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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 10/93; Case No. 10.443
Session:	Eighty-Third Session (1 – 12 March 1993)
Title/Style of Cause:	Teofilo Rimac Capcha v. Peru
Doc. Type:	Report
Decided by:	Chairman: Dr. Oscar Luján Fappiano First Vice-Chairman: Prof. Michael Reisman; Second Vice-Chairman: Dr. Alvaro Tirado Mejía; Members: Dr. Leo Valladares Lanza, Dr. Marco Tulio Bruni Celli, Mr. Oliver H. Jackman; Dr. Patrick L. Robinson
Dated:	12 March 1993
Citation:	Rimac Capcha v. Peru, Case 10.443, Inter-Am. C.H.R., Report No. 10/93, OEA/Ser./L/V/II.83, doc. 14, corr. 1 (1992)
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BACKGROUND:

1. The Inter-American Commission on Human Rights received a petition dated August 29, 1989, that set forth the testimony of a student from the Universidad Nacional Alcides Carrion, who was arrested along with the victim Teofilo Rimac Capcha on June 23, 1986:

1. On June 23, 1986, at approximately 12:00 p.m., I was taken prisoner at my home by members of the Peruvian Army. The events occurred in the department of Cerro de Pasco, where I was a student. As a consequence of this detention, a "police investigation" was launched consisting of physical and psychological torture and attempted murder and disappearance over a period of seven days.

2. During the period to which I refer, other university students were also detained, among them Teofilo Rimac Capcha, who has since disappeared.

3. The undersigned and others are eyewitnesses to what happened to the aforementioned citizen. These events are explained in detail in the petition filed with the Senate Human Rights Commission on February 20, 1987.

4. The Army, in conjunction with the Investigations Police (PIP), drafted a "police affidavit" (DIRCOTE-LIMA) riddled with anomalies and contradictions (normal for a fictitious story) in an effort to justify the murder and subsequent disappearance of Teofilo Rimac Capcha and the torture they inflicted upon us (crushed ribs, skull fracture, arm fractures and other injuries). Because of that police affidavit, pretrial hearings were instituted in the case against us and we were unfairly incarcerated (31 months).

5. Members of the Army attempted to abduct us on more than three occasions during the course of our incarceration at the Cerro de Pasco public prison. Complaints have been filed with the Departmental Public Prosecutor's Office, the Office of the Attorney General of the Nation, the International Red Cross and elsewhere. The purpose was to silence us once and for all and thus allow these crimes against humanity to go unpunished.

6. Because of pressure from the Army, the judicial system was very slow to act (the case was held up for seven months as there was no judge who would hear the case -out of fear-; the court delayed the

case unnecessarily because of political pressure). On January 26, 1989, the proceedings ended with the logical exoneration of the accused.

2. Attached to the petition were the Senate Investigating Committee's Report, its Majority Opinion and its Minority Opinion; the complaint filed with the Human Rights Defense Committee of the Department of Pasco; a complaint filed with the Chairman of the Human Rights Commission of the House of Deputies; the complaint filed with the PIP (Investigations Police) of the city of Huancayo, Department of Junin, about threats made against the star witness in the case, and newspaper accounts from around that time.

3. Via a note dated August 29, 1989, the Commission began formal processing of the case by requesting that the Government of Peru supply pertinent information regarding the facts reported in the communication, as well as any other information that would enable the Commission to determine whether all remedies under domestic law had been exhausted in the instant case; the government was given 90 days in which to reply.

4. On March 7, 1990, the Inter-American Commission on Human Rights sent a second request to the Government of Peru for information regarding the investigations conducted into this case, and gave it 30 days in which to reply.

5. The Commission received additional information from the petitioner on March 20, 1989, consisting of the testimony of an individual who said he had been arrested along with Teofilo Rimac Capcha and who was tortured and present during the victim's final moments.

6. In a letter dated April 12, 1990, the Commission sent this communication to the Government of Peru and asked that the government report thereon to the Commission within 60 days.

7. On March 25, 1991, the IACHR once again asked the Government of Peru for information on the investigations carried out in connection with this case and advised the government that if the requested information was not received within 30 days, the Commission would consider application of Article 42 of its Regulations and thus presume as true the facts recounted in the petition, as long as other evidence does not lead to a different conclusion.

8. When it did not receive an answer by the prescribed deadline, on July 10, 1992 the Inter-American Commission on Human Rights sent the Government of Peru another communication repeating its request that the government provide the information in question within 30 days, with warning that Article 42 of the Regulations might be applied.

9. Through a note dated August 10, 1992, the Government replied as follows:

In this regard, the Permanent Representative of Peru respectfully requests the Executive Secretariat of the IACHR to extend the deadline specified in its letter of July 10 last, inasmuch as the Ministry of Defense of Peru has indicated that it does not have the background information on the case that would enable it to provide the information the Secretariat is requesting.

10. Despite the amount of time that had already elapsed, the Commission, in a note of August 13, 1992, gave the Government of Peru another 30 days in which to report on the facts denounced.

11. On September 23, 1992, well past all deadlines, a note from the Government of Peru was received at the Commission's Executive Secretariat wherein the former reported that "measures have been taken to establish the whereabouts of the citizen in question" (Teofilo Rimac Capcha); it stated that on

July 22, 1986, "he was formally charged with the crime of terrorism, and pretrial proceedings were instituted that same month and year ... presumably with the prisoner in absentia"; the note went on to say that "information was requested of the Office of the Provincial Prosecutor of Pasco to ascertain what steps had been taken ... in connection with the alleged disappearance, allegedly at the hands of military troops on June 23, 1986 ..."

12. At its 82 session, the Commission adopted report No. 21/92, which was referred to the Government of Peru 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 inasmuch as it concerns violations of rights recognized in the American Convention on Human Rights: Article 4 relating to 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 provided for in Article 44 of the aforementioned Convention of which Peru is a State party.

2. The petition satisfies the formal requirements for admissibility as set forth in the American Convention on Human Rights and the Regulations of the Commission.

3. The petition is not pending in any other international proceeding for settlement and is not substantially the same as any earlier petition already reviewed by the Commission.

4. In the instant case, documents have been presented which provide information on the events denounced, which were also reported in the Peruvian press.

5. That based on the information supplied to the Commission as the instant case was being processed and set forth in the corresponding appendices, the facts would be as follows:

5.1 At approximately 23:30 hours on June 16, 1986, subversives planted dynamite charges in the road at the place known as Pucallacu in the city of Cerro de Pasco, Department of Pasco. They detonated the dynamite charges as a vehicle transporting military troops was passing. Three soldiers and one civilian were killed, and another three soldiers were wounded. From then until June 24, the Army made arrests in places near the site of the attack, and in the city of Cerro de Pasco itself. It apprehended a number of people who were accused of being the alleged authors. Among the townspeople arrested were Edgardo Alarcon Leon, a student leader with the Frente Unico de Comensales of the Universidad Nacional Daniel Alcides Carrion in Cerro de Pasco; Juan Santiago Atencio, a leader of the CENTROMIN-PERU union; Marcial Torres, Vice President of the Frente Unico de Comensales UNDAC-PASCO; Saturnino Rojas Rimac; Teofilo Rimac Capcha, a professor at the Universidad Nacional Daniel Alcides Carrion, Deputy Secretary of the Federation of Farm Communities of Pasco and a member of the FOCEP Political Party which was part of the "United Left" Alliance; and other individuals whose identify it has not been possible to ascertain.

5.2 At approximately 1:00 a.m. on June 23, Army troopers from the Carmen Chico Garrison searched the home of Teofilo Rimac Capcha and his wife Doris Caqui Calixto, at Avenida Bolivar No. 69-A, San Juan Pampa, Cerro de Pasco. While the owners of the house were forced to remain lying facedown, the soldiers searched the house, inspecting personal papers, books legally in circulation, and other personal effects. Finally, they took Rimac Capcha into custody and took him to the Carmen Chico Garrison where they incarcerated him in a makeshift cell, along with seven to ten other people.

5.3 Later, all the detainees were tortured to force them to admit to their involvement in attacks that had occurred in the area, including the one at Pucallacu. The torture inflicted upon them can be described

as follows:

- * They were kicked and beaten on various parts of their body with blunt instruments and the toes of shoes.
- * They were kept hanging by the arms for hours, with their hands tied behind their backs.
- * They were made to believe they were being buried alive: they were put into ditches and earth was thrown over them.
- * A substance called "Terokal" was put in their nasal passages and mouths.
- * They were denied food and water.
- * They were denied warm clothing, despite the low temperatures in that region.

5.4 The information supplied during the processing of the case indicates that at dusk on June 26, Teofilo Rimac Capcha was separated from his cellmates by soldiers and taken to be interrogated. Then, at around 22:00 hours, he was returned to his cell. Though blindfolded, the other detainees knew that he was in a bad state when he returned, as he was crying out in pain and his breathing was irregular. At 6 or 7 the next morning, a noncommissioned medic entered the cell to treat detainee Saturnino Rojas for a fractured arm caused by the torture. When he saw Rimac's condition, he ordered another soldier to give him mouth-to-mouth resuscitation, despite which, according to the information reported, he soon died.

5.5 The information in the case file indicates that the victim's lifeless body was removed immediately; the bonds and blindfolds were taken off the other detainees and they were given food and water. On June 27, an Army Investigating Commission interrogated the detainees about what had happened; they told of having been tortured and subjected to other humiliations. The detainees signed their statements without coercion.

5.6 On July 7, 1986, in the course of its investigation of this case, the Senate Human Rights Commission requested information from the Department of Defense concerning the facts in this case and received the following reply on September 11:

- 1) Teofilo Rimac Capcha was arrested by a patrol at his home on June 23 last, "for alleged involvement in subversive activities".
- 2) On June 24, an attempt was made to deliver Rimac Capcha and other detainees into the custody of the Pasco PIP, but "for lack of space" he was returned to the Carmen Chico Garrison.
- 3) At 4:30 hours on June 27, 1986, Rimac was taken to a latrine, whereupon he escaped from the military base.

5.7 On December 4, 1986, the Senate Investigating Committee asked the Chairman of the Joint Command to provide information in connection with the alleged escape of Teofilo Rimac, and received the following reply on March 9, 1987:

- 1) The soldiers responsible for guarding Teofilo Rimac Capcha have been brought up on charges in the Army's Second Court District, for the crime of having allowed the "escape of convicts or prisoners".
- 2) The search for the fugitive "is still in progress, but has turned up nothing."

5.8 In its report of August 6, 1987, the Senate Investigating Committee (minority opinion, concluded that all the eyewitnesses said they had been mistreated and many said they had spoken with Rimac Capcha before and after the abuse and torture; none, however, could state categorically that he had seen Rimac Capcha die. Though they all told of hearing groans, moans and even possible agonized outcries, they also said they were blindfolded. The minority report states that as to the victim's escape, the information that the Chairman of the Supreme Council of Military Justice was to have provided on the status of the proceedings and the legal situation of those being tried was absolutely essential; also pending was the reply that the Chairman of the Supreme Council of Military Justice was to provide on the legal situation of those charged with the crime of having allowed the "escape of convicts or prisoners" which is being investigated by the Army's Second Court Jurisdiction because of the escape of Teofilo Rimac Capcha. Given the line of reasoning used, the minority on the Senate Investigating Committee concluded that there was insufficient evidence to establish the death of citizen Teofilo Rimac Capcha.

5.9 Although it concluded that there was insufficient evidence to establish the victim's death, the minority on the Senate Investigating Committee qualified this finding in paragraph 6, stating that "... under Article 63 of the Civil Code, ... one can be declared presumed dead after two years if the

disappearance occurred under life-threatening circumstances, even if the body has not been found or identified, which could be the case here ..." The victim has been classified as disappeared since June 27, 1986.

5.10 The testimony of the individuals held in custody with Teofilo Rimac Capcha, the findings of the investigations conducted by the Senate Investigating Committee and the information supplied in the complaints filed by the next-of-kin of the victim, all concur that the proper legal formalities were not observed at the time the individual in question was arrested, that while he was held prisoner he was subjected to various forms of torture, and that he died from that torture while in Army custody, in the early morning hours of June 27, 1986. The whereabouts of his remains are still unknown.

5.11 The version given by the Army to the effect that Teofilo Rimac Capcha purportedly escaped from the Carmen Chico Garrison is not probable since that military establishment was heavily guarded and surrounded by barbed-wire fencing; prisoners were taken to the latrines by a contingent of soldiers. Moreover, Teofilo Rimac Capcha had serious injuries as a result of the torture inflicted upon him. Finally, there is also the fact that after several years, there is still no official information on the outcome of the trial involving the soldiers charged with the alleged crime of allowing the "escape of convicts or prisoners".

5.12 Even though it has been more than three years since the case was first processed with the Commission, and despite the seriousness of the charges made and the Commission's repeated overtures, the Government of Peru has not provided a satisfactory response concerning the facts in this case. In effect, in its note of September 22, 1992, the Government of Peru confined itself to supplying information that sheds no light whatsoever on the facts; it did not even supply the reports that the Senate Commission had requested.

6. As for the remedies under domestic law, the information supplied as this case was being processed points to the fact that while those remedies have been exhausted they have been ineffective in protecting the rights of the individual in question since he is still considered to be a detained-disappeared person. Those remedies were the following:

6.1 On July 1, 1986, Doris Caqui Calixto filed a complaint with the Pasco Bar Association to denounce the arbitrary detention of her husband, Teofilo Rimac, in the Carmen Chico Garrison. Still unaware of the fate that had befallen her husband, she asked that this institution intercede with the Office of the Government Attorney to confirm the detention and take steps to safeguard his life. The next day, July 2, this complaint was forwarded to the Office of the Provincial Prosecutor for Pasco.

6.2 On June 23, 1986, Mrs. Doris Caqui Calixto filed another complaint, this one with the Cerro de Pasco Human Rights Defense Committee, asking that the necessary measures be taken to ensure her husband's safety and secure his prompt release.

6.3 On November 20, 1986, the Peruvian Senate voted unanimously in favor of one of the Senators' own initiatives, which was to order its own Human Rights Commission to serve as an Investigating Committee to ascertain the facts in the disappearance of citizen Teofilo Rimac Capcha. That Committee issued its majority opinion on May 21, 1987, and its minority opinion on August 6, 1987.

7. One must also consider the fact that the key witnesses in this case are being threatened by Peruvian Army soldiers, which the following facts will show:

7.1 Edgardo Alarcon Leon, a student leader from the Universidad Nacional Daniel Alcides Carrion in Cerro de Pasco, was one of those detained on June 23, 1986, but on January 26, 1989 was exonerated when no evidence against him could be found. Edgardo Alarcon was an eyewitness to what happened to the now disappeared Teofilo Rimac Capcha subsequent to June 23, 1986, as he maintains that he was held prisoner and tortured in the same detention facility as the victim. On March 2, 1989, Edgardo Alarcon Leon testified in the presence of Deputy Flavio Nucez Izaga, at the time Chairman of the Human Rights Commission of the House of Deputies.

7.2 According to Police Report No. 018 SE-JP, at approximately 2:00 a.m. on January 31, 1989, four subjects wearing ski masks appeared at the home of Domingo Alarcon Cano, located at Jiron Alfonso Ugarte No. 560, in Pampas, Department of Junin, searching for his son, Edgardo Alarcon Leon. Domingo Alarcon Cano, however, strenuously objected to these men entering his home, and told them that Edgardo was not at home.

7.3 The Police Report also states that at around 1:00 a.m. on February 20, 1989, four subjects entered his home while he, his wife and children were sleeping. The subjects were heavily armed and their faces were covered by ski masks. Two of them were wearing black boots. The subjects forced Edgardo's father to open all closets and compartments in the house and kept asking him for his son. When they did not find him, they left.

7.4 On July 8, 1992, the Inter-American Commission on Human Rights received a petition to the effect that Mrs. Doris Caqui Calixto, wife of the victim in the instant case and the mother of four children, was being continually threatened and persecuted by agents of law and order (Case No. 11,036, being processed with the Commission).

8. In a judgement of July 29, 1988, in the Velasquez Rodriguez case, the Inter-American Court stated the following regarding the duty to investigate:

... it 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 176).

9. The Commission has repeatedly expressed its categorical condemnation of the heinous phenomenon of forcible disappearance of persons, stating in a variety of 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. [FN1]

[FN1] Annual Report 1978, 1980-81, 1982-83, 1985-86, 1986-87.

10. In a number of resolutions, the General Assembly of the Organization of American States has emphasized that countries in which forcible disappearances have occurred must put an end to this practice immediately, and has urged the governments to take the necessary measures to determine the status of these persons. The General Assembly of the Organization has also declared that forced disappearance of persons is an affront to the conscience of the hemisphere and constitutes a crime against humanity. [FN2]

[FN2] Annual Report 1978, 1980-81, 1982-83, 1985-86, 1986-87.

11. In a judgment of July 29, 1988 in the Velasquez Rodriguez case, the Inter-American Court of Human Rights declared the following:

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).

12. Since the friendly settlement procedure provided for in Article 48.1.f of the American Convention on Human Rights is not applicable given the nature of the events denounced, the Commission must comply with the provisions of Article 50.1 of the Convention and set forth its conclusions and recommendations on the petition submitted to it for consideration.

13. That on February 3, 1993 the Government of Peru presented its observations on Report 21/92 noting that Teofilo Rimac Capcha was captured by Military Police Commando of Cerro de Pasco on June 22, 1986 and that on June 27 he escaped and his whereabouts are presently unknown.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
CONCLUDES:

1. To declare that the Government of Peru is responsible for violations of the rights to life, humane treatment, personal liberty and judicial protection, recognized in articles 4, 5, 7 and 25, respectively, of the American Convention on Human Rights, as a consequence of acts committed by agents of the Peruvian State who unlawfully deprived Teofilo Rimac Capcha of his freedom in the city of Cerro de Pasco, department of Pasco, on June 23, 1986, and then tortured him to death and engineered the disappearance of his body.

2. To declare that the Government of Peru has not complied with the obligation to respect human rights and guarantees, which obligation is imposed under 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 a fair compensation to the victim's next-of-kin.

4. To recommend to the Government of Peru that it conduct a thorough investigation of the facts denounced in order to clarify the circumstances of the arrest, establish the victim's whereabouts, identify the persons responsible and bring them to justice so they might receive the punishment that such reprehensible conduct warrants.

5. To request the Government of Peru to adopt effective security measures to protect the life and physical safety of the witnesses and the victim's family.

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 Peru did not adopt measures to correct the situation denounced, within the time period stipulated in Report No. 21/92.