# Clarification Questions and Answers for the Twenty-First Inter-American Human Rights Moot Court Competition of the Academy on Human Rights and Humanitarian Law

1. Did the government of the Republic of Santa Clara conduct periodic reviews with respect to the purpose and lawful use of the funds transferred to Silverfield S.A. and Miningcorp S.A., among other companies, by the Public Foreign Investment Fund?

filed in Santa Clara by members of the Camana Osorio family asks to have investigated ?

The criminal complaint referred to in paragraph 27 of the facts of the case seeks to have the judicial authorities of Santa Clara determine the criminal responsibility of Eliot Klein and David Nelson for the murders of the members of the Camana Osorio family that took place on December 12, 1994 and December 10, 2002.

5. With respect to paragraph 40 of the facts of the case, what suitable domestic proceeding is provided for under the laws of the State of Santa Clara to seek compensatory damages?

According to the laws of the State of Santa Clara, the suitable action for filing compensatory claims against the government is adversarial administrative litigation. With respect to compensatory claims against private individuals, the suitable proceeding is a regular civil action.

6. With respect to paragraphs 50 and 51 of the facts of the case, should the articles of the ACHR that have allegedly been violated be examined in relation to Articles 1.1 and/ or 2 thereof, or independently of them?

This question goes beyond the clarification of the facts of the case and aims to clarify the interpretation of the Inter-American Commission and Court regarding obligations arising from the American Convention.

### 7. Will gold mining activity be conducted in Orifuna territory?

It follows from paragraphs 10 and 33 of the facts of the case that the extraction phase of the Wirikuya project will not be carried out in Orifuna territory, or in any part of the Republic of Madruga. Although the extraction will take place exclusively on land located in Santa Clara, the authorities of that country have identified potential impacts on the territory of the Orifuna people, which is located entirely in the Atlantic region in the northern part of the Republic of Madruga.

#### 8. Was the Orifuna community engaged in any type of economic activity?

The communities that make up the Orífuna people are engaged in the economic activities specified in paragraph 10 of the facts of the case.

## 9. On what grounds was the petition for a constitutional remedy (*amparo*) brought by Catalina Coral in Madruga, referred to in paragraph 46, found to be inadmissible?

The petition for a constitutional remedy ( ) mentioned in paragraph 46 of the facts of the case was ruled inadmissible by the Supreme Court of Madruga on the grounds that Catalina Coral lacked standing to represent the interests of the communal Orífuna landholdings.

#### 10. Law of Extraterritorial Jurisdiction over Corruption and Human Trafficking regulate extraterritoriality and jurisdiction over matters related to corruption?

Article 20 of the 1998 Law of Extraterritorial Jurisdiction over Corruption and Human Trafficking establishes that acts of corruption committed by citizens or corporations headquartered in Santa Clara a LmVY'gi V'YWh'rc'VIJ ]"LbX'VIJa ]bU'UMJcbg'i bXYf'h\Un'Wti bhfmij\n f]gX]WJcbz'Yj Yb'if they have taken place abroad.

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The Wirikuya project remains at the exploration phase. The exploitation or extraction phase is anticipated to begin in July 2016. According to the applicable law in Santa Clara, before that phase of the mining project can begin, it is necessary to issue a new SEIS and conduct a new prior, free, and informed consultation process with the potentially affected indigenous and/or tribal peoples.

26. What is the purpose of the constitutional appeal alleging error on the part of the lower court that was filed with the Supreme Court of Santa Clara, what does it consist of, and under what circumstances can it be used?

According to the pertinent laws of Santa Clara, the constitutional appeal alleging error on the part of the lower court seeks to challenge the appeal decisions issued by the Civil Divisions on constitutional matters. The purpose of the appeal filed by Ricardo Manuín, described in paragraph 40 of the facts of the case, was to appeal, before the Supreme Court of Santa Clara, the decision of the Civil Division dismissing the petition for a constitutional remedy ( ) described in paragraph 39.

27. What arguments did the State of Santa Clara present in the admissibility proceedings before the IACHR with respect to the preliminary objection of lack of territorial jurisdiction?

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#### 32. On what dates did David Nelson conduct the three meetings with members of the outlawed

The diplomatic cable published by Wikileaks in February 2006, mentioned in paragraph 25 of the facts of the case, indicates that the three meetings between members of Los Olivos and David Nelson took place between the years 2001 and 2003. There is no information on the exact dates of those meetings.

## 33. Do decisions made by the Pichicha's People's Assembly bind the Pichicha people or affect the greater Santa Clara government in any way?

According to the ancestral traditions of the Pichicha people, its Assembly is the highest political authority and sole body with jurisdiction to make decisions relating to the management of the Pichicha territory.

#### 34. Was Lucía

In keeping with the ancestral traditions of the Orifuna, its DYcd`YÑy 5 ggYa V`m is the sole entity authorized to make decisions about the management of the Orifuna territory. The Assembly is comprised by a representative from each communal landholding and a President, and its decisions are always adopted by consensus.

40. On what grounds did the Supreme Court of Madruga determine that the writ of *amparo* filed by Catalina Coral, President of ?

See the answer to question 9 above.

41. Santa Clara presented two technical reports on the Wiricuya Project: the first in May 2007 (

45. What preventive measures did Silverfield S.A. take in relation to the construction works of the Wirikuya project?

See the answer to question 14 above.

46. According to paragraph 16 of the facts of the case of Edmundo Camana *et al.*, Pichicha and Orífuna peoples v. Santa Clara, are disputes related to the rights of indigenous communities located in the signatory countries included among those that are submitted to the arbitration system provided for in the North American Free Trade and Development Agreement signed by Santa Clara,

52. According to paragraph 38 of the facts, on what legal basis did the FWA issue its order for the immediate decontamination of Pampulla Lake, and for the provisional collection of water from local streams, including the Mandí Stream?

The Federal Water Authority (FWA) is the administrative entity responsible for the distribution of potable water in the State of Santa Clara. Under the applicable law, the FWA is authorized to take urgent measures, including allowing its officials to gain temporary access to private property, in order to guarantee the supply of potable water to populations affected by environmental disasters.

53. According to paragraph 29 of the facts, why did the Foreign Ministry of the Republic of Madruga issue Official Letter No. 001.2962?

Official Letter No. 001.2962 was issued by the Foreign Ministry of the Republic of Madruga for purposes of informing the judicial authorities of Santa Clara of the status of the criminal investigations into the murder of members of the Camana Osorio family. The letter was issued pursuant to a letter rogatory from the Civil Courts of Santa Clara that heard the judicial actions described in paragraphs 27 and 28 of the facts of the case.

54. According to paragraph 40 of the facts, when the Supreme Court of Santa Clara ruled the writ of *amparo* inadmissible, what remedy was it referring to as a suitable mechanism for asserting compensatory claims?

See the answer to question 5 above.

55. Did the militia members who murdered the Camana Osorio family on December 12, 1994 belong to the Los Olivos militia group?

The Madrugan authorities have not been able to determine, in a final court judgment, who was responsible for the December 12, 1994 murder of the members of the Camana Osorio family. The only information regarding the identity of the direct perpetrators of the crime is described in section III of the facts of the case and in the answer to clarification question 16 above.

56. On what factual basis did the human rights organizations in Madruga find that the error in the calculation of the statute of limitations in the investigation against the two leaders of the Los Olivos militia group for the offense of money laundering involved collusion between the Miningcorp?

For several years now, national and international human rights organizations have been claiming that mining companies operating in the region have paid bribes to members of the Office of the Prosecutor to encourage impunity for the widespread violence in northern Madruga. Those organizations maintain that the mining companies i most of which are subsidiaries of companies headquartered in Santa Clarai are the ones who benefit the most from the acts of harassment, threats, and murder carried out by the unlawful armed militias that operate in northern Madruga.

57. What health consequences did the Pichicha population experience as a result of the pollution of Pampulla Lake?

No member of the Pichicha people or the communities surrounding Pampulla Lake ever consumed water that was contaminated by the residues spilled in the May 15, 2011 accident. The main impact on the health of the affected persons consisted of the rationing of the potable water supply for a few days until the Federal Water Authority was able to resume supplying water from alternative sources other than the Pampulla Lake.

58. How old was Lucía Camana Osorio in 1994? Paragraph No. 17 of the hypothetical case.

See the answer to question 34 above.

59. When paragraph 16 of the hypothetical case states that corporations and the three NAFTDA signatory countries must be adjudicated by an arbitral panel,

role and standing of the communal landholdings, president?

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See the answer to question 39 above.

66. Will the other 12 communal landholdings not located along the high valley and estuary of the Doce River be affected in any way by the Wirikuya project? Were the residents of those communal landholdings consulted about the project?

The April 2008 report of the Office of the Undersecretary for Intercultural Affairs of Santa Clara stresses that the entire