

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 10/89; Case No. 9802
Session: Seventy-Fifth Session (3 – 14 April 1989)
Title/Style of Cause: Benito Rojas Ccorahua v. Peru
Doc. Type: Resolution
Decided by: Chairman: Oliver Jackman;
First Vice Chairman: Elsa Kelly;
Second Vice Chairman: Leo Valladares Lanza;
Members: Gilda Maciel Correa Russomano, Marco Tulio Bruni-Celli, John Reese Stevenson, Patrick Lipton Robinson
Dated: 14 April 1989
Citation: Rojas Ccorahua v. Peru, Case 9802, Inter-Am. C.H.R., Report No. 10/89, OEA/Ser.L/V/II.76, doc. 10 (1988-1989)

Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

HAVING SEEN:

The background of this case, namely, the following:

1. On September 17, 1986, the Inter-American Commission on Human Rights received the following complaint:

Benito Rojas Ccorahua, reportedly detained Sunday July 20, 1986 at about 11:00 a.m., in Tambo, La Mar Province, by members of the armed forces based there, and taken in the presence of witnesses to the Militar Base housed in the municipal building. He was reportedly detained in the company of others while on his way to the Presbyterian Church of Tambo of which he is a member. His wife reported the arrest in formal depositions to the Public Ministry and to the Chief of the Political Military Zone. In these she states that she was permitted to take him food each day from 20 to 28 July at the Tambo base and last personally spoke to him on 28 July.

On Wednesday July 30, Tambo military authorities told her he was no longer held there, but had been transferred to the Los Cabitos barracks in Ayacucho. No formal acknowledgment of the arrest was provided the family or other parties by the Tambo military authorities, and since his reported transfer to Los Cabitos, his relatives have received no official information regarding his fate.

In a statement to the Fiscal Superior Decano of Ayacucho, dated August 12, his wife provides evidence that Benito Rojas Ccorahua was in fact seen by other prisoners when in custody at Los Cabitos. She cites a former prisoner as having informed her on August 11, that he had been held with Benito Rojas Ccorahua at Los Cabitos Barracks until his release, although the date of his release is not stated, it appears that he was released shortly before meeting the wife of his fellow prisoner. In the same statement to the Fiscal Superior Decano, it is noted that the remedy of habeas corpus had been sought through the Segundo, Juzgado de Instrucción of Huamanga. However, no examining magistrate seeking to implement habeas corpus has been permitted access to detention areas in the Los Cabitos complex in recent years, and consequently habeas corpus is in practice inoperative in the emergency zone, under the Political

Military Command.

By note of October 24, 1986, the Commission requested the relevant information from the Government of Peru, conveying to it the pertinent parts of the complaint in accordance with Article 34 of the Regulations. The request was reiterated in letters dated January 21, 1988, June 7, 1988, and February 17, 1989.

CONSIDERING:

a. That the Government of Peru has not replied to the request for information made by the Commission in regard to this case.

b. That the nature of the events described in the complaint precludes application to this case of the friendly settlement procedure provided for in Article 48 (1) f of the American Convention on Human Rights, to which Peru is a party.

It should be kept in mind in this connection, that the Inter-American Court of Human Rights, in its opinion of June 26, 1987, concerning Preliminary Objections in the Velasquez Rodriguez case, interpreted Article 48 (1) f as follows:

Taken literally, the wording of Article 48 (1) f (...) would seem to establish a compulsory procedure. Nevertheless, the Court believes that, if the phrase is interpreted within the context of the Convention, it is clear that the Commission should attempt such friendly settlement only when the circumstances of the controversy make that opinion suitable or necessary, at the Commission's sole discretion.

Farther on, the Court confirms the practice followed by the Commission in cases of forced disappearance, adding:

That (...) when the forced disappearance of a person at the hands of a State's authorities is reported and that State denies that such acts have taken place, it is very difficult to reach a friendly settlement that will reflect respect for the rights to life, to humane treatment and to personal liberty.

c. That Article 42 of the Regulations of the Commission provides as follows:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

d. In its reports on the situation of human rights, the Commission has vehemently condemned this grievous phenomenon of forced disappearance of persons, stating in various documents that ... this procedure is cruel and inhuman and that such disappearance is not only an arbitrary deprivation of liberty but also an extremely serious threat to the integrity, the safety and the very life of the victim (Annual Report 1978, 1980-1981, 1982-1983, 1985-1986, 1986-1987 and special reports by country, such as OEA/Ser.L/V/II.49 doc. 19, 1980 (Argentina), OEA/Ser.L/V/II.66 doc. 17, 1985 (Chile), and OEA/Ser.L/V/II.66, doc. 16, 1985 (Guatemala).

For its part, the General Assembly of the OAS has in various resolutions (see 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) stressed the need for an immediate end to this practice in countries where forced disappearances have occurred, urging governments to take the necessary steps to ascertain the fate of those persons. In addition, as proposed by the Commission, the General Assembly of the OAS has declared that the forced disappearance of persons

in the Americas is a crime against humanity (see Resolutions 666 (X-III-0/83), and 742 (XIV-0/84).

In deciding the Velasquez Rodriguez case on July 29, 1988, the Inter-American Court of Human Rights, in turn, held as follows:

The practice of disappearances, in addition to directly violating many provisions of the Convention, such as those noted above, 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. (Inter-American Court of Human Rights, Judgment of July 29, 1988, Series C., No. 4).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To presume the truth of the events reported in the communication of September 17, 1986, with regard to the arrest and subsequent disappearance of Mr. Benito Rojas Ccorahua.
2. To declare that the events described in the complaint constitute an extremely serious violation of the right to life (Article 4) the right to security and integrity of the person (Article 5) and the right to personal liberty (Article 7) under the American Convention on Human Rights, to which Peru is a party.
3. To recommend to the Government of Peru that it proceed with all possible speed to investigate the facts and to sanction with the severest penalties those responsible for the arrest and disappearance of Mr. Benito Rojas Ccorahua.
4. To ask the Government of Peru to advise the Commission within 90 days of the measures it has taken in conformity with this resolution. Should the Government of Peru fail to present its comments within that time, the Commission, in accordance with Article 63 g of its Regulations, shall include this resolution in its Annual Report to the General Assembly of the OAS.
5. To convey this resolution to the Government of Peru and to the complainant.