.

²⁶ Locker, *supra* note 11, at pp. 73-74.

recognize that there should be a higher duty owed by the State to campesinos, and take into consideration their special vulnerability and circumstances due to their ties to and reliance on the land for survival.

Article 21 of the American Convention provides for the right to property, including protection against the taking or destruction of property and the interference with the individual's right to use and enjoy his property.²⁷ The right to property is a broad notion for the use and enjoyment of "possessions" that includes "movables and immovables, corporeal and incorporeal elements, and any other immaterial object that may be of value."²⁸ This Court has recognized that the taking of rural dwellers' livestock and the destruction of their property are violations of the right to property under Article 21.²⁹ This Court has recognized that the destruction of property extends beyond earning a living or access to food. The Court stated in the *Ituango Massacre* case that:

[T]he damage suffered by those who lost their livestock, from which they earned their living, is especially severe. Over and above the loss of their main source of income and food, the way in which the livestock was stolen, with the explicit and implicit collaboration of members of the Army, increased the villagers' feelings of impotence and vulnerability.³⁰

The gravity of these human rights violations and feelings of powerlessness and vulnerability stem from the close relationship that the population has to their livestock for physical and economic survival.

²⁷ *Ituango Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148 ¶174 (July 1, 2006); see also Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, art. 21 [hereinafter *American Convention*].*

²⁸ *Ituango Massacre*, at ¶ 174.

²⁹ In the *Ituango Massacre* over 1,200 animals were taken from the victims and the state was held accountable for allowing and enabling the violation of American Convention and the Constitution of Colombia. *Ituango Massacre*, at ¶ 176; *See also* Case of Santo Domingo Massacre v. Colombia, Preliminary objections, merits and reparations, Inter-Am. Ct. H.R. (ser. C) No. 259 ¶ 204 (Nov. 30, 2012).

³⁰ *Ituango Massacre*, at ¶ 178.

The related right to privacy under the American Convention affords persons the right to be free from arbitrary or abusive attack on their private life, home, dignity, and family.³¹ Under Article 11 of the American Convention, the State has an obligation to prevent violations of the right to property and privacy.³² This Court further has recognized that the acquiescence of State officials in such violations constitutes a grave violation of such rights.³³

The arbitrary and violent interference with property rights and private life is devastating to people that live off the land because they are more likely to fall victim to extreme poverty and marginalization.³⁴ The invasion of the homes and disruption of family life could shatter a community who has a significantly communal lifestyle.³⁵

This Court has recognized the vulnerability of rural populations when deprived of their right to property and right to privacy. In the *Case of Moiwana Community v. Suriname*, this Court noted that the N'djuka Maroon village was comprised of rural indigenous peoples who had inextricable ties to their land and livestock, and who hunted for survival. “[T]he Moiwana community members, a N'djuka tribal people, possess an ‘all-encompassing relationship’ to their traditional lands, and their concept of ownership regarding that territory is not centered on the individual, but rather on the community as a whole.”³⁶ This Court emphasized that their ties to the land rendered them more vulnerable after the attacks by the armed forces because the forced

³¹ Article 5 provides: “Everyone has the right to have his honor respected and his dignity recognized.” Article 11 provides: “No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. Everyone has the right to the protection of the law against such interference or attacks” American Convention, *supra* note 27, arts. 5, 11; *Ituango Massacre*, at ¶ 174.

³² American Convention, *supra* note 27, art. 11.

³³ *Ituango Massacre*, at ¶ 183.

³⁴ *Id.* at ¶ 182.

³⁵ *Id.* at ¶¶ 178, 182.

³⁶ *Case of Moiwana Community v. Suriname, Merits, Reparations, and Judgment*, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 133 (Jun. 15, 2005).

eviction caused them to lose all contact with their sacred lands and cultural heritage.³⁷ This Court recognized that the destruction of their sole means of physical and economic survival was a gross violation of their right to property.³⁸

Similarly, this Court recognized in *El Mozote Massacre* that destruction of property was “a violation of the use and enjoyment of property, and also constitutes an abusive and arbitrary interference in their private life and home.”³⁹ Importantly, the military was responsible for the destruction of the property; this rendered the violation of the right to property and privacy even more severe.⁴⁰

The European Court of Human Rights (hereinafter “ECHR”) has also recognized that rural dweller communities may be vulnerable to human rights violations regarding their property and livelihood.⁴¹ The ECHR held in *Dogan and Others v. Turkey* that Turkey violated the Boydas community’s right to property and right to respect private and family life, due to the community’s reliance on their livestock and property as essential to their way of life.⁴²

Both the ECHR and this Court has found that when state agents destroy property, homes, land, and livestock of communities who rely on their livestock and property for survival, the state violates the right to property and right of privacy. When the state’s agents are military personnel the violation is more egregious, because the destruction is a direct elimination of the community’s sole means of physical and economic survival.

³⁷ *Moiwana*, at ¶¶ 131-134.

³⁸ *Id.*

³⁹ *Case of The Massacres of El Mozote v. El Savador*, Merits, reparations and costs, Inter-Amer. Ct. H.R., (ser. C) No. 252, ¶182 (Oct 25, 2012).

⁴⁰ *Id.* at ¶ 180.

⁴¹ The village of Boydas is a rural region of Turkey where the individuals living in this community subsist on their farming, agriculture, and livestock. The case involved fifteen individuals who were forcibly displaced from Boydas and whose livestock and property were destroyed by the Turkish security forces in October 1994. The Court found violations since the applicants were deprived of all their living because of their denial to access their property, interfered with the peaceful enjoyment of possessions, and unjustified interference with family life. *Dogan and Others v. Turkey*, 15 Eur. Ct. H.R. 287 ¶¶ 137 - 139 (2004).

⁴² *Dogan*, at ¶ 154.

In the current case, the community of Santa Barbara is an isolated rural population that is physically and economically dependent on their livestock and property.⁴³ Perú violated the rights⁴⁴ of the community of Santa Barbara when it violently entered and raided the homes of the campesinos, killed all of their livestock, and destroyed their property.⁴⁵ In particular, Perú violated its duty of special protection of the rights of property and privacy to the campesino community of Santa Barbara.

C. Perú Violated the Right to Life and the Right to Personal Liberty of the 15 Disappeared Persons.

The right to life has been provided for and recognized in an extensive list of international and regional instruments.⁴⁶ The American Convention specifies that the right to life is inherent to all human beings and ensures that no one should be arbitrarily deprived of life.⁴⁷ Arbitrary killings and forced disappearances constitute serious violations of the right to life.⁴⁸ The State's

⁴³ Report 77/11, *supra* note 2, at ¶ 181; *see also* La Vida Como Premio: Un Estudio de la Interfase en un Contexto de Violencia Histórica, Alejandro Farell, p. 2-4 (Spanish versión, April 26, 2014), *available at* <http://lanic.utexas.edu/project/laop/claspo/rtc/0057.pdf>.

⁴⁴ “Article 11. Right to Privacy: 1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.” “Article 21. Right to Property: 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law.” American Convention, *supra* note 27, arts. 11, 21.

⁴⁵ Report 77/11, *supra* note 2, at ¶¶ 218 – 225.

⁴⁶ Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 3 [hereinafter *UDHR*]; *see* International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 6 [hereinafter *ICCPR*] (Perú ratified the ICCPR on Apr. 28, 1978); Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, E.T.S. 5, 213 U.N.T.S. 221, art. 2 [hereinafter *CPHR*]; *see also*, Organization of African Unity (OAU), *African Charter on Human and Peoples’ Rights (“Banjul Charter”)*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 4 [hereinafter *African Charter*].

⁴⁷ “Every 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.” American Convention, *supra* note 27, art. 4.

⁴⁸ The Inter-American Convention on Forced Disappearance of Persons article 1, ratified by Perú on February 8, 2002, obligates states to “not practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees; to punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons” Inter-American Convention on Forced Disappearance of Persons, O.A.S.T.S. No. 68, 33 ILM 1429 (1994), art. 1; *see generally* Organization of American States, Inter-American Convention to Prevent and Punish Torture, OEA/Ser.LV/II.82 doc. 6 rev.1 at 83, 25 I.L.M.

obligation to protect vulnerable populations within their borders includes a duty not to target these populations through arbitrary killings and forced disappearances.⁴⁹

The right to life and personal liberty are well protected in international and non-international armed conflicts. Common Article 3 of the 1949 Geneva Conventions provides that in cases of internal armed conflict, the state shall guarantee that civilians are not subjected to murder, crimes against personal dignity, or cruel treatment.⁵⁰ Civilian protection against arbitrary killing includes the protection from dangers arising from military operations.⁵¹ Dangers arising from military operations include but are not limited to arbitrary detention and killings, torture, stealing of property, and rape.⁵² States have an obligation to protect vulnerable populations when oppressive regimes and military and paramilitary operations target those populations for political or discriminatory purposes that violate the right to life. States must ensure through effective measures that the civilian population is not subject to an attack or violation by military personnel.⁵³

This Court has recognized the special vulnerability of rural communities, specifically indigenous groups, during times of armed conflict. In the *Mapiripán Massacre v. Colombia* case, this Court stated that the vulnerability of these communities “is reinforced by their rural

519 (1992) (Perú ratified this Convention on Feb. 27, 1990); International Convention for the Protection of All Persons from Enforced Disappearances, U.N. Doc. E/CN.4/2005/WG.22/WP.1/Rev.4 (2005); Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, June 26, 1987, 1465 U.N.T.S. 85 (Perú ratified this Convention on July 7, 1988); General Comment 6(3) to the ICCPR states that “the deprivation of life by the authorities of the State is a matter of the utmost gravity.” States have the responsibility to prevent arbitrary killings and forced disappearance of individuals which many times results in the deprivation of life. Compilation of General Comments and General Recommendations Adopted By Human Rights Treaty Bodies, May, 27, 2008, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I).

⁴⁹ Protocol II International Committee of the Red Cross, Protocols Additional to the Geneva Conventions, August 12, 1949, 1125 U.N.T.S. 609 (1977), art. 13 [hereinafter *Protocol II*].

⁵⁰ Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135. (1949), art. 3.

⁵¹ Protocol II, *supra* note 49, art. 13 at ¶ 1.

⁵² *Massacre of Mapiripán v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134 ¶ 155-160 (Sept. 15, 2005); see *El Mozote*, at ¶¶ 77, 93; *Moiwana*, at ¶¶ 153, 208; see also *Ituango Massacre*, at ¶¶ 21, 385.

⁵³ Protocol II, *supra* note 49, art. 13, at ¶ 1.

origin.”⁵⁴ The vulnerability of these groups during armed conflict includes both physical vulnerability where they are more exposed to attacks, but also psychological. Some of these “grave psychological repercussions” are caused by the loss of land and their houses, marginalization, deterioration of living conditions, unemployment, increased illness and mortality, food insecurity, and social disintegration.⁵⁵

In both *Ituango Massacre v. Colombia* and *Mapiripán Massacre v. Colombia*, this Court determined that the killing, robbing, and displacement of the indigenous communities during internal armed conflict was a violation of their right to life and right to personal liberty.⁵⁶

Likewise, in this case, Perú deprived the campesino community of Santa Barbara of their right to life and liberty when its military members deliberately and violently raided the village, resulting in the death and forced disappearance of fifteen men, women, and children of the community. The 15 disappeared persons⁵⁷ were campesinos entitled to special protections due to their circumstances rendering them vulnerable. They all depended on the land;⁵⁸ ten of them were farmers.⁵⁹ Perú had a duty to ensure that its military force did not arbitrarily detain and kill the campesinos. Instead, the Peruvian military raided the village, took the 15 disappeared persons, and killed them.⁶⁰ Perú therefore violated its duty of special protection of the rights to life and liberty of the 15 campesinos.

⁵⁴ *Massacre of Mapiripán*, at ¶ 175; see also *Ituango Massacre*, at ¶ 125.

⁵⁵ *Massacre of Mapiripán*, at ¶ 175.

⁵⁶ *Ituango Massacre*, at ¶ 138; see also *Massacre of Mapiripán*, at ¶ 138.

⁵⁷ Report 77/11, *supra* note 2, at ¶ 225.

⁵⁸ *Id.* at ¶¶ 184-200.

⁵⁹ *Id.* at ¶ 17.

⁶⁰ *Id.* at ¶¶ 183–186.

D. Perú Violated the Right to Humane Treatment of the 15 Disappeared Persons.

The right to humane treatment provides that every person has the right to have his physical, mental, and moral integrity respected and no one shall be subjected to torture, or to cruel, inhuman, or degrading punishment or treatment.⁶¹ This Court recognized in *Bámaca Velásquez Case v. Guatemala* and *Cantoral Benavides v. Perú*, that a person illegally detained is more vulnerable to a violation of their right to humane treatment.⁶² “[A] person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his/her other rights, such as the right to humane treatment and to be treated with dignity, will be violated.”⁶³

In addition, this Court has held that forced disappearances violate the right to humane treatment, since prolonged isolation, deprivation of communication, and fear of imminent death are considered inhumane treatment.⁶⁴ This Court found in *El Mozote v. El Salvador* that the physical, mental and moral suffering leading up to the Mozote Massacre constituted a violation of humane treatment.⁶⁵ The degrading treatment of being bound and physically tortured in

⁶¹ “(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.” American Convention, *supra* note 27, art. 5.

⁶² *Bámaca Velásquez Case v. Guatemala*, Merits, Inter-Am. Ct. H.R., (ser. C), No. 70, ¶ 150 (Nov 25, 2000); *see also Cantoral Benavides Case v. Perú*, Merits, Inter-Am. Ct. H.R., (ser. C), No. 69 ¶ 90 (Aug. 18, 2000).

⁶³ *Cantoral Benavides*, *supra* note 62, at ¶ 90; *see Case of Ireland v. the United Kingdom*, App. No. 5310/71, Eur. Ct. H.R., (ser. A) no. 25. ¶ 167 (1978) (“The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment.”); *Villagrán-Morales et al. Case*, Judgment of September 19, 1999. Series C No. 63, ¶ 166 (“as this Court has already stated, that a persons who is unlawfully detained (*supra*, para. 134) is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated.”); *see also Suárez-Rosero Case*, Judgment of November 12, 1997, ¶ 90 (“One of the reasons that incommunicado detention is considered to be an exceptional instrument is the grave effects it has on the detained person. Indeed, isolation from the outside world produces moral and psychological suffering in any person, places him in a particularly vulnerable position, and increases the risk of aggression and arbitrary acts in prisons.”).

⁶⁴ American Convention, *supra* note 27, art. 5 at ¶¶ 1, 2; *Bámaca*, at ¶ 145 (b)(c)(d)(e);

⁶⁵ *El Mozote*, at ¶ 162.

addition to watching their children being tortured resulted in extreme mental suffering.⁶⁶ This Court found that prolonged detention, physical torture, the knowledge of forthcoming death, and the resulting mental suffering all violate the right to humane treatment.⁶⁷

In the present case, the military raided the village, stole livestock, arbitrarily detained and killed the 15 disappeared persons. The 15 victims were beaten and forced to walk for several hours with their hands bound and tied by their necks, and not given food or water.⁶⁸ The Commission concluded that the victims were humiliated, tortured, and feared for their lives.⁶⁹ The 15 disappeared persons suffered emotional, mental, and physical abuses including torture and mistreatment when the military interrogated and killed them.⁷⁰ As in *El Mozote*, this Court should recognize in the instant case that humiliation, torture, and fear of death resulted in the violation of the right to humane treatment for the 15 disappeared persons, and that Perú violated its duty of special protection of the right to humane treatment to the campesino community.

II. Perú Violated Its Duty of Special Protection to the Children of Santa Barbara.

A. Perú Owes a Duty of Special Protection to Children.

Under international law, pursuant to myriad international treaties, children are an especially vulnerable class entitled to heightened State protection.⁷¹ The Convention on the

⁶⁶ *Id.* at ¶¶ 158, 162.

⁶⁷ *El Mozote*, at ¶ 158.

⁶⁸ Report 77/11, *supra* note 2, at ¶ 128.

⁶⁹ *Id.* at ¶ 193.

⁷⁰ The Commission noted in its 1993 report on Peru that, at the time the events, violations of the right to life, such as forced disappearance, were frequently preceded by mistreatment and torture, generally aimed at forcing the victims to make self-incriminating confessions to get those victims to provide information on subversive groups or to create the kind of fear among the people that will deter them from cooperating with subversive groups. Report on the Situation of Human Rights in Perú, Inter-Am. Comm'n H.R., Report No. OEA/Ser. L/V/II.83 Doc. 31 rev. ¶ 18 (1993).

⁷¹ Children constitute a group to whom the international community has paid much attention. The first international instrument regarding them was the 1924 Geneva Declaration, adopted by the International Association for the Protection of Children. This Declaration recognized that humanity must give children the best of itself, as a duty that is above all considerations of race, nationality, or creed. Geneva Declaration of the Rights of the Child of 1924, Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924). At least 80 international instruments

Rights of the Child (hereinafter “CRC”) defines “child” as “as every human below the age of eighteen years.”⁷² In addition, Article 19 of the American Convention requires State Parties to provide special protections for every minor child due to the importance of their physical and emotional development.⁷³ This right to special protection, care, and aid is required because children require necessary assistance and care due to their status as minors.⁷⁴

The Commission stated that the reason for Article 19 of the Convention arose from the vulnerability of children and their incapacity to personally ensure the respect of their rights. It also declared . . . that State measures are necessary in the case of at risk children.⁷⁵

Children’s rights are broadly recognized in a well-settled international *corpus juris*, which recognizes the duty of the State to provide special protection and assistance to children under their jurisdiction.⁷⁶

In the *Case of Barrios Family v. Venezuela*, this Court found that Venezuela disregarded its special obligation to respect and protect the children when state agents arbitrarily detained and

adopted during the 20th century are applicable to children in various degrees. Among them, the following stand out: the Declaration on the Rights of the Child, November 20, 1959, G.A. Res. 1386 (XIV), U.N. Doc. A/RES/14/1386; The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, November 29, 1985, G.A. Res. 40/33, U.N. Doc. A/RES/40/33 [hereinafter *The Beijing Rules*]; The United Nations Standard Minimum Rules for Non-custodial Measures, December 14, 1990, G.A. Res. 45/110, U.N. Doc A/RES/45/110 [hereinafter *The Tokyo Rules*]; United Nations Guidelines for the Prevention of Juvenile Delinquency, December 14, 1990, G.A. Res. 45/112, U.N. Doc. A/RES/45/112 [hereinafter *Riyadh Guidelines*]; ICCPR, *supra* note 46, art. 24.

⁷² Convention on the Rights of the Child, November 20, 1989, G.A. Res. 44/25, 1577 U.N.T.S. 3, art. 1 [hereinafter *CRC*].

⁷³ “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” American Convention, *supra* note 27, art. 19; *see* Caso Masacres de Río Negro v. Guatemala. Excepción Preliminar, Fondo, Reparaciones y Costas, Corte IDH, (Ser. C) No. 250, ¶ 142 (Sept. 4, 2012); *see also* Caso Chitay Nech y otros Vs. Guatemala. Excepciones Preliminares, Fondo, Reparaciones y Costas, Corte IDH, (Ser. C) No. 212 ¶164 (May 25, 2010); *See* Condición Jurídica y Derechos Humanos del Niños. Opinión Consultiva OC-17/02, Corte IDH, (Ser. A) No. 17 ¶ 54, 60 (Aug. 28, 2002);

⁷⁴ *See* CRC, *supra* note 72, art. 19; The Rights Of The Child In The Inter-American Human Rights System, Second Edition [hereinafter *RC 2nd*]; Advisory Opinion OC 17/02 Juridical Condition and Human Rights of the Child, Inter-Am Comm’n H.R., OEA/Ser.L/V/II.133, Doc. 34 (Oct. 28, 2002), at § II; (b)(c)(d), *available at* http://www1.umn.edu/humanrts/iachr/series_A_OC-17.html.

⁷⁵ *Villagrán*, *supra* note 63, at ¶ 185.

⁷⁶ CRC *supra* note 72, art. 19; *see* ICCPR, *supra* note 46, art. 24; UDHR *supra* note 46, art. 25; Protocol II *supra* note 49, art. 4(3); African Charter on the Rights and Welfare of the Child, November 29, 1999, OAU Doc. CAB/LEG/24.9/49 (1990), art. 4; *see also* RC 2nd, *supra* note 74, at ¶ 15.

executed the Barrios children.⁷⁷ This special duty included the obligation to adopt all positive measures to ensure the full enjoyment of the rights of the child, paying special attention to the needs and the rights based on the child's vulnerable situation.⁷⁸ Venezuela had a heightened duty of special protection of the children and to maintain the safeguards granted by Article 19 of the American Convention.⁷⁹ This Court emphasized that Venezuela illegally deprived the Barrios children of their liberty, and the children's vulnerability made the severity of the acts and the deprivation more egregious.⁸⁰ Furthermore, this Court found that a State has an obligation to "prevent situations that might lead" to violations against the children, in this case the persecution of the entire Barrios Family.⁸¹

Similarly, in the *Case of "Las Dos Erres" Massacre v. Guatemala*, this Court found that the detention, sexual violence, and torture of two children were breaches of the State's duty to protect the children.⁸² In addition, this Court found that the State's lack of investigation of these acts was also a breach of its duty to protect the children.⁸³ Guatemala's duty to protect the children victims included conducting an effective investigation of violations (or allegations), and preventing situations that would place the child at risk.⁸⁴

⁷⁷ Case of Barrios Family v. Venezuela, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 237 ¶¶ 64-68 (Nov. 24, 2011). The Commission has also analyzed general situations in its annual reports of 1970 (Mexico), 1971 (Chile and the United States of America), 1972 (Colombia), 1973 (Chile, Costa Rica, and Uruguay), 1974 (Nicaragua), 1975 (Argentina and Mexico), 1976 (Chile), and 1978 (Jamaica). Another situation evaluated by the IACHR was the pattern of kidnappings of the children of political opponents of military dictatorships and the expulsion of children from schools or the refusal to register them because of their religious beliefs. 44RC 2nd, *supra* note 74, at ¶ 64; *see also* RC 2nd, *supra* note 74, ¶ 168 (On the principle of the best interests of the child, the Court stated that this is a criterion for interpretation of the cases related to children, and established that "the prevalence of the best interest of the child should be understood as the need to satisfy all the rights of children, and this obligates the state and affects the interpretation of all the other rights of the Convention when the case refers to minors.").

⁷⁸ *Barrios Family*, at ¶¶ 55, 168.

⁷⁹ *Id.* at ¶¶ 55, 87, 89.

⁸⁰ *Id.* at ¶ 71.

⁸¹ *Id.* at ¶ 85; *see also* *Mapiripán Massacre*, at ¶ 171.

⁸² *Los Dos Erres*, at ¶ 162.

⁸³ *Id.* at ¶¶ 138, 140.

⁸⁴ RC 2nd, *supra* note 74, at ¶ 88; *see also* *Los Dos Erres*, at ¶ 190.

These cases reflect this Court’s long-standing precedent recognizing that children are a vulnerable class in need of special protection. This State duty includes the children’s protection as a vulnerable population and the requirement to adopt positive measures.⁸⁵

Moreover, this Court has found that the state has a heightened duty for the special protection of children as a vulnerable population during armed conflict, as children are the least prepared to mentally respond to a violent situation and so would suffer the abuse in the disproportionate manner.⁸⁶ This Court has found that the special vulnerability of children due to their physical and emotional immaturity becomes more evident during armed conflict.⁸⁷ “The special vulnerability of boys and girls due to their condition as such becomes even more evident in a situation of domestic armed conflict [I]t is they who suffer its abuse in a disproportionate manner”⁸⁸ The CRC provides that States recognize that every *child* has the inherent right to life and that States shall ensure to the maximum extent possible the survival and development of the *child*.⁸⁹ The CRC, American Convention, and Geneva Conventions are part of a comprehensive international *corpus juris* that provide for the protection of children, which the States must respect especially during armed conflict where children are even more vulnerable.⁹⁰

⁸⁵ Report 77/11, *supra* note 2, at ¶ 196.

⁸⁶ Report 77/11, *supra* note 2, at ¶ 216; *see El Mozote*, at ¶ 150; *see also* Case of the Gómez Paquiyauri Brothers v. Peru, Merits, Reparations, and Costs, Inter-Am. Ct. H.R., (Ser. C) No. 110 ¶ 157 (July 8, 2004).

⁸⁷ *Los Dos Erres*, at ¶ 138.

⁸⁸ *Mapiripán Massacre*, at ¶ 156.

⁸⁹ CRC, *supra* note 72, art. 6, 38; *see* Protocol II, *supra* note 49, art. 4, at para. 3; *see also* Plan of action for the protection of victims of armed conflict through respect of International Humanitarian Law, September 16, 1999, 27th International Conference of the Red Cross and Red Crescent, Geneva, 31 October to 6 November 1999, available at <https://www.icrc.org/eng/resources/documents/misc/57jpnz.htm> (“[W]ithin the context of armed conflict, state’s obligations toward Children...Geneva Protocol II....provide care and need....reunite with family.”).

⁹⁰ *Mapiripán Massacre*, at ¶¶ 153, 155, 156.

This Court has recognized that states have a higher duty to children during armed conflict, as they are doubly vulnerable.⁹¹ Their vulnerability is in part because they are easy targets and used a means to control adults. In addition, this Court emphasized that children subjected to violence during armed conflict are particularly impacted because of their physical and psychological vulnerabilities. Much of the damage is due to the exposure to violence and the loss of their parents and home.⁹² This Court has found that states that expose or permit children to be exposed to a climate of violence by not ensuring their safety during armed conflict are in violation of their duty to special protection of children.⁹³

In *Gómez-Paquiyaury Brothers v. Perú*, this Court recognized that “when the right to life is not respected, all the other rights are meaningless.”⁹⁴ This Court further recognized that safeguarding the right to life is “crucial for the realization of other rights.”⁹⁵ In addition, it is essential for States to effectively investigate deprivations of the right to life and punish all those responsible.⁹⁶ This Court emphasized that in cases where the victims of human rights violations are *children*, those violations are exceptionally grave.⁹⁷ This Court found that Perú was responsible for the killings of these two minor *children* and in doing so violated numerous human rights including the right to life.⁹⁸

This Court has recognized that children are particularly vulnerable in times of internal armed conflict, especially when targeted as a means to control family and community members

⁹¹ *Id.* at ¶ 156.

⁹² *Mapiripán Massacre*, at ¶ 155.

⁹³ *Id.* at ¶ 148.

⁹⁴ *Gómez Brothers*, at ¶ 128.

⁹⁵ *Id.* at ¶ 128.

⁹⁶ “In cases of extra-legal executions, it is essential for the States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life.” Case of Myrna Mack Chang, Judgment, Nov. 25, 2003, Ser. C, No. 101, ¶ 156 (2003).

⁹⁷ *Gómez Brothers*, at ¶ 89.

⁹⁸ *Id.* at ¶¶ 122, 125.

as a systematic practice of separation of children from their families including abduction and illegal retention, and witnessing their family members being killed.⁹⁹ The grave human rights violations to the children in *Los Dos Erres* case is representative of the vulnerability that children face in internal armed conflicts. Specifically in regards to Perú, the Commission observed the deep concern at the continued violence, which has already caused thousands of killings, disappearances, and displacements of children and parents.¹⁰⁰

B. Perú violated Its Duty of Special Protection of the Rights to Life and Liberty During a Time of Armed Conflict to the Children of the Santa Barbara Community.

In the current case, Perú violated its duty of special protection by not shielding the children from the violence of the armed conflict. Perú subjected the children to the same type of physical and mental abuse as the adults experienced. The state-sanctioned military raided the village and detained the seven children under the age of six. The military bound the children and forced them to walk for hours, and caused their forced disappearance and execution.¹⁰¹ This Court should find that Perú violated its duty of special protection to vulnerable children and their right to life and liberty during a time of armed conflict.

CONCLUSION

Campesinos are a vulnerable population entitled to special protections by the state to respect all human rights specified in the American Convention. A cornerstone of the vulnerability of *campesinos* is their complete dependence on the land for their physical and economic survival. Their vulnerability is also judged by their disproportional exposure to

⁹⁹ In addition to witnessing their family members be killed, the illegal retention of children included changing their name, denying them their identity, and in some cases these abductions and illegal retentions were perpetrated by the same soldiers who participated in the massacres. The illegal retention of children included changing their name, denying them their identity, and in some cases these abductions and illegal retentions were perpetrated by the same soldiers who participated in the massacres. *Los Dos Erres*, at ¶¶ 170 – 174, 191.

¹⁰⁰ Report 77/11, *supra* note 2, at ¶ 217.

¹⁰¹ *Id.* at ¶ 193.

political marginalization, social inequalities, and lack of access to justice and effective remedies. Perú has a duty of special protection of the *campesinos* to the Santa Barbara Community and violated their right to privacy and right to property. Perú violated the right to life, right to liberty, right to property, right to privacy and right to humane treatment of the 15 disappeared Persons. The Peruvian military killed their livestock, destroyed their homes, arbitrarily detained, and killed the 15 disappeared persons.

Perú also had a special duty to protect the Santa Barbara children, as their status as minors makes them especially vulnerable and violations of their rights is a detriment to their physical and mental development. Internal armed conflict exacerbated the vulnerability of the Santa Barbara children because their exposure to violence left them physically and psychologically damaged. The children are often left without any effective remedy for their human rights deprivations.

Perú violated the inherent rights of the Santa Barbara Community, the 15 disappeared persons and the children. Perú failed to provide for their special protection, and violated their rights to life, liberty, property, privacy and humane treatment under the American Convention. The Santa Barbara community suffered denial of justice by lack of investigation and lack of an effective remedy. The Court's purpose when a State fails to provide the appropriate domestic recourses is to hold the State accountable for human rights violations committed by their agents. Respectfully, this Court should hold Perú responsible for the human rights violations perpetrated by their military forces in the Santa Barbara community on July 4, 1991.

Respectfully Submitted,

International Human Rights Clinic
The John Marshall Law School
321 S. Plymouth Ct.
Chicago, IL 60604