

**REPORT Nº 9/93**

CASE 10.433

PERU

March 12, 1993

I. BACKGROUND

1. On May 10, 1989, in the course of an on-site visit to Peru, a Special Committee of the Inter-American Commission on Human Rights met with the then head of the Joint Command and Commander-in-Chief of the Army, General Artemio Palomino, and gave him a copy of an article published in the May 8, 1989 issue of Caretas magazine. The article reported that:

... on Tuesday afternoon, May 3, the Jauja Defense Front filed a complaint with the provincial authorities, stating that eight persons had disappeared as a result of Army activity in the Huertas area.

The petitioners stated that townspeople Raúl Salas Chocas, Wilson Salas Huánuco, Abel Asparrín Huamán, Teódulo Simeón Yaringaña, Jaime Jesús Montalvo, Nicolás Chocas Caveró, José Jacob Camarena and Freddy Flores Salas, a minor, were taken from their homes by military patrols combing the area following a confrontation in the Los Molinos district that had left 59 MRTA casualties.

General Palomino took the information in question and promised to make the necessary inquiries.

II. FACTS DENOUNCED

2. The Inter-American Commission on Human Rights received a petition dated July 14, 1989, to the effect that:

1. On April 28, 1989, seven persons were taken into custody by soldiers of the Peruvian Army in the areas of Coriac and Los Molinos, Huertas District, Jauja Province, Junín Department.

2. At approximately 3 a.m. on that date, a bloody clash occurred between members of the Armed Forces and subversives from the Túpac Amaru Revolutionary Movement (Movimiento Revolucionario Túpac Amaru - MRTA) at Los Molinos. Within hours of the clash, which left some 60 rebels dead, the President of the Republic visited the scene of the events and said that it had been "a severe blow to the subversive movement".

3. Shortly thereafter, however, Army helicopters descended upon the communities near the site of the confrontation and proceeded to detain all the local population, even though the latter showed their identification papers. Following a selection process, the following persons were arrested: Raúl Alfredo Salas Chocas, Wilson Edgard Salas Huánuco, Nicolás Chocas Caveró, Freddy Félix Flores Salas, Teódulo Fermín Simeón Yaringaña, Jaime Jesús Montalvo and José Camarena Peña.

4. The civilians were then placed aboard the Army helicopters and taken to the "Teodoro Peñaloza" Garrison at Jauja and then transferred to the "9 de Diciembre" Garrison in the city of Huancayo. At both places, the fact of their detention was denied when family members inquired, even though there had been eyewitnesses. And so these individuals and many others whose names could not

be obtained continue to be detained-disappeared.

3. The petition was accompanied by the following documents: a petition of *habeas corpus* that had been filed with Huancayo's Second Court of Investigation; the decision of the examining magistrate and brief of appeal; the petition of *habeas corpus* sent by telegraph to the Huancayo Magistrate's Court; the petitions filed with Junin's Chief Prosecutor; the petitions filed with the military authorities in the area; and the victims' birth and marriage certificates.

4. In a note dated August 4, 1989, the Commission began to process the case and requested that the Government of Peru supply information about the events reported in the petition and any other information that might help the Commission determine whether all domestic remedies had been exhausted. The Commission gave the Government 90 days in which to reply.

### III. REMEDIES UNDER DOMESTIC LAW

5. On February 12, 1990, the Commission received additional information from the petitioner, stating that:

The persons named are still detained-disappeared and the many measures taken under domestic law have been completely futile. The following measures were reported:

a) A petition of *habeas corpus* filed with Peruvian Army Lt. Colonel Roberto Contreras, commander of the "9 de Diciembre" Garrison, on behalf of Raúl Alfredo Salas Chocas, Wilson Edgard Salas Huánuco and Freddy Félix Flores Salas. The Huancayo Second Court of Investigation denied the petition for lack of merit, based on a visit made to the garrison in question. The inspection confined itself to the outer cells and did not check to see whether they were being held in the inner portion of the Garrison. That judgment was appealed on June 26, 1989, and the appeal was denied by the Huancayo Second Magistrate's Court, which upheld the ruling being appealed.

b) A petition of *habeas corpus* filed on July 14, 1989 with the Huancayo Magistrate's Court on behalf of all the persons named. It should be noted that this action was taken upon receipt of new information confirming that the individuals in question were being held at the "9 de Diciembre" Garrison. The petition was sent by telegraph. No response has ever been received.

c) A petition sent by telegraph on July 14, 1989, to Dr. Ramón Pinto Bastidas, Chief Prosecutor for Junín, asking that he intervene.

d) Petitions filed with the Chief of the Political-Military Command for the zone and to Lt. Colonel Roberto Contreras Ramos, the officer in command of the "9 de Diciembre" Garrison.

e) It was learned that the Junín Board of Superior Prosecutors had appointed Dr. Filomeno Salazar Hinojosa as ad hoc Prosecutor for this case, who has spoken with the families of the disappeared and those who witnessed their imprisonment. He has, however, failed to take decisive measures to shed light on the facts reported.

6. In a note dated February 13, 1990, the Commission forwarded this communication to the Government of Peru with the request that it provide the Commission with information on the matter within a period of 45 days.

7. On March 7, 1990, the IACHR again asked the Government of Peru for information concerning the investigation into this present case, giving it a period of 30 days in

which to reply.

8. When no reply was forthcoming and well after the prescribed time period had elapsed, on June 12, 1992 the Commission sent another communication reiterating its request for information from the Government of Peru and advising it that unless that information was received within 60 days, it would consider applying Article 42 of the Commission's Regulations, whereby the facts reported in the petition are presumed to be true as long as other evidence does not lead to a different conclusion.

9. On September 17, 1992, when all deadlines had expired, the Commission received a reply to its last communication wherein the Government states that thus far "the physical whereabouts and legal situation of the allegedly missing persons have not been established ...", and

10. At its 82 session, the Commission adopted Report No. 20/92, 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. The Commission is competent to take cognizance of the instant case as it involves violations of rights recognized by the American Convention on Human Rights: 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, as stipulated in Article 44 of the aforesaid Convention, to which Peru is a State party.

2. The complaint meets the formal requirements of admissibility as set forth in the American Convention on Human Rights and in the Commission's Regulations.

3. The complaint is not pending settlement in another procedure under an international arrangement, nor does it duplicate an earlier petition which has already been examined by the Commission.

4. In the instant case, legal documents providing information concerning the facts denounced have been presented and were also published in the Peruvian press, regarding which the Inter-American Commission of Human Rights requested information from the Chief of the Joint Command a few days after the events in question transpired.

5. From the information supplied to the Commission as this case was being processed, the facts alleged are as follows:

a. On April 28, 1989, there was a clash between Peruvian Army troops and members of the Túpac Amaru Revolutionary Movement, at the place known as Los Molinos in the Province of Jauja, Department of Junín.

b. Within hours of the clash, Army helicopters descended upon the communities of Coriac and Los Molinos in the vicinity of the site where the clash had occurred, and troops detained numerous townspeople, among them the following:

- Raúl Alfredo Salas Chocas
- Wilson Edgard Salas Huánuco
- Nicolás Chocas Caveró
- Freddy Félix Flores Salas (a minor)
- Teódulo Fermín Simeón Yaringaña
- Jaime Jesús Montalvo
- José Camarena Peña.

c. The individuals named above were put aboard the helicopters in the presence of

their families and numerous witnesses. They were taken to "Teodoro Peñaloza" Garrison in Jauja and then transferred to "9 de Diciembre" Garrison in Huancayo on May 10, according to what members of the "Teodoro Peñaloza" Garrison told the relatives of the detainees.

d. The detainees were alleged to have been held inside "9 de Diciembre" Military Garrison, according to the petition of habeas corpus filed with the examining magistrate of Huancayo on June 26, 1989, and the appeal filed with the Examining Judge of the Huancayo Second Court that same day.

e. The persons listed above are still disappeared.

6. As for the remedies under domestic law, the information supplied during the processing of this case indicates that such remedies have been used and exhausted, as follows:

a. The petition of habeas corpus presented on behalf of Raúl Alfredo Salas Chocas, Wilson Edgard Salas Huánuco and Freddy Félix Flores Salas was dismissed by the Examining Magistrate of the Second Court who, after an inspection of the "cells in the '9 de Diciembre' Garrison in the Chilca District" went on record to the effect that the individuals in question were not to be found there; the dismissal was upheld by the Second Magistrate's Court of Huancayo.

b. There is no record of a second inspection of the garrison in question, to check inside that facility, especially the area known as "the tunnel", as the pleadings in the appeal had sought.

c. Nor is there any record of the results of the petition of habeas corpus filed on behalf of Teódulo Simeón Yaringaña or of any investigation of the interior of "9 de Diciembre" Garrison that the corresponding petition brief had requested.

d. On July 14, 1989, another petition of habeas corpus was filed with the Huancayo Magistrate's Court on behalf of the victims in this case, requesting a summary proceeding inasmuch as "There is reliable evidence that the individuals in question are inside that military base ("9 de Diciembre" Garrison) even though the arrest has been denied." There is no record that the petition produced any result.

e. The request sent to the Chief Prosecutor of Junín on July 14, 1989, asking that he intervene and inspect the "9 de Diciembre" Garrison to safeguard the rights of the aggrieved parties would not appear to have produced any result.

f. There is no record that the letters of July 14, 1989, to the Chief of the Political Military Command of Huancayo asking that permission be granted for an inspection of the interior of that military garrison achieved their intended purpose.

g. The ad hoc prosecutor appointed to investigate the case spoke with witnesses to the confinement of the aggrieved parties in this case, though his actions failed to shed light on the facts denounced, as the petitioner duly reported.

7. The petition of *habeas corpus* filed provides information pointing to the fact that the persons in question were held in custody by the Peruvian Army and confined in its "9 de Diciembre" Garrison, though there is no record to show that the competent authorities ever conducted a serious investigation of the facts denounced by the victims' relatives and attorneys in their letters to the Huancayo Magistrate's Court and to the Chief of the Political Military Command.

8. In its judgment of July 29, 1988, in the Velásquez Rodríguez case, 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. (Paragraph 176).

9. In the same case the Inter-American Court states the following concerning 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. (Paragraph 177).

10. Although three years have elapsed since the case was first processed by the Commission and despite the seriousness of the charges made and the Commission's repeated overtures, the Government of Peru has failed to provide a satisfactory response concerning the facts in the instant case.

11. Inasmuch as it did not reply by the deadlines established by the Commission, the Government of Peru has failed to comply with the international obligation to provide information within a reasonable period, as established in Article 48 of the Convention.

12. The Commission has repeatedly expressed its categorical condemnation of the heinous phenomenon of forced disappearance of persons and has stated in various documents that:

... this procedure is cruel and inhuman and the disappearance not only constitutes an arbitrary deprivation of liberty but also an extremely serious threat to the humane treatment, security and life itself of the victim.<sup>9</sup>

13. In a number of resolutions, the General Assembly of the Organization of American States has emphasized that countries in which forced disappearances have occurred must put an immediate end to this practice, and has urged the governments to make the necessary efforts to establish the situation of such persons. The Organization's General Assembly has also declared the forced disappearance of persons to be an affront to the conscience of the hemisphere and a crime against humanity.<sup>10</sup>

14. In the Velásquez Rodríguez case the Inter-American Court of Human Rights has stated that:

The practice of disappearances, in addition to directly violating many provisions of the Convention (...), constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention. (Paragraph 158).

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<sup>9</sup> Annual Reports of 1978, 1980-81, 1982-83, 1985-86, and 1986-87.

<sup>10</sup> Resolutions AG/RES. 443 (IX-0/79), 510 (X-0/80), 543 (XI-0/81), 618 (XII-0/82), 666 (XIII-0/83) and 742 (XIV-0/84).

15. Since the procedure of friendly settlement contemplated in Article 48 paragraph 1.f of the American Convention on Human Rights does not apply because of the nature of the facts denounced and given the fact that the Government did not reply, the Commission must comply with the provisions of Article 50, paragraph 1 of the Convention, setting forth its conclusions and recommendations concerning the petition submitted for its consideration.

16. The Government of Perú, on November 6, 1992, presented its observations on Report N° 20/92 in which information is provided on only one of seven disappeared persons, and in that instance, only to deny his detention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

1. To declare that the Government of Peru is responsible for violation of the rights to personal liberty, to life and to judicial protection, recognized in Articles 7, 4 and 25 of the American Convention on Human Rights inasmuch as soldiers with the Peruvian Army, acting as agents of the Peruvian State, unlawfully arrested and engineered the subsequent disappearance of Raúl A. Salas Chocas, Wilson E. Salas Huánuco, Nicolás Chocas Cavero, Freddy F. Flores Salas, Teódulo F. Simeón Yaringaña, Jaime Jesús Montalvo and José Camarena Peña, events that transpired in the Province of Jauja, Department of Junín, on April 28, 1989.

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

3. To recommend that the Government of Peru conduct a thorough investigation into the facts denounced in order to clarify the circumstances of the arrest, determine the whereabouts of the victims, identify the persons responsible and bring them to justice so that they receive the punishment that such reprehensible conduct warrants.

4. 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. 20/92.