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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3664/2019*, **

<i>Communication submitted by:</i>	Armando García Mendoza, on behalf of his deceased brother, Emiliano García Mendoza, and Julia Gutiérrez Julca, on behalf of her deceased husband, Rubén Pariona Camposano (represented by the Coordinadora Nacional de Derechos Humanos [National Coordinator of Human Rights])
<i>Alleged victims:</i>	Emiliano García Mendoza and Rubén Pariona Camposano
<i>State party:</i>	Peru
<i>Date of communication:</i>	27 March 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 14 November 2019 (not issued in document form)
<i>Date of adoption of Views:</i>	14 March 2022
<i>Subject matter:</i>	Extrajudicial executions during a demonstration
<i>Procedural issues:</i>	Exhaustion of local remedies
<i>Substantive issues:</i>	Right to an effective remedy; right to life; right of peaceful assembly
<i>Articles of the Covenant:</i>	2 (3), 6 (1) and 21
<i>Articles of the Optional Protocol:</i>	5 (2) (b)

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



1. The authors of the communication are Armando García Mendoza, a Peruvian citizen born on 15 July 1967, and Julia Gutiérrez Julca, a Peruvian citizen born on 26 June 1980. They are acting, respectively, on behalf of the brother of Mr. García Mendoza, Emiliano García Mendoza, and the husband of Ms. Gutiérrez Julca, Rubén Pariona Camposano, both of whom died during a demonstration. They claim that the State party has violated their rights under article 6 (1) of the Covenant, read alone and in conjunction with articles 2 (3), and 21. The Optional Protocol entered into force for the State party on 3 January 1981. The authors are represented by counsel.

Facts as submitted by the authors

2.1 The Junta Nacional de Regantes, a national irrigation users' association, called a nationwide agrarian strike on 18 and 19 February 2008. At a general meeting attended by provincial and district leaders, it was agreed that the demonstration would be peaceful. In Ayacucho, the district governor granted the permit for the demonstration.

2.2 On 18 February 2008, some 3,500 demonstrators marched through the streets of the city of Huamanga, in the department of Ayacucho, from 8 a.m. to 1 p.m.

2.3 On 19 February 2008, Mr. García Mendoza and Mr. Pariona Camposano, along with around 700 others, took part in a demonstration in Huamanga. The demonstrators reached the street Vía Libertadores at the second entrance to the Ayacucho gas station (on the Lima-Huamanga road), where 12 police officers were stationed to keep order. The police officer in charge ordered the arrest of a demonstrator.¹ The demonstrators reacted to the arrest being made, and the officer in charge threw a tear-gas canister into the crowd to disperse it. When the demonstrators dispersed, two shots were heard and Mr. García Mendoza, 44, and Mr. Pariona Camposano, 29, fell to the ground with wounds to the head that were bleeding profusely. Both died instantly.² The forensic report showed that their injuries had been caused by firearm projectiles consistent with metal pellets.

Investigation by the public prosecutor's office

2.4 Following the events, the Huamanga provincial prosecutor on duty ordered that an investigation be opened.

2.5 On 1 April 2008, the Huamanga provincial prosecutor filed criminal charges in the First Criminal Court of Huamanga against police officer Carlos Alberto Rodríguez Huamaní for the alleged offence of aggravated homicide in connection with the deaths of Mr. García Mendoza and Mr. Pariona Camposano, as sufficient evidence had been found during the preliminary inquiry to link him to both deaths. In particular, the prosecutor noted that the accused acknowledged having fired shots in the direction of where the victims had fallen,³ and since only two shots were heard during the demonstration, just before the two campesinos died, the shots that the officer acknowledged firing were probably the ones that killed Mr. García Mendoza and Mr. Pariona Camposano. The prosecutor asked that the accused be sentenced to 30 years' imprisonment and be required to pay 100,000 nuevos soles⁴ to the authors.

Investigation by the Multiparty Congressional Commission of Inquiry

2.6 As the matter was one of national interest, while the judicial proceedings were under way, the Congress of the Republic set up a multiparty commission of inquiry to help establish the facts; study the guidance given by the Ministry of the Interior to the National Police on

¹ The officer's statement, which appears in the judgment handed down by the court of first instance on 30 October 2013, indicates that the arrest that had been ordered was of a demonstrator who had been rousing the crowd.

² According to autopsy report No. 0036-2008, Mr. García Mendoza suffered a serious brain injury and fractures of the cranial vault and base of the skull and died as a result of the impact of three firearm projectiles that had entered the right occipital parietal region and become lodged in the encephalic mass. According to autopsy report No. 0037-2008, Mr. Pariona Camposano's head showed signs of ballistic impact from an object that had pierced the cranial vault.

³ He was carrying a Savage 12-gauge shotgun bearing serial number E090267.

⁴ US\$ 36,000 at the exchange rate on that date.

how to prevent disturbances and maintain and restore order; and identify the individuals who had taken part in the events and the likely culprits.

2.7 On 15 January 2009, the Multiparty Congressional Commission of Inquiry released its final report on how and under what circumstances campesinos had died at the hands of the police during the agrarian strike. The Commission noted that the claim of the Ministry of the Interior and the Police that one of the demonstrators was carrying a home-made firearm cannot be considered credible, as after almost a year, that person has still not been identified. However, there is in fact a police officer who has admitted to firing shots at the moment when the two campesinos died, who was located to the rear of the demonstrators. The officer was standing in a hunter's stance 25 meters away and fired on the demonstrators in the direction of where the two campesino community members were shot dead. In addition, the suspect did not make the shotgun available to the forensic department of the Peruvian National Police, even though there was an order for him to do so; rather, he brought the weapon into the storeroom after it had already been cleaned. As a result, the ballistics report concluded that the weapon bore no signs of having been fired, even though Rodríguez himself acknowledges that he fired the weapon. The Commission also found that the cartridge was fired from the Savage 12-gauge shotgun bearing serial number E090267 – the very weapon that Rodríguez Huamán was carrying.⁵ In the Commission's view, there is a contradiction between the reports to Congress of the Minister of the Interior, which indicate that lead pellets are incompatible with weapons used by the National Police, and the ballistics report, which indicates that the projectiles that caused the deaths, lead pellets, are compatible with the shotgun used by the police officer.⁶

2.8 The Commission's final report finds, first, that the two deaths amount to extrajudicial executions, for although police officers who are authorized to use force may respond to unlawful acts of aggression, their response must be consistent with the principles of immediacy and proportionality. Consequently, if the police do not comply with those principles in responding to a threat, their use of force becomes illegitimate and disproportionate and violates the right to life.⁷ In the case at hand, "the deceased did not present a danger to the police officer's personal safety or to the safety of others. They had their backs turned to the police officer who fired the shot ... which would mean that the use of force was disproportionate, resulting in extrajudicial executions."⁸ The report further concludes that the officials in charge failed in their duties to safeguard the lives of citizens during a police operation and to supervise their subordinates.⁹

2.9 On the basis of the foregoing, the report of the Multiparty Congressional Commission of Inquiry concluded that the Ministry of the Interior and the Director of Police bore institutional responsibility for failing to remedy operations on the ground when they were revealed to be flawed and to infringe on fundamental rights and for failing to effectively oversee the police officers in charge.¹⁰ It also found that the local directorates bore responsibility because they had acted negligently in adapting the National Plan, preparing the regional plans, supervising police officers in charge of operations, investigating incidents and punishing those responsible.¹¹

2.10 The investigation conducted by the Office of the Inspector-General of the National Police revealed that eight members of the police force were administratively liable for their conduct and subject to disciplinary penalties: a general for not exercising oversight because he had failed to supervise the order of operations; two majors for failing, as group leaders, to review and inspect beforehand the personnel assigned and for allowing some police officers

⁵ Congress of the Republic of Peru, *Final report of the Multiparty Congressional Commission of Inquiry that investigated how and under what circumstances four campesinos died as a result of the most recent indefinite agrarian strike that began on 18 February 2008*, pp. 91–93.

⁶ Ballistics Report No. 04/08.

⁷ Congress of the Republic of Peru, *Final report of the Multiparty Congressional Commission of Inquiry that investigated how and under what circumstances four campesinos died as a result of the most recent indefinite agrarian strike that began on 18 February 2008*, p. 52.

⁸ *Ibid.*, p. 53.

⁹ *Ibid.*

¹⁰ *Ibid.*, pp. 89–90.

¹¹ *Ibid.*, p. 90.

to take their personal firearms with them; another major for not having followed the demonstration, for which only 12 police officers had been assigned to provide protection; a non-commissioned officer for having thrown a tear-gas canister without due diligence in the performance of his police duties; two non-commissioned officers for carrying their personal firearms; and police officer Carlos Alberto Rodríguez Huamaní for having lied in his statement to the Office of the Inspector-General, in which he stated that he had not fired his weapon, and later indicating to the homicide division and a representative of the Public Prosecution Service that he had indeed used the weapon.¹²

2.11 The Commission of Inquiry stated that, although the Office of the Inspector-General of the National Police carries out important work in investigating and punishing disciplinary violations committed by police personnel and ensuring that any police personnel who commit offences are tried in accordance with the law, it is noteworthy that the wrongful acts of the police officers in question were classified legally as very minor offences, indicating that the Office of the Inspector-General of the National Police is covering up for and protecting some bad police officers.¹³

2.12 On the basis of all the foregoing elements, the Commission of Inquiry recommended that the Public Prosecution Service “broaden the investigations to examine whether senior officers of the Ayacucho police region were complicit by omission in the homicides, through their failure to make appropriate use of mechanisms to supervise their subordinates”, and that the Office of the Inspector-General and the Administrative Disciplinary Tribunal of the Peruvian National Police “reclassify the disciplinary violations committed by various police officers ... to reflect their true scope, as the violations in question involved the deaths of four individuals and are therefore not minor”.¹⁴

Criminal proceedings

2.13 The authors claim that, in spite of the conclusions reached in the report of the Multiparty Congressional Commission of Inquiry, the judicial investigations into the two homicides were not carried out properly and led to judicial decisions that have allowed them to go unpunished. In its judgment of 30 October 2013, the Criminal Appeals Division of the High Court of Ayacucho acquitted the defendant, stating that although the autopsies established the cause of death, it had been impossible to establish, either at the oral hearings or through other judicial means, that the defendant was responsible, given that, according to the report of the ballistics expert, his weapon bore no signs of having been fired.¹⁵ The judgment also notes that the presumption of innocence is recognized in the Constitution and can be overridden only by objective evidence, not suppositions.¹⁶ As convictions must be based on sufficient evidence that clearly and unquestionably demonstrates the defendant’s guilt, in the absence of such evidence, the defendant must be acquitted.¹⁷

2.14 Although the prosecutor’s office did not challenge the judgment, the authors did. On 7 June 2016, the Transitional Criminal Division of the Supreme Court of Justice upheld the acquittal, despite stating that the police response was disproportionate, as there were too few external factors to warrant it, and that the circumstances instead highlighted the reprehensibility of the police officers’ conduct, as shots were fired at close range, exponentially increasing their deadlines. In the view of the Transitional Criminal Division, because of the shortcomings in the preliminary investigation, there was little evidence to decisively and unquestionably link the acquitted defendant to the act of firing the shots. It therefore described the prosecutor’s case as “strictly pro forma” and concluded that, given the lack of evidence to establish beyond a reasonable doubt that the defendant had committed the offence of aggravated homicide, it was found that there was insufficient evidence of guilt to convict the defendant.¹⁸

¹² Ibid., p. 51.

¹³ Ibid., p. 90.

¹⁴ Ibid., p. 97.

¹⁵ Judgment of 30 October 2013, pp. 30–31.

¹⁶ Ibid., p. 36.

¹⁷ Ibid., pp. 37–38.

¹⁸ Judgment of 7 June 2016, p. 7.

2.15 The authors argue that, although it was established that the two deceased men had been shot when their backs were turned (see para. 2.16 below), and although the police officers' lack of training – corroborated by the Ombudsman's Office – had resulted in the unnecessary use of tear gas, which made the situation more chaotic (see para. 2.17 below), repeated negligence in the conduct of the investigations had significantly affected the outcome of the trial (see paras. 2.18–2.20 below).

2.16 The investigation established that the shots were fired from a distance of approximately 25 metres when Mr. García Mendoza and Mr. Pariona Camposano had their backs turned.¹⁹ In the authors' view, the use of lethal force against persons who were fleeing, and therefore posed no danger to the life or physical integrity of the police officers, was unjustified.

2.17 The authors also argue that the police officers were not adequately equipped for or trained in crowd control, that the impact that an order to arrest a demonstrator without compelling reasons would have on the crowd had not been properly assessed and that, while the protest was peaceful, the use of tear gas made the situation chaotic, which led to the two homicides. The police officers' lack of training was corroborated by the Ombudsman's Office in its report No. 156, which states that “many of the coordination problems that the various departments responsible for operations to restore public order have are reflected in those operations”, and that “the Office's review of the curriculum taught in National Police academies for officers and non-commissioned officers has shown that issues relating to social conflicts, violence and the use of force are treated superficially. In addition, the police academies face logistical challenges ... in providing practical training for future police officers. Later, when the police officers are carrying out their duties, the shortcomings are exacerbated because of the lack of a decentralized training plan and the frequent rotation of the members of crowd-control units.”²⁰

2.18 The authors claim that, despite all the evidence regarding the liability of the police, the outcome of the judicial proceedings was affected by the negligence in the conduct of the investigations. For example, even though the prosecutor had ordered the regional police chief to have all the police officers who had participated in the operation turn in their weapons to the forensics department, police officer Carlos Alberto Rodríguez Huamaní turned in his weapon to the police armoury, not to the forensics department, and was not investigated for his failure to comply with the order. Tests subsequently conducted on the weapon indicated that it “bore no signs of having been fired”,²¹ which seems implausible given that the police officer himself indicated that he had fired two shots. The test results can be explained by the fact that the weapon had been cleaned before it reached the forensics department, as noted by the Multiparty Congressional Commission of Inquiry (see para. 2.7). Furthermore, when police officers use their weapons, they must file a report requesting that the weapon be taken out of service and replaced, which he also failed to do. Nor did he return the cartridges, nor was he asked by the authorities for an ammunition use report, which would have been useful in determining which ammunition he had used during the operation and whether it was consistent with the wounds to the victims' skulls.

2.19 The authors also complain that the ballistics report prepared by experts from the Institute of Forensic Medicine, a State institution, on four pellets that were extracted from the victims' bodies (three from Mr. García Mendoza's skull and one from Mr. Pariona Camposano's) during the first autopsy, was contradictory in stating, on the one hand, that the pellets found were compatible with the shotgun used by the police officer and therefore could have been fired from it and, on the other, that they could have been fired from a home-made

¹⁹ Forensic report of the Institute of Forensic Medicine of Peru, p. 11, and autopsy report of the Equipo Peruano de Antropología Forense, p. 9.

²⁰ Republic of Peru, Ombudsman's Office, decision No. 009-2012/DP, *Violencia en los conflictos sociales*, report No. 156 (2012), pp. 6–7. Available at <https://sinia.minam.gob.pe/documentos/informe-defensorial-no-156-violencia-conflictos-sociales#:~:text=Informe%3A%20Informe%20Defensorial%20N%C2%BA%20156%3A%20Violencia%20en%20los%20conflictos%20sociales.&text=El%20presente%20informe%20tiene%20como,afectaciones%20a%20los%20derechos%20fundamentales.>

²¹ Ballistics expert's report No. 317/08, Injuries Department of the Homicide Investigation Division of the Criminal Investigations Directorate of the Peruvian National Police.

firearm. It thereby introduced the possibility that the deaths could have been caused not by the police but by a civilian. Indeed, as mentioned in the final report of the Commission of Inquiry, the argument was advanced that the deaths had been caused by a civilian with a home-made weapon. To support that argument, the Director of Forensics claimed before Congress that the projectiles – lead pellets – were not from weapons used by the National Police. However, two reports – the report of the Multiparty Congressional Commission of Inquiry and an expert report that the relatives had requested from the Equipo Peruano de Antropología Forense (Peruvian Team of Forensic Anthropology) – call into question the theory of a home-made weapon. The expert report of the Equipo Peruano de Antropología Forense stated that the pellets that were supposedly extracted from the bodies could not have produced the holes found in the skulls, since their size and shape did not match, at any angle, the large-diameter injuries to the skulls of both victims (oval in one case and round in the other).²² The authors therefore believe that the pellets in question could have been placed in the skulls to tamper with the evidence. The Equipo Peruano de Antropología Forense also notes that, in addition to the three bullet impacts to Mr. García Mendoza’s head noted in the first autopsy and the one found in Mr. Pariona Camposano’s head, there was a second bullet impact in Mr. Pariona Camposano’s neck, exiting his jaw.²³

2.20 The authors further claim that the investigations were not exhaustive, as the conduct of neither the police commanders who planned the operation nor those who carried it out was examined. In the authors’ view, the lack of investigation of the senior police officials, who failed to effectively oversee the actions of their subordinates, constitutes another example of negligence in the investigation, since the report of the Multiparty Congressional Commission of Inquiry itself indicated that the superiors had wrongfully failed to act and could be found to have been complicit in the homicides by their omissions.²⁴ Although the report was released on 15 January 2009, four years and nine months before the acquittal was handed down, the police commanders were never included in the investigation.

Complaint

3.1 The authors claim that there has been a violation of article 6 (1) of the Covenant, read alone and in conjunction with article 2 (3). They recall that article 3 of the Code of Conduct for Law Enforcement Officials provides that force may be used only when “strictly necessary” and that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which are also reflected in the State party’s Police Human Rights Manual,²⁵ establish the principles of legality, necessity and proportionality. However, in the case at hand, the use of force by police personnel was neither necessary nor proportional, which means that their actions were unlawful. The authors claim that both deaths were arbitrary within the meaning of general comment No. 36 (2019).

3.2 Furthermore, as both homicides have gone entirely unpunished, the authors claim that, in the present case, there has also been a violation of article 6 of the Covenant read in conjunction with article 2 (3). In this regard, the authors recall that, while general comment No. 36 (2019) states that the investigation and the prosecution of those responsible for deaths are important elements of the duty to protect the right to life, in the present case, the only defendant was acquitted after an investigation marked by negligence and no police commander was investigated.

3.3 Lastly, the authors claim a violation of the right of peaceful assembly protected under article 21 of the Covenant. They recall that, according to the guidelines²⁶ for observing demonstrations and protests, the right to protest arises from a combination of three essential safeguards, namely, freedom of expression, freedom of peaceful assembly and freedom of association. The authors assert that the action taken by the police against the demonstrators

²² Equipo Peruano de Antropología Forense, expert report of 11 March 2009, p. 44.

²³ *Ibid.*, p. 45.

²⁴ Congress of the Republic of Peru, Final report of the Multiparty Congressional Commission of Inquiry that investigated how and under what circumstances four campesinos died as a result of the most recent indefinite agrarian strike that began on 18 February 2008, p. 93.

²⁵ Ministerial Decision No. 1452-2006-IN of 31 May 2006.

²⁶ See www.ohchr.org/Documents/Publications/Factsheet31.pdf.

was disproportionate and unnecessary. There were no grounds for restricting or suppressing the demonstration, there were no signs of rioting warranting the arrest of a demonstrator and tear gas was used to disperse demonstrators who were protesting peacefully.

State party's observations on admissibility and the merits

4.1 On 15 April 2021, the State party argued that the communication should be declared inadmissible for failure to exhaust domestic remedies. It noted that, specifically, the authors had not applied for the constitutional remedy of *amparo* with respect to either the judgment of 30 October 2013 acquitting the accused police officer or that of 7 June 2016 upholding the judgment at first instance.

4.2 The State party also argues that there has been no violation of article 6 of the Covenant since the defendant's guilt was not established. The State party points out that the police officer, who admitted firing the shots in question, acted in exercise of his right to self-defence. The State party further asserts that, when fired, pellets only enter soft tissue, do not lead to bone fractures and are not lethal.

4.3 The State party concludes that there was an adequate investigation, but there was no evidence to provide a proper and sufficient basis for demonstrating, with objective certainty, that the accused was criminally liable. Convictions must be based on evidence that is sufficient to clearly and unquestionably demonstrate the guilt of the accused; given the absence of such evidence, an acquittal was appropriate. The State party points out that the presumption of innocence, a principle contained in the Covenant itself, had to be respected, given the uncertainty as to whether the accused had committed the acts at issue in the criminal proceedings.

Author's comments on the State party's observations

5.1 On 16 August 2021, the authors argued that they were not required to apply for the constitutional remedy of *amparo* to exhaust domestic remedies. Indeed, the Peruvian Constitutional Court had already pointed out that the remedy of *amparo* does not provide an additional level of review for ordinary proceedings, as it does not allow for all the findings made in such proceedings to be reviewed.²⁷ Furthermore, the infringements of the rights to life and of peaceful assembly have already occurred, and the Code of Constitutional Procedure states that the remedy of *amparo* is unavailable if, at the time the application for it is made, the violation of a constitutional right or the threat of its violation has ceased or become irreparable. The authors also recall that, according to the Committee's own jurisprudence, it is only necessary to exhaust those remedies that have some prospect of success.²⁸

5.2 The authors also recall that the public prosecutor's office did not appeal the judgment at first instance acquitting the defendant. In the face of that office's inaction, private lawyers did appeal, and the authors sought to have the State party correct the course of action taken at first instance. Although the appellate court demonstrated in the grounds for its judgment that the prosecutor at first instance had conducted an investigation that was not rigorous but merely pro forma, it upheld the acquittal. In its judgment, the appellate court noted the "shortcomings in the preliminary investigation", as a result of which "there was little evidence to decisively and unquestionably link the acquitted defendant, Rodríguez Huamaní, to the act of firing the shots; the prosecution's case in this regard was therefore strictly pro forma". It was because of that "lack of evidence to establish beyond a reasonable doubt that the defendant had committed the offence of aggravated homicide" that it was "found that there is insufficient evidence of guilt to convict the defendant". The authors point out that the foregoing is related to the consideration of the merits (see para. 2.14).

5.3 With regard to the violation of article 6 of the Covenant, the authors note that the State party's argument that the police officer acted in self-defence is not addressed in the judgment of the appellate court. Rather, that judgment stated that "the police response was

²⁷ Judgment of 17 October 2005 in case No. 5374-2005-PA/TC, para. 6. Available at <https://tc.gob.pe/jurisprudencia/2006/05374-2005-AA.pdf>.

²⁸ *Alba Cabriada v. Spain* (CCPR/C/82/D/1101/2002), para. 6.5.

disproportionate, as there were too few external factors to warrant it” and that “the circumstances instead highlighted the reprehensibility of the police officers’ conduct, as shots were fired at close range, exponentially increasing their deadliness” (see para. 2.14).

5.4 The authors also note that, according to general comment No. 36 (2019), the duty to protect life is carried out through the investigation, prosecution and punishment of persons responsible for the unlawful deprivation of life, through reparation for victims’ family members and through an examination of the legal responsibility of the superior officers who planned and were in command of the operation in question.

5.5 Lastly, the authors point out that they are not challenging the outcome of the judgments that resulted in the acquittal of the main suspect but rather the serious omissions that prevented the State party from carrying out an in-depth investigation that would have made it possible for the violation of the right to life to be punished.

State party’s additional observations

6.1 On 18 October 2021, the State party reiterated its position regarding the failure to exhaust domestic remedies, stressing that the constitutional remedy of *amparo* provides a constitutional safeguard against acts or omissions of any authority, government official or other person that violate or threaten fundamental rights. Article 4 of the Code of Constitutional Procedure states that “the remedy of *amparo* is available with respect to final judicial rulings that clearly undermine the effective protection of procedural guarantees”. In short, the remedy of *amparo* can be invoked to challenge judicial rulings in relation to each and every one of the fundamental rights recognized, whether expressly or implicitly, in the Constitution. Thus, if the remedy of *amparo* had been pursued, it would have been possible to verify whether minimum guarantees, such as the rights to have unimpeded access to the justice system, to mount a defence, to give evidence, to obtain a reasoned decision based on the law, to appeal and to have one’s case heard within a reasonable time period and by a competent, independent, impartial judge, had been respected. Judicial proceedings that take place without such guarantees being observed are deemed irregular and must be corrected by the Constitutional Court.

6.2 Regarding admissibility, the State party asks the Committee to find, as it has previously done, that when it comes to authors’ claims concerning procedural violations at the stage of investigation and trial, “it is generally for States parties’ courts to evaluate the facts and the evidence in a particular case, and to interpret domestic law, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice, or that the court failed in its duty to maintain independence and impartiality”, and that if it cannot be concluded that the courts evaluated the evidence arbitrarily or in a manner that amounted to a denial of justice, then the Committee must declare the communication insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol.²⁹

6.3 With respect to the merits, the State party reiterates that it has not violated the right to life, as the courts found the accused not guilty following judicial proceedings in which due process guarantees and the presumption of innocence were respected. The State party also notes that it respects its citizens’ rights to personal integrity and to life and, for that reason, has implemented domestic protection mechanisms.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

²⁹ *S. Sh. v. Kazakhstan* (CCPR/C/119/D/2842/2016), paras. 4.4–4.6.

7.3 The Committee notes the State party's argument that the communication should be declared inadmissible for failure to exhaust domestic remedies, under article 5 (2) (b) of the Optional Protocol, because the authors did not apply for the constitutional remedy of *amparo* with respect to either the judgment at first instance or the appellate judgment upholding it, both of which acquitted the accused.

7.4 The Committee also notes the authors' argument that they were not required to apply for the constitutional remedy of *amparo* to exhaust domestic remedies, since the Peruvian Constitutional Court had already pointed out that the remedy of *amparo* does not provide an additional level of review for ordinary proceedings and that the Code of Constitutional Procedure states that the remedy of *amparo* is unavailable if, at the time the application for it is made, the violation of the right or the threat of its violation has ceased or become irreparable, as in the case at hand. The authors also recall that, according to the Committee's own jurisprudence, it is only necessary to exhaust those remedies that have some prospect of success.

7.5 The Committee recalls that the purpose of requiring that domestic remedies be exhausted is to give States parties the opportunity to perform their duty to protect and guarantee Covenant rights.³⁰ The Committee also recalls that, in keeping with article 5 (2) (b) of the Optional Protocol, the authors need only make use of avenues that offer them a reasonable prospect of redress,³¹ that relate to the alleged violation and that offer redress that would be proportionate to the harm done. While the Committee notes that, as stated by the Inter-American Court of Human Rights, "the writs of habeas corpus and of '*amparo*' are among those judicial remedies that are essential for the protection of various rights ... and that serve, moreover, to preserve legality in a democratic society",³² in the present case, the Committee also notes that the State party has not sufficiently responded to the authors' specific argument that the remedy of *amparo* as regulated in the State party's legislation is unavailable once the violation has become irreparable, as is the case in the present communication, where the deaths of Mr. García Mendoza and Mr. Pariona Camposano are irreversible. In this respect, the Committee notes that the authors' complaint relates to the recognition of the violation of their relatives' right to life. The authors did not apply to the domestic courts – and did not apply to the Committee – for any reparation measures for the violation of their own rights. The Committee also notes that article 1 of the Peruvian Code of Constitutional Procedure provides that the remedy of *amparo* is designed to protect constitutional rights and restore the situation to what it was before the violation or threat of violation of a constitutional right.³³ The Committee notes that, in the State party, the main purpose of the remedy of *amparo* is therefore the restitution of violated rights and it aims at the cessation of the harmful acts and the restoration of the situation that existed prior to the violation, and that when restitution is impossible because the violation has become irreparable (as is the case with the violation of the right to life, for example), *amparo* rulings may, in the case that a responsible party has been identified, request the opening of an investigation and grant compensation for the harm caused.³⁴ In the present case, nonetheless, the Committee notes that the alleged violation of the right to life has become irreparable, and that an *amparo* ruling could not have served to identify the responsible party due to the "shortcomings in the preliminary investigation" which resulted in "insufficient evidence" (see paras. 2.14 and 5.2). The Committee further notes that, in any event, an *amparo* appeal against the judicial decisions acquitting the accused police officer (as proposed by the State party) would not have addressed the broader institutional responsibility pointed out by the report of the Multiparty Congressional Commission of Inquiry in 2009, when the State party was recommended to "broaden the investigations to examine whether senior officers were complicit by omission in the homicides" and to "reclassify the disciplinary violations committed by various police officers to reflect their true scope, as the violations in question

³⁰ Settled jurisprudence since the Committee adopted its Views in *T.K. v. France*, communication No. 220/1987, para. 8.3.

³¹ *Colamarco Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2.

³² Habeas corpus in emergency situations (arts. 27 (2), 25 (1) and 7 (6), American Convention on Human Rights). Advisory Opinion OC-8/87 of 30 January 1987. Series A No. 8, para. 42.

³³ See also the Habeas Corpus and Amparo Act (No. 23.506), art. 1.

³⁴ *Ibid.*, art. 11.

involved the deaths of four persons and are therefore not minor” (see paras. 2.9 and 2.12). In the light of all the above, the Committee considers that an *amparo* remedy would not have been effective in the specific circumstances of the present case and therefore concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

7.6 As all admissibility requirements have been met and the authors’ complaints under article 6 of the Covenant, read alone and in conjunction with article 2 (3), and article 21 have been sufficiently substantiated for the purposes of admissibility, the Committee declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the authors’ argument that the facts of the present case constitute a violation of article 6 (1) of the Covenant because, while any use of force must be consistent with the principles of legality, necessity and proportionality, the use of force in the present case was not, with the result that the two killings were arbitrary executions. The Committee notes that the authors have indicated that two shots were heard just before Mr. García Mendoza and Mr. Pariona Camposano fell to the ground and died as a result of the impact of firearm projectiles that, according to the findings of the forensic report of the Institute of Forensic Medicine (see para. 2.16), came from behind, meaning that the victims had their backs turned and did not represent a danger to the police officers; that the accused police officer admitted having fired, in the direction of where the victims fell, the only two shots heard during the demonstration; that the Office of the Inspector-General of the National Police found that eight police officers were administratively liable and subject to disciplinary penalties, including the accused police officer, who faced such liability for having lied at first, stating that he had not fired his weapon, and then later saying that he had indeed done so; that, according to the ballistics report, the projectiles that caused the deaths are compatible with the shotgun used by the accused police officer; that even the Transitional Criminal Division of the Supreme Court has said that the police response was “disproportionate” and reprehensible; that the Ombudsman’s Office has acknowledged that police officers are not adequately trained in crowd control; and that the Multiparty Congressional Commission of Inquiry also concluded that the Ministry of the Interior and the Director of Police bore institutional responsibility for not having effectively overseen the police officers.

8.3 The Committee also notes the authors’ additional claim that there has been a violation of article 6 of the Covenant read in conjunction with article 2 (3) since the two homicides have gone unpunished, with the only defendant being acquitted after an investigation marked by negligence that prevented the violation of the right to life from being punished, in spite of all the elements mentioned above. According to the authors, the suspect did not initially make his weapon available to the forensics department as ordered by the public prosecutor’s office, bringing it in instead after it had already been cleaned, and was not investigated for his failure to comply with the order. As a result, the ballistics report concluded that the weapon showed no signs of having been used, even though the suspect himself had stated otherwise. Similarly, the suspect did not file a report requesting that his weapon be taken out of service and replaced after he had used it, even though that was the procedure to follow. He also did not return the remaining cartridges and was not asked for an ammunition use report, which would have been useful in determining which ammunition he had used during the operation and whether it was consistent with the wounds to the victims’ skulls. The authors also claim that the investigations were not exhaustive, as the legal responsibility of superiors was not examined, even though the Multiparty Congressional Commission of Inquiry had recommended that the Public Prosecution Service broaden its investigations and consider whether senior officers had been complicit by their omissions. In short, as recognized by the Transitional Criminal Division of the Supreme Court, there were shortcomings in the investigation that led to the two killings remaining unpunished.

8.4 The Committee also notes the State party’s argument that, after a proper investigation, it had not been established that the accused, who acted in exercise of his right to self-defence, was criminally liable. The State party points out that convictions must be based on a sufficient

body of evidence that clearly and unquestionably demonstrates the defendant's guilt and that, in the absence of such evidence, the defendant must be acquitted, in keeping with the presumption of innocence.

8.5 The Committee recalls that, according to general comment No. 36 (2019), the use of potentially lethal force for law enforcement purposes is an extreme measure that should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat (see para. 12). Force may be used only when less dangerous means are not practicable and only to the minimum extent necessary, which means that firearms should never be used for the sole purpose of dispersing an assembly.³⁵ In addition, any use of force must be in line with the fundamental principles of legality, necessity, proportionality, precaution, non-discrimination and responsibility, and indiscriminate fire into a crowd is never allowed.³⁶ Consequently, live ammunition may be directed only at people who represent an imminent threat of death or serious injury to law enforcement officials or bystanders.

8.6 In addition, States parties are expected to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials, including through procedures designed to ensure that law enforcement actions are adequately planned. The plan should detail the instructions and equipment for and the deployment of all relevant officials and units.³⁷ In particular, only law enforcement officials trained on the relevant human rights standards should be deployed to police assemblies.³⁸ According to paragraphs 2.7, 2.8 and 2.10 above, these measures do not appear to have been implemented. Furthermore, all operations of law enforcement officials should comply with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life.³⁹

8.7 Furthermore, the Committee recalls that, since deprivation of life by the authorities of the State is a matter of the utmost gravity, the duty to protect the right to life also requires States parties to investigate and prosecute potential cases of unlawful deprivation of life, punish perpetrators and provide full reparation.⁴⁰ The Committee recalls that States have an obligation to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials, in the context of assemblies, and that both intentional and negligent action or inaction can amount to a violation of human rights.⁴¹ Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice.⁴² In particular, investigations should explore the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates,⁴³ and there must be an investigation whenever live fire has been used against demonstrators.⁴⁴

8.8 The Committee notes that Mr. García Mendoza and Mr. Pariona Camposano died during a demonstration because of head wounds caused by bullets that had entered at the neck and exited the jaw; that the prosecutor filed criminal charges against a police officer for the alleged offence of aggravated homicide, seeking a sentence of 30 years' imprisonment;

³⁵ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 9.

³⁶ A/HRC/26/36, para. 75.

³⁷ Human Rights Committee, general comment No. 37 (2020), para. 76.

³⁸ *Ibid.*, para. 80.

³⁹ Human Rights Committee, general comment No. 36 (2019), para. 13.

⁴⁰ *Ibid.*, para. 19.

⁴¹ Human Rights Committee, general comment No. 37 (2020), para. 90.

⁴² Human Rights Committee, general comment No. 36 (2019), para. 27. See also *Sathasivam et al. v. Sri Lanka* (CCPR/C/93/D/1436/2005), para. 6.4; *Amirov and Amirova v. Russian Federation* (CCPR/C/95/D/1447/2006), para. 11.2.

⁴³ General comment No. 36 (2019), para. 27.

⁴⁴ *Ibid.*, para. 29. See also *Umetaliev et al. v. Kyrgyzstan* (CCPR/C/94/D/1275/2004), para. 9.4; *Olmedo v. Paraguay* (CCPR/C/104/D/1828/2008), para. 7.5.

and that the police officer was acquitted because of a lack of evidence, stemming mainly from the fact that the investigation was marked by negligence, as acknowledged by the State party's own judicial authorities.

8.9 In the light of the foregoing, the Committee considers that the investigations conducted do not appear to have been exhaustive and were ineffective in identifying those responsible for the deaths of Mr. García Mendoza and Mr. Pariona Camposano and concludes that the facts before it disclose a violation of article 6, read alone and in conjunction with article 2 (3) of the Covenant.

8.10 Having reached this conclusion, and in the light of the evidence contained in paragraphs 8.5 to 8.8 above, the Committee is of the view that the facts before it disclose that the use of force failed to meet the requirements of necessity and proportionality and, therefore, amount to a violation of the right of Mr. García Mendoza and Mr. Pariona Camposano to peaceful assembly established under article 21 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of article 6 (1) of the Covenant, read alone and in conjunction with article 2 (3), and article 21.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to provide full reparation to persons whose rights have been violated. Accordingly, the State party should, inter alia, (a) conduct a thorough and effective investigation into the events leading to the deaths of Mr. García Mendoza and Mr. Pariona Camposano and, if liability is established, impose criminal and administrative penalties on all persons responsible; and (b) provide adequate compensation to the authors for the harm they have suffered. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.
