

REPORT N° 11/93
CASE 10.528
PERU
March 12, 1993

BACKGROUND:

1. That the Inter-American Commission on Human Rights received the following petition, dated March 22, 1990:

We have the honor to address the Inter-American Commission to request that you urgently intercede with the Peruvian authorities concerning the arrest-disappearance of Peruvian citizen Falconieri Saravia Castillo, based on the following facts from information provided by the National Agrarian Confederation [Confederación Nacional Agraria] (CNA) by the victim's own next-of-kin:

1. On March 16, 1990, in the city of Huancavelica in the province and department of that same name, Falconieri Saravia Castillo (age 45), married to Mrs. Mauricia Quinto and father of seven (two of them small children), artisan and farmer, President of the Huancavelica Agrarian Federation, a municipal agent for the community of Santa Barbara and a member of the United Left, went to his community's Assembly Hall on the outskirts of the city of Huancavelica.

2. As he was on route to the assembly, according to information provided by his son, Saravia Castillo was detained at 17:00 hours by a military man in civilian dress, who identified himself with his identification card. The military man was armed.

3. One of Saravia Castillo's sons, who was following his father some distance behind, saw the military man known as "el ruso" (the Russian) take his father away, in the direction of the office of the Political Military Command, located at Jr. Victoria Garma in the city of Huancavelica.

4. His relatives went that evening (18:30 hours) to the office of the Political-Military Command, and again the next day (March 17) and on Monday March 19, but were told repeatedly that no arrest was ever made.

5. Even Mrs. Mauricia Quinto de Saravia filed a writ with the Office of the Provincial Prosecutor of Huancavelica, which was received on the morning of March 19 but returned, unprocessed, that same afternoon. The Office of the Provincial Prosecutor of Huancavelica, held by Dr. Humberto Pareja, has thus committed a serious crime.

6. Despite the time that has passed, the personal whereabouts of citizen Falconieri Saravia Castillo are still unknown.

7. We are requesting your urgent intervention with the Peruvian authorities to safeguard the fundamental rights of citizen Falconieri Saravia Castillo, who is detained-disappeared.

2. That attached to the petition were copies of the telegrams sent to the Examining Judge of Huancavelica, to the Chief Prosecutor of Huancavelica, and to Peruvian Army Colonel Luis Paz Cárdenas, Chief of the Huancavelica Political Military Command. There is also a copy of the delivery receipt for the request sent to Peruvian Army General Julio Velasquez Giacarini, Minister of Defense at the time; a copy of the receipt for the complaint filed with Dr. Manuel Catacora Gonzáles, Attorney General of the Nation, and, finally, the testimony of one of the victim's sons, who saw his father being led away and brought to the headquarters of the Huancavelica Political Military Command. The Commission has that document in its possession;

3. That in a note dated March 22, 1990, the Commission began its processing of the case and requested from the Government of Peru the relevant information on the facts reported in that communication, and any other information that would enable it to determine whether the remedies under domestic law had been exhausted in the instant case;

4. That on May 2, 1990, the Inter-American Commission on Human Rights again requested from the Government of Peru information on the investigations conducted into the instant case, and set a 90-day deadline for the government to reply;

5. That the Commission received additional information from the petitioner dated May 9, 1990, as follows:

We write to you at this time to inform you that according to reports we have received, citizen Falconieri Saravia Castillo has been executed by members of the Peruvian Army. The circumstances were as follows:

1. On March 16, 1990, Falconieri Saravia Castillo was detained, according to the account provided by his son, while on route to a meeting. The arresting officer was a military man in civilian dress, who identified himself. The military man was armed.

2. Mr. Saravia's son saw the military man, who is called "Ruso" ("Russian"), take his father to the headquarters of Huancavelica's Political Military Command, located at Jr. Victoria Garma.

3. Everything seems to indicate that before Falconieri Saravia's arrest, there was a "terrorism" complaint filed by a neighboring community. This spurred the military into action. The autopsy report prepared by Medical Examiner Pedro García apparently contains certain errors and raises certain questions. As the cause of death it cites internal hemorrhaging caused by a medium-calibre firearm; but apparently the internal bleeding was caused by bullets from a Peruvian Army FAL (light automatic weapon); what the autopsy report describes as perhaps a bullet wound, is a slash beside the left eye, a slash across the throat and a slash to the back of the neck.

- The body has 10 bullet orifices. It is unclear whether these were five entry and five exit wounds. There were bullet wounds to the heart, and perforations in the liver, intestine and the left kidney.

- The body showed signs of torture on the genitals and had contusions on the right hand and the marks left by lashes around the wrists, hematomas on the

lower members and blisters on the feet from being forced to walk barefoot.

- This information has been supplied to a member of the National Executive Committee of the National Coordinator of Human Rights in a personal interview held at the scene of the events (Huancavelica). Given the situation, the physician refused to turn over the Autopsy Certificate.

4. The criminal indictment has not yet been handed down; because the Technical Police are conducting certain preliminary investigations, the case has not yet been turned over to the Judge.

6. That in a note dated May 14, 1990, the Commission forwarded this communication to the Government of Peru, asking that it provide the Commission with information within a period of 60 days;

7. That on March 18, 1991, the Commission reiterated its request that the Government of Peru provide information on the investigations conducted into the instant case, and also warned that should the requested information not be received within 30 days, it would consider application of Article 42 of the Commission's Regulations, whereby the facts recounted in the complaint would be presumed to be true as long as other evidence does not lead to another conclusion;

8. That since no reply was received and the established legal deadline had long since expired, on August 9, 1991, the Inter-American Commission on Human Rights sent the Government of Peru yet another communication, again asking that it supply information within 30 days, warning of the application of Article 42 of its Regulations and providing it with yet more information supplied by the petitioner (Appendix VI);

9. That on September 24, 1992, when the deadlines had already passed, the Government of Peru replied that the investigations were being conducted to "identify those responsible for the murder" (of Falconieri Saravia Castillo) and mentioned that orders had been given to conduct a ballistics test and to identify the military in civilian dress who had detained the victim.

10. At its 82 session, the Commission adopted Report No. 22/92, which was referred to the Government of Perú so that the latter might make whatever observations it deemed pertinent within three months of the date of transmission.

ANALYSIS:

1. That under Article 44 of the American Convention on Human Rights, of which Peru is a State Party, the Commission is competent to hear the instant case inasmuch as it involves violations of rights recognized in that Convention -Article 4 on the right to life, Article 5 on the right to humane treatment, Article 7 on the right to personal liberty and Article 25 on the right to judicial protection;

2. That the petition satisfies the formal requirements for admissibility contained in the American Convention on Human Rights and in the Commission's Regulations;

3. That the petition is neither pending settlement in another procedure under an international governmental organization nor a duplication of a petition already examined by the Commission;

4. That the facts in this case, taken from the testimony and from the various complaints filed with competent organs, are as follows:

- a) On March 16, 1990, at 17:00 hours, Falconieri Saravia Castillo was detained by a military man known as "Ruso" [Russian] and taken to the headquarters of the Huancavelica Political Military Command;
- b) The military man in question was in civilian dress, wearing a black shirt, white pants, shoes and a black knit scarf around his neck;
- c) The military man identified himself and, at gun-point, led Saravia away from the vicinity of the Santa Barbara Housing Project, taking him via various city streets, in the presence of witnesses who saw him pass by;
- d) The day of the arrest, Saturday the 17th, and again on Monday the 19th, the victim's relatives went to the military base to inquire about his situation and were told that Falconieri Saravia was not being held in custody.
- e) The victim's body turned up on April 1, 1990, and bore visible signs of torture;

5. That the following documents attached to this report prove that the remedies under domestic law have been attempted and have failed to ensure the victim's exercise of his rights:

- a) A petition filed by the victim's next-of-kin with the Office of the Provincial Prosecutor, received at 10:15 a.m. on March 19, but returned that afternoon, claiming that the next-of-kin had to see the Judge. The relatives put into writing the fact that the Provincial Prosecutor, Dr. Humberto Pareja, was guilty of an egregious omission by abandoning a person at risk of death, since the worst was feared if the courts did not act quickly (Appendix II);
- b) On March 21, the corresponding petition was presented to the Examining Judge of Huancavelica, asking that the abduction, detention incommunicado and denial of Falconieri Saravia Castillo's right to self-defense cease (Appendix I);
- c) A similar letter was sent to the Chief of Huancavelica's Political Military Command on March 21 (Appendix III), to the Minister of Defense, dated March 22 (Appendix IV), and to the Attorney General of the Nation, also dated March 22 (Appendix V);
- d) At the request of Eulogio Saravia Quinto, son of Falconieri Saravia Castillo, on June 25, 1990, the Ministry of Defense reported the following:
 - 1. The investigations having been conducted, the Commander General of the 4th Front has determined that citizen Saravia Castillo Falconieri was not detained either by Army troops or by the National Police.

2. He further advised that the Departmental Headquarters of the Technical Police in Huancavelica had reported, through Communication No. 066-IC-JDP, dated April 5, 1990, that the citizen in question had been found dead on April 1, 1990, on the Supaymayo-Lachocc bridge and that thus far the author or authors of the crime against the life of this citizen had not been identified, located and taken into custody.

3. Moreover, despite repeated notifications, the next-of-kin of the individual in question had not appeared at the Departmental Headquarters of the Technical Police in Huancavelica; they could have supplied additional information on the fact denounced, to shed light on the reason for his death; the investigations were, nonetheless, continuing.

e) In this regard, the petitioner stated the following:

As for the case of Mr. Falconieri Saravia Castillo, we should inform you that the victim's next-of-kin no longer press to have justice done in Peru, because of the fear and sense of insecurity in the city of Huancavelica.

We attach a copy of the Death Certificate of Falconieri Saravia Castillo, which confirms that he died a violent death by the allusion to the "Forensic Medical Certificate because of the autopsy done on the body."

We also enclose a copy of the replies received from the Office of the Army Inspector General and from the Ministry of Defense, in response to information requests filed by Eulogio Saravia Quinto, son of Falconieri Saravia Castillo.

6. That the official documents discussed in the preceding section provide sufficient information for the competent Peruvian jurisdictional and political-military authorities to have taken action to clarify the situation denounced and restore Mr. Falconieri Saravia's violated rights, especially when one considers how quickly the remedies under domestic law were filed and how promptly the Inter-American Commission on Human Rights acted upon the complaint.

7. That the Inter-American Court of Human Rights stated the following:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.¹

8. That the Government's reply to the petition is insufficient, and simply notes that

¹ Velásquez Rodríguez case, Judgment of July 29, 1988, Series C, No. 4, Paragraph 176.

the victim was not arrested either by Army troops or by the National Police, which shows that the Peruvian authorities have not taken steps to investigate the complaint diligently and with the seriousness that the case demands.

9. That the Inter-American Court stated the following with regard to the duty to investigate the situations denounced:

[The duty to investigate]...must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.²

10. That the reply received from the Government of Peru, dated September 24, 1992, reporting that measures were being taken to shed light on the facts in this case, fails to provide any information pertinent to the serious issue of the death and disappearance of Falconieri Saravia Castillo.

11. That since the friendly settlement procedure provided for in Article 48 paragraph 1.f of the American Convention on Human Rights is not applicable owing to the nature of the facts denounced and the absence of any reply from the Government, the Commission must carry out the provisions of Article 50 paragraph 1 of the Convention and issue its conclusions and recommendations on the petition submitted to it for consideration,

12. That on October 26, 1992 the Government of Perú presented its observations on Report 22/92 which indicated that in spite of investigations conducted had failed to identify or arrest the murderer or murderers of Mr. Falconieri Saravia Castillo.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

1. To declare that the Government of Peru is responsible for violation of the rights to life, to humane treatment, to personal liberty and to judicial protection, upheld in articles 4, 5, 7 and 25 of the American Convention on Human Rights, as a result of acts of agents of the peruvian State, who effected an illegal arrest, tortured and extrajudicially executed Falconieri Saravia Castillo, in the Department of Huancavelica on March 22, 1990.

2. To declare that the Government of Peru has failed to comply with the obligations to respect the human rights and guarantees, imposed through Article 1 of the American Convention on Human Rights of which Peru is a State Party.

3. To recommend to the Government of Peru that it pay fair compensation to the victim's next-of-kin.

² Ibid., paragraph 177.

4. To recommend to the Government of Peru that it conduct an exhaustive investigation into the facts denounced, to clarify the circumstances and identify those responsible for the murder of Falconieri Saravia Castillo, and that they be brought to justice.

5. To request the Government of Peru to adopt effective security measures to protect the lives and safety of the eye-witnesses to the events and the relatives of the victim.

6. To publish this report in the Annual Report to the General Assembly, pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, inasmuch as the Government of Perú did not adopt measures to correct the situation denounced, within the time period stipulated in Report No. 22/92.