

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 40/97; Cases 10.941, 10.942, 10.944, 10.945
Session:	Ninty-Eighth Regular Session (17 February – 6 March 1998)
Title/Style of Cause:	Camilo Alarcon Espinoza, Sara Luz Mozombite Quinonez, Jeronimo Villar Salome, Alvaro Hachiguy Izquierdo and Daniel Huaman Amacifuen v. Peru
Doc. Type:	Report
Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume.
Dated:	19 February 1998
Citation:	Alarcon Espinoza v. Peru, Case 10.941, Inter-Am. C.H.R., Report No. 40/97, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
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

I. BACKGROUND

A. The Complaint

a) Disappearance of Luz Mozombite Quiñonez and Camilo Alarcón Espinoza

1. On September 17, 1991, the Inter-American Commission on Human Rights ("the Commission") received a communication against Peru (herein after "the Peruvian State," the "State" or "Peru") denouncing that at 11 a.m. on August 8, 1991, Luz Mozombite Quiñonez and Camilo Alarcón Espinoza had been detained by members of the Peruvian army from the Aucuyacu district barracks. They were detained at the Sangapilla crossroads in Aucuyacu and, according to the communication, subsequently taken to the Aucuyacu barracks. On August 13, 1991, Camilo Alarcón's clothes were found in the Huallaga river. That same day, Sara Luz Mozombite's head was found on the shore of the river, while the rest of her body was found several kilometers downstream.

2. Camilo Alarcón Espinoza was 28 years old at the time of his disappearance. He was unmarried, with a son, and he had arrived to work in Aucuyacu two weeks before he disappeared. Sara Luz Mozombite Quiñonez was 19 years old, had a son, and had been an evening student at the Inca Huaricocha school in Ayacucho.

b) Disappearance of Jerónimo Villar Salomé, Alvaro Hachiguy Izquierdo and Daniel Huamán Amacifuen

3. In the same communication, the Commission received the denunciation of the disappearances of Jerónimo Villar Salomé, Alvaro Hachiguy Izquierdo and Daniel Huamán Amacifuen.

4. Jerónimo Villar Salomé was detained, by soldiers from the Aucuyacu barracks, at Sangapilla, Aucuyacu at 11.30 p.m. on August 16, 1991 when he came out of a meeting of the town council without his identity documents. Witnesses say he was taken to the Upper Huallaga Project military barracks.

5. Alvaro Hachiguy Izquierdo was detained, by Peruvian army personnel, at 3 a.m. on September 6, 1991 when he came out of a meeting being held in the Aucuyacu town council building, and taken to the military barracks in that town.

6. Daniel Huamán Amacifuen was detained, by Peruvian army soldiers, at 10 p.m. on September 7, 1991 two blocks away from the Aucuyacu town council building and taken to the military barracks in that town.

7. In all these instances, the petitioners point out that they filed Habeas Corpus writs and denunciations with the competent administrative authorities, but had received so far no official response from the Government to their requests.

B. Alleged violations

8. The petitioners indicate that the alleged facts constitute cases of forced disappearance, in which the Peruvian State is responsible for violation of Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights.

II. PROCESSING BY THE IACHR

9. The denunciations were received by the Inter-American Commission on Human Rights on September 18, 1991 and registered under the numbers 10.941 (Camilo Alarcón Espinoza and Sara Luz Mozombite), 10.942 (Jerónimo Villar Salomé), 10.944 (Alvaro Hachiguy Izquierdo) and 10.945 Daniel Huaman Amacifuen. In view of the fact that the allegations made in these four petitions are essentially similar, being related in terms of origin, the region in which the events occurred, the dates they occurred, and the fact that they involved the same State agents acting in a manner that implies they were implementing State policy, the Commission decided to combine complaints in order to resolve them together, pursuant to article 40 (2) of its Regulations.

10. Having received the denunciation, without prejudging its admissibility, the Commission transmitted the pertinent parts of it to the Government of Peru in a communication dated September 18, 1991, requesting it to submit the corresponding information.

The reply of the Peruvian State

11. In a note dated November 8, 1991, the State of Peru replied to the Commission and indicated that "the Joint Chiefs of Staff have reported that the citizens mentioned were not detained by Peruvian army personnel."

12. On December 16, 1991, the Commission transmitted the Government's reply to the petitioners, asking them to submit their observations within 45 days.

Observations by the petitioners

13. On February 10, 1992, the Commission received the petitioners' observations regarding the Government's reply. In their replies, the petitioners stated:

The Leoncio Prado province is under military control as a result of the State of Emergency imposed by Supreme Decree 031 of June 14, 1991, published in the government gazette "El Peruano" on June 21, 1991.

That Supreme Decree suspended the individual guarantees contemplated in paragraphs 7, 9, and 20 of Article 2 of the Political Constitution of the Republic (inviolability of the home, freedom of residence, freedom of association, and right to personal freedom)

The petitioners state that they have exhausted domestic remedies, since they went to the Public Ministry (Ministerio Público) and to the judicial authorities to make inquiries regarding the whereabouts of Camilo Alarcón, Sara Luz Mozombite Quiñonez, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo and Daniel Huamán Amacifuen, and have not received from those institutions any information regarding the results of their inquiries.

14. The petitioners state that they invoked domestic remedies as follows:

a) Vis-à-vis the Public Ministry:

On August 22, 1991, they lodged petitions for investigations regarding Sara Luz Mozombite Quiñonez and Camilo Alarcón Espinoza with the Provincial Prosecutor for Leoncio Prado, the Senior Departmental Prosecutor for Húanuco, and the Special Human Rights Prosecutor. On August 22, 1991, the petition was also lodged with the Supreme Assistant Prosecutor in Criminal Matters in charge of the Special Attorney's Office for the Defense of the People and Human Rights.

15. When Sara Luz Mozombite's head and then the rest of her body were found on the shores of the Huallaga river, further requests for an investigation were lodged with the state authorities. The Prosecutor's Office was also informed that Camilo Alarcón Espinoza's clothes had been found.

16. On September 18, 1991, the Provincial Prosecutor for Leoncio Prado and the Senior Departmental Prosecutor for Húanuco were again urged to investigate the detention of Camilo Alarcón Espinoza, and Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo and Daniel Huamán Amacifuen, people who had subsequently been detained and were likewise missing. On

September 20, the Provincial Prosecutor and the Senior Departmental Prosecutor for Húanuco were requested to investigate the murder of Sara Luz Mozombite Quiñonez. For lack of replies to these written requests, the petitioners demanded on September 18, 1991 that Peru's Attorney General initiate an investigation.

17. The petitioners state that, after all their written requests, they were only once notified, on January 21, 1992, that the above-mentioned disappearances were under "investigation". (Note N-049-92 MP-FN-FEDPDH-DH sent to the petitioners by the Supreme Assistant Prosecutor.)

18. The petitioners point out that the various government officials in the Public Ministry have failed to carry out any investigation into the denunciations. The witnesses of what happened have not been interviewed. Nor have they any knowledge that the various attorneys have carried out an inspection of the military base in Aucuyacu or interviewed or interrogated the officers in charge of that base or their subordinates. The evidence that could help clarify the cases has not been gathered by the Public Ministry. In the petitioners' view, the Public Ministry commonly fails to act in cases involving members of the Army, thereby allowing violations of human rights to go unpunished.

b) Judicial remedies

19. On August 22, 1991, the petitioners filed a Habeas Corpus writ on behalf of Sara Luz Mozombite Quiñonez and Camilo Alarcón Espinoza with the investigating Judge for Leoncio Prado, directed against the head of the military base in Aucuyacu.

20. On September 18, 1991, they filed another Habeas Corpus writ on behalf of Camilo Alarcón, and of Jerónimo Villar Salomé, Alvaro Huachiguy Izquierdo and Daniel Amacifuen with the investigation Judge for Leoncio Prado.

21. The above-mentioned judicial actions led nowhere and to date the petitioners have not been notified officially as to the concrete steps undertaken by the judge to locate the disappeared persons.

c) Vis-à-vis the military authorities

22. The above-mentioned occurrences were denounced to the head of the military base in Aucuyacu and to the head of the Political-Military Command in San Martín on August 22, 1991. Subsequently, a further communication was presented on September 18, 1991, updating the information available regarding the disappeared persons, including the discovery of the head and then the body of Sara Mozombite Quiñonez, and of Camilo Alarcón Espinoza's clothes. That information was also submitted to the Ministry of Defense on September 20, 1991.

23. According to the petitioners, on October 29, 1991, the Ministry of Defense replied to the last communication by providing a report by the Joint Chiefs of Staff of the Armed Forces which stated that the citizens referred to had not been detained by Peruvian army personnel.

24. Finally, the petitioners request recognition of the fact that domestic remedies have been exhausted and that the Peruvian State is responsible for the violations denounced.

25. The observations made by the petitioners were transmitted to the Government in notes dated March 12, 17, and 19, 1992.

Further observations by the State of Peru

26. On August 10, 1992, the State of Peru presented a communication notifying the Commission of a report by the Ministry of Defense of Peru indicating that Huamán Amacifuen had not been detained by the Peruvian army and that in order to reach that conclusion:

. . . the Joint Chiefs of Staff of the Armed Forces relied on the investigation and inquiries ordered by the Political-Military Command in the Huallaga valley in the district where the alleged events occurred in order to verify the whereabouts of citizen Huamán Amacifuen.

27. On December 9, 1992, the Commission received a communication from the State of Peru regarding Cases Nos. 10.941, 10.942 and 10.944, ratifying that citizens Camilo Alarcón Espinoza, Sara Luz Mozombite, Jéronimo Villar Salomé and Alvaro Huachiguy Izquierdo had not been detained by the security forces.

28. The Government submits further information from the Justice of the Peace, Governor, and National Police based in Aucuyacu, certifying that in their respective spheres there exist no denunciations regarding the disappearances, kidnapping, or detention of the above-mentioned citizens. It encloses copies of those reports.

29. The observations presented by the State were forwarded to the petitioners on August 12, December 22 and 29, 1992.

Further observations by the petitioners

30. In a note dated February 22, 1993, the petitioners submitted their observations to the Government's reply indicating that that reply revealed a lack of seriousness and of any genuine intention to investigate the disappearances. The inquiries made are merely formal procedures that, in the petitioners' view, demonstrate the State's tolerance of such grave occurrences.

31. The petitioners point out that the State has not disproved the arguments and testimony proving that Camilo Alarcón Espinoza, Jéronimo Villar Salomé, Alvaro Huachiguy Izquierdo, and Sara Luz Mozombite Quiñonez were detained. They say that the State denies that members of the security forces took part in the detention and tries to prove that by exhibiting documents issued by authorities who are not responsible for verifying the disappearance of the victims. This shows, they say, the lack of any serious State effort to clarify what happened.

32. According to the petitioners, the remedies under domestic jurisdiction have proved to be totally ineffective as regards the protection of the victims' rights. The petitioners filed Habeas Corpus writs with the Investigating Judge for Leoncio Prado on August 22, 1991. Since then the

petitioners have received no official communication regarding the status of those writs or the steps taken to locate the victims. They say that the same applies to a Habeas Corpus writ filed on September 18, 1991.

33. The petitioners also point out that they denounced what had happened to the Public Ministry and that that institutions notified them, in a document transmitted by the Supreme Prosecutor in Criminal Matters in charge of the Special Attorney's Office for the Omibudsman on January 21, 1992, that the denunciations of the detention of Camilo Alarcón Espinoza, Jéronimo Villar Salomé, Alvaro Huachiguy Izquierdo, Daniel Huamán Amacifuen and Sara Luz Mozombite Quiñonez were being investigated. Subsequently, the prosecutors attached to the Public Ministry have provided no further information on the state of the investigations.

34. The petitioners conclude by stating that the State seeks to corroborate its claim that the military based in Aucuyacu were not responsible for the events denounced with a certificate issued by the Justice of the Peace, the Governor, and National Police. They point out that those authorities have no jurisdictional functions in criminal matters and therefore lack competence to investigate the crimes denounced.

35. The document issued by the National Police in Aucuyacu certifying that no detention was registered is, according to the petitioners, totally invalid. They argue that it is inadmissible because "there is no formal system for registering detention in Peruvian police stations". Moreover, the petitioners point out, the victims were detained in an illegal and clandestine fashion, which explains why it there is no official registration or admission. Finally, the detention was not carried out by police officers but by army personnel, so that a police certificate denying detention is meaningless in these cases.

36. Finally, the petitioners request that the Peruvian State be held responsible for violating the right to life, humane treatment, and personal liberty recognized under articles 4, 5, and 7 of the American Convention on Human Rights read in conjunction with to article 1.1 of that Convention. To that end, they request that the Commission recommend that the State of Peru pay fair compensation to the relatives of the victims and carry out an effective investigation into the events denounced and those who allegedly perpetrated them, with a view to clarifying the circumstances and identifying those responsible for the disappearance and extrajudicial execution of Camilo Alarcón, Jerónimo Villar Salomé, Alvaro Huachiguy Izquierdo and Sara Luz Mozombite Quiñonez.

37. In a note dated March 31, 1993, the Commission transmitted the pertinent parts of the observations made by the petitioners to the State of Peru. On December 27, 1993, the petitioners' comments were again transmitted to the State, which was asked to submit its final observations within 45 days.

Additional observations of the Peruvian State

38. In a note dated September 23, 1994, the State of Peru presented its final observations in the case of Daniel Huamán Amacifuen. The State of Peru submitted a report from the Ministry of Defense of Peru which states that "the armed security forces have not detained citizen Daniel

Amacifuen". It enclosed a certification from the 1st and 2nd joint Provincial Prosecutor's Office for Leoncio Prado, which states that there are no denunciations against Peruvian army personnel for alleged violations of the human rights of Huamán Amacifuén.

III. ADMISSIBILITY

Presentation by the prescribed deadline

39. The denunciation was lodged within the period contemplated in articles 46.b of the Convention and 38.1. of the Regulations.

Jurisdiction

40. In accordance with Article 44 of the American Convention on Human Rights, to which Peru is a State Party, the Commission is competent to consider these cases since they claim alleged violation of rights guaranteed by articles 4, 5, 7, and 25 of the Convention, with regard to the right to life, humane treatment, personal freedom, and the right to a fair trial, and by articles 1.1, 2 and 43 regarding the duty of States to respect and apply the Convention, to adopt measures under domestic law to give effect to the provisions set forth in the Convention, and to provide the Inter-American Commission on Human Rights with the requisite information.

Formal requirements

41. The denunciations fulfill the formal requirements for admissibility established in Article 46.1 of the Convention and Article 32 of the Regulations of the Commission.

The lack of other proceedings and the requisite of cosa juzgada.

42. This case is not pending in another international proceeding for settlement, nor is it substantially the same as a petition previously studied and settled by the Commission.

Exhaustion of domestic remedies

43. The Inter-American Court of Human Rights has established, regarding the exhaustion of domestic remedies, that "...in keeping with the object and purpose of the Convention and in accordance with an interpretation of article 46 (1) (a) of the Convention, the proper remedy in the case of the forced disappearance of persons would ordinarily be habeas corpus, since those cases require urgent action by the authorities (and is)... the normal means of funding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty...". (Caballero Delgado and Santana Case. Preliminary Objections. Judgment of January 21, 1994, para. 65, and Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 64).

44. Applying this judgment by the Inter-American Court of Human Rights, just the fact that a habeas corpus writ was filed in the case of persons detained and subsequently disappeared with negative results because the victims have still not been located is sufficient to show that domestic

remedies have been exhausted (Caballero Delgado and Santana case, Preliminary Objections, op.cit. paragraph 67).

45. Furthermore, according to the Inter-American Court of Human Rights, the domestic remedies have to be effective. That is to say, they should be able to ensure the end for which they were devised. In the case we are dealing with, the persons concerned disappeared in August and September 1991. Complaints were lodged before the competent domestic authorities on several occasions at various levels of the Public Ministry and before the competent jurisdictional authorities. Five years have elapsed and no information is available regarding the findings of the criminal investigations carried out by the prosecutors in charge of the case. Despite the existence of eye-witnesses and clear indications that the agents involved were Peruvian army soldiers from the military barracks in Aucuyacu, no efforts have been made to investigate this matter. The only information provided has been that the case is under investigation.

46. Criminal proceedings are at a standstill because, despite investigation by domestic competent bodies, the whereabouts of the disappeared persons has not been determined nor has any headway been made in clarifying the events denounced. The end result of both procedures (the habeas corpus writ and the criminal proceedings) is proof enough that domestic resources were ineffective and inadequate. Neither procedure managed to locate the victim, nor have the investigations managed to lead to identification, trial, and punishment of those guilty of the criminal act.

47. The Government is duty-bound to show the existence and effectiveness of appropriate domestic remedies for the protection of the victims' rights. In the case at hand, the Government did not allege that domestic remedies had not been exhausted and the evidence available suggests that domestic remedies are totally unsuitable for protecting the fundamental rights of victims. (Velásquez Rodríguez case. Preliminary Exceptions, Judgment of June 26, 1987 para. 88). For that reason, with regard to the requirement that domestic remedies be exhausted, the Commission considers that this is a case to which the exception contemplated in Article 46.2 of the Convention applies, whereby the petitioner is exonerated from the requirement to first invoke and exhaust domestic remedies.

Friendly Settlement

48. The friendly settlement procedure envisaged in Article 48.1.f of the Convention and in Article 45 of the Regulations of the Commission was proposed by the Commission to the parties but no agreement was reached.

49. Given the inapplicability of the friendly settlement procedures established in article 48.1.f of the American Convention, the Commission proceeded in accordance with article 50, paragraph 1 of the Convention, and issued its conclusions and recommendations regarding the complaint submitted for consideration.

IV. PROCEEDINGS AFTER COMMISSION ADOPTION OF THE ARTICLE 50 REPORT

50. Pursuant to article 50 of the Convention, the Commission on March 11, 1997, during its 95th period of sessions, approved report 18/97 concerning the present case.

51. By letter dated April 28, 1997, the Commission transmitted a copy of its article 50 decision on this case to Peru and requested that the State provide information regarding steps taken to carry out the recommendations of the Commission, and advised them that they were not at liberty to publish the report since it was still confidential.

52. By Note No. 7-5-M/271 dated August 1, 1997, Peru presented its observations on the Commission's confidential report. These observations did not refer to steps which the State had taken to carry out the recommendations of the Commission, but challenged the Commission's conclusion that members of the military had been responsible for the detention and deaths of the victims and stated that if members of the security forces had been found to be responsible that the amnesty laws would have applied to them.

V. THE MERITS

A. Proven facts

53. The petitioners denounced to the Commission the disappearance of Camilo Alarcón Espinoza, Jerónimo Villar Salomé, Alvaro Huachiguy Izquierdo, Daniel Huamán Amacifuén and Sara Luz Mozombite Quiñonez and informed the Commission that those possibly responsible were members of the Peruvian Army stationed in the military base in Aucuyacu.

54. The occurrences denounced by the petitioner were contested by the State, which replied that after various investigations carried out by the Army and National Police the persons mentioned had not been detained by the Peruvian State's security forces. To prove its point, the State of Peru presented a note by the Joint Chiefs of Staff of the Armed Forces dated November 8, 1991, stating that the persons mentioned above had never been detained. Likewise, the Government submitted various certificates testifying that Camilo Alarcón Espinoza, Jerónimo Villar Salomé, Alvaro Huachiguy Izquierdo, Daniel Huamán Amacifuén and Sara Luz Mozombite Quiñonez had not been detained by the State and that there were no judicial files regarding their disappearance.

55. The contradiction between the Government's version and that of the petitioner calls for detailed analysis of the evidence at hand. In this case the Commission has sufficient evidence with which to establish the disappearance of the victim and the veracity of the events denounced. In effect, the statements of eye witnesses and those of relatives of the victims coincide in the assertion that the victims were detained by soldiers from the military barracks in Aucuyacu.

56. Furthermore, the petitioners have shown the Commission copies of the various denunciations lodged with prosecutors in order to get them to investigate the detention and disappearance of these people. Thus, the petitioner enclosed a copy of a denunciation dated August 22, 1991 and lodged with the Supreme Assistant Prosecutor in Criminal Matters in charge of the Special Prosecutor's Office of the Ombudsman. The petitioner also enclosed copies

of the requests made on the same date to the Provincial Prosecutor for Leoncio Prado and the Senior Departmental Prosecutor for Húanuco.

57. On August 13, 1991, Sara Luz Mozombite's head was found, followed, a day later, by the discovery of the rest of her body. Camilo Alarcón's clothes were also found. The State has neither contested nor denied this point. As for the murder of Sara Luz Mozombite, the State has not said what investigations it is carrying out to identify those guilty of this murder nor has it informed the Commission of the current status of the corresponding criminal proceedings.

58. In the absence of a reply by the Public Ministry authorities, a further denunciation was lodged directly with the Attorney General, dated September 18, 1991. This petition was replied to by the Assistant Attorney General in note N-049-92 MP-FN-FEDPDH-DH, dated January 21, 1992. In this letter, the Attorney General restricted himself to stating that the cases of Sara Luz Mozombite, Jerónimo Villar Salomé, Alvaro Huachiguy Izquierdo, Daniel Huamán Amacifuén and Camilo Alarcón were "under investigation".

59. In order to refute the claims of the petitioners, in its reply dated December 9, 1992, the State of Peru enclosed "statements issued by the local authorities, the Justice of the Peace, Governor, and National Police certifying that in their respective spheres that there is no record of any denunciations regarding the disappearance, kidnapping, detention and arrest of Sara Luz Mozombite and Camilo Alarcón Espinoza, which corroborates the previous report's statement that the citizens mentioned were not detained".

60. The above-mentioned documents submitted by the State are of dubious probative value. Indeed, according to the Peruvian Constitution of 1979--in force at the time of the events we are dealing with--the Public Ministry is supposed to supervise and intervene in the investigation of the crime from the police inquiry stage onwards and to instigate criminal proceedings either of its own accord or at the request of one of the parties. Consequently, the Public Ministry is the appropriate organ to carry out an investigation into the illegal detention of a person. Nevertheless, the State of Peru has not provided a complete and detailed report by senior staff at the Public Ministry, nor, specifically, a report by the Attorney General, regarding the non-existence of the denunciations, the status of the investigations, or anything clarifying what happened.

61. On the contrary, the only document regarding the status of investigations into the detention denounced was provided by the petitioners. In this document, the Attorney General reports that the disappearances in question are under "investigation". This document was enclosed with a communication from the petitioner and was not challenged or contested by the Government, for which reason it should be considered as evidence.

62. Furthermore, the petitioner provides a clear and precise description of the habeas corpus writs filed with the Leoncio Prado investigating Judge and encloses copies of those documents. The proofs presented by the State in no way serve to demonstrate that those remedies were not invoked, because the State does not enclose copies or certificates from that Magistrate's office. The statements from the office of the Justice of the Peace which it does enclose may not serve

such a purpose because they emanate from a different jurisdictional organ than that specifically mentioned by the petitioner.

63. Nor does the State enclose copies of the file corresponding to the habeas corpus writ. Thus, the State of Peru has not been able to prove that the habeas corpus remedy served to clarify the whereabouts of the victims. What is more, given that the petitioners have not been notified officially of the final resolution of that action, it may be concluded that no such action was ever carried out.

64. Finally, there exists evidence which would confirm the fact that the persons detained by the Peruvian Army and taken to the military base in Aucuyacu were tortured and probably murdered thereafter.

65. The report presented by the Aucayacu parish reveals that various people were detained and later disappeared by the Peruvian Army, especially in the months of August and September 1991, following an incursion by the Shining Path directed against the military base in Aucuyacu.

66. In a note dated January 9, 1992, the Assistant Attorney General indicates that in the first nine months of 1991 there were 268 denunciations of disappearances, of which only a few were clarified. Most of the detention-disappearances occurred in zones where the subversive groups known as the Tupac Amaru Revolutionary Movement and the Shining Path were active. Forced disappearance of persons was at that time a frequent feature of the counter-insurgency struggle against Sendero Luminoso.

67. One of the disappeared persons (Sara Luz) was found decapitated on the shores of the Huallaga river, while the other victim's clothing was found in the same area. These two circumstances suggest that the victims were detained and subsequently tortured, with a view to interrogation and to obtain information regarding their participation in Sendero Luminoso.

68. The fact that the military authorities deny having carried out the detention thus merely confirms the clandestine nature of the military operations. Detention is neither registered nor officially admitted, in order to make it possible to employ torture during interrogation and if need be to apply extrajudicial punishment to persons considered to be sympathizers, collaborators, or members of the rebel groups.

B. Violation of the victim's rights

69. Camilo Alarcón Espinoza, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo, Daniel Huamán Amacifuen and Sara Luz Mozombite Quiñonez were detained in the months of August and September, 1991 by military personnel from the Aucuyacu barracks. Since then the fate of three of the victims is unknown, including whether they are still alive or not. As for Sara Luz Mozombite, her body was found decapitated, several days after her disappearance.

70. Despite the fact that the events were repeatedly denounced to the Peruvian authorities, the Government has not initiated criminal proceedings with a view to investigating and ascertaining what happened. Nobody has been accused of the crime, despite the fact that the petitioners

provided specific data regarding the identity of those allegedly involved, presumably soldiers from the Aucuyacu barracks.

71. The whole set of circumstances arising out of the events denounced, namely: the detention of the victims in clandestine fashion by military personnel, the lack of information regarding their situation, the failure of the authorities to admit this detention, failure to pursue the habeas corpus actions filed on behalf of the victims, is classified as "forced disappearance".

72. In addition, public functionaries and the State have failed to collaborate in the investigation of the military stationed in Aucuyacu, who have not been investigated, tried, or punished for these occurrences. The indolence and inaction on the part of investigatory bodies and judicial authorities demonstrate that there is an attempt to ensure that these events go unpunished.

73. The practice of forced or involuntary disappearance has been classified by the General Assembly of the Organization of American States as a crime against humanity,[FN1] which violates fundamental rights of human beings, such as personal liberty, humane treatment, the right to a fair trial and due process, and even the right to life.

[FN1] Resolution 666 (XIII-O/83) of the General Assembly of the Organization of American States.

74. Regarding the practice of forced disappearance the Commission has maintained that:

These cruel and inhumane procedures constitute not just arbitrary deprivation of liberty, but also a very serious risk with respect to the physical integrity, safety, and even the life of the person. Moreover, they reduce the victim to a state of complete defenselessness, with grave violation of the rights to justice, protection against arbitrary arrest, and due process.[FN2]

[FN2] IACHR, Ten Years, (1971-1981) OAS 1982. pg. 317.

Right to juridical personality (Article 3 of the Convention)

75. Article 3 of the American Convention on Human Rights states that every person has a right to recognition as a person before the law. When Camilo Alarcón Espinoza, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo, Daniel Huamán Amacifuen and Sara Luz Mozombite Quiñonez were detained by State agents, and then disappeared, they were removed from the legal and institutional order of the State. In that sense forced disappearance implies the negation of a person's very existence as a human being endowed with juridical personality.[FN3]

[FN3] Article 1.1 of the Declaration regarding protection of persons from forced disappearances defines disappearance as "a violation of the norms of international law guaranteeing every human being the right to recognition as a person before the law." {CHECK PRE-EXISTING OR OFFICIAL TRANS.} UN General Assembly resolution 47/133, of December 18, 1992.

Right to life (Article 4 of the Convention)

76. The Inter-American Court of Human Rights has pointed out that the forced disappearance of persons "often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life recognized in Article 4 of the convention." Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 157.

77. In the case of Camilo Alarcón Espinoza, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo and Daniel Huamán Amacifuen, the testimonies and evidence provided show that they were detained by State officials. In addition, their whereabouts are still unknown five years after their detention-disappearance.

78. All these background data lead to the presumption that Camilo Alarcón Espinoza, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo and Daniel Huamán Amacifuen are dead, bearing in mind that more than five years have elapsed since their detention and disappearance and that those responsible are agents of the State. (Velásquez Rodríguez Case. Judgment of July 29, 1988, paragraph 147).

79. In the case of Sara Luz Mozombite Quiñonez, the grotesque circumstances surrounding the discovery of her body (first her head, and the following day her body) permit one to suppose that she was tortured and murdered during her clandestine detention.

80. The jurisprudence of the Court states: "The right to life and the guarantee and respect thereof by States cannot be conceived in a restrictive manner. That right does not merely imply that no person may be arbitrarily deprived of his or her life (...). It also demands of the States that they take all appropriate measures to protect and preserve it (...). The international protection of human rights, as it relates to Article 4(1) of the American Convention on Human Rights, has a preventive dimension, in which the obligation to act with due diligence assumes graver implications when dealing with illegal detentions." (Gangaram Panday Case. Judgment of January 22, 1994. Dissident opinions of Judges Picado-Sotela and Aguiar-Aranguren and Cançado Trindade, paras. 3,4.)

81. Therefore, the Commission considers that the State of Peru has violated the right to life, a fundamental right protected under Article 4 of the Convention which states that "Every person has the right to have his life respected..." and "No one shall be arbitrarily deprived of his life."

Right to humane treatment (article 5 of the Convention)

82. Given that forced disappearance involves violation of multiple rights, implicitly violated is the right to humane treatment of Camilo Alarcón Espinoza, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo, Daniel Huamán Amacifuen and Sara Luz Mozombite Quiñonez.

83. In this regard, the Court has stated that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person." (Velásquez Rodríguez Case. Judgment. (op.cit.) para. 156).

84. There exists, moreover, evidence that leads one to presume that the detainees were tortured, particularly, the condition in which Sara Luz Mozombite Quiñonez's body was found: headless and with torture marks. The conditions under which the victims were held, in secrecy, isolation, and deprived of communication; the defenselessness to which the victim is reduced by preventing or denying him or her any form of protection or safeguards of rights all make torture by the Armed Forces, designed to extract information about subversive groups or gatherings, highly feasible. For these reasons, the Commission ascertains that article 5 of the Convention was violated.

Right to personal liberty (article 7 of the Convention)

85. A detention is arbitrary and illegal when it is practiced for reasons not validly envisaged by law, when it is carried out without observing legal standards, and when powers to detain have been abused, i.e. when a detention is carried out for reasons other than those contemplated and required by law. The Commission has also pointed out that detention for improper purposes is in itself a punishment or sentence, a kind of sentence without trial or extralegal sentence violating the guarantees inherent in the right to a fair trial.

86. In the case at hand, Camilo Alarcón Espinoza, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo, Daniel Huamán Amacifuen and Sara Mozombite Quiñonez were detained illegally and arbitrarily by members of a Peruvian army patrol in Aucuyacu on between August and September 1991. The file also shows that the military authorities systematically denied responsibility for the detention.

87. It is necessary to take into account the context in which the detention took place. Continual incursions by the terrorist group had produced a state of permanent alarm among the population. For that reason, the region had been declared in a state of emergency, based *prima facie* on the Peruvian State's urgent need to combat terrorism. As a result of the state of emergency, article 2.20 g of the Peruvian Constitution of 1979 had been suspended, so that the military were legally empowered to detain people without an order from a competent judge and without there having to be a blatant crime.

88. Despite the *prima facie* legitimacy of this measure, the security forces' power to detain is not unlimited, nor does it permit them to detain citizens arbitrarily. The suspension of the judicial order required to detain someone does not mean that state functionaries are exonerated from the

legal requirements needed to decree such a step legally, nor does it remove jurisdictional controls over the manner in which the detention are carried out.

89. Under the American Convention on Human Rights, suspension of the right to personal liberty may never be total. Underlying any democratic society are principles that the security forces must observe when deciding and carrying out a detention, even under a state of emergency. The legal prerequisites for a detention constitute obligations that state authorities must respect in order to comply with the international commitment to safeguard and respect human rights that their country undertook when signing the Convention.

90. Those prerequisites are, first, that state authorities remain bound by law: people may only be detained if they have taken part, or are suspected of having taken part, in acts classified as crimes. This implies that the security forces must possess signs or evidence substantiating in a rational manner the possible participation of the person concerned in a criminal act.

91. Second, the purpose of a detention by police or military personnel must be to obtain evidence that can serve to bring a criminal charge, or information conducive to finding such evidence. It is important to stress that the State may not impose sentences without the guarantee of a prior trial. In a democratic State subject to the rule of law and respectful of the separation of powers, every sentence must be issued by the judiciary and only after establishing guilt in a completely fair trial. The existence of a state of emergency does not authorize the State to disregard the principle that a person must be presumed innocent until he or she is proven guilty nor does it empower the security forces to exercise an arbitrary and unrestricted *ius puniendi* (right to punish).

92. In this context, article 7.5 of the American Convention sets forth that "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released (...)." Article 7.6 adds: "Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention (...)." The Commission has also pointed out that anyone deprived of his liberty must be kept in officially recognized detention centers and brought promptly before a judge, pursuant to domestic legislation. In case of failure to comply with this legal obligation, the State has the duty to guarantee the detainee the possibility of presenting an effective judicial recourse which permits judicial control over the legality of his detention.

93. The right to be brought before a competent judge is a fundamental guarantee of the rights of every detainee. As the Inter-American Court of Human Rights has pointed out, the judicial supervision over a detention, by means of a writ of habeas corpus, "performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment." (Habeas corpus in emergency situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 35).

94. Precisely for that reason, Article 27 of the American Convention on Human Rights established that there can be no suspension of the judicial guarantees essential for the protection of non-derogable rights. As the Inter-American Court of Human Rights has pointed out: "[F]rom Article 27 (1), moreover, comes the general requirement that in any state of emergency there be appropriate means to control the measures taken, so that they are proportionate to the needs and do not exceed the strict limits imposed by the Convention or derived from it." (Judicial guarantees in states of emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 21).

95. The judicial nature of such means "implies the active involvement of an independent and impartial judicial body having the power to pass on the lawfulness of measures adopted in a state of emergency." (Habeas corpus, *op.cit.*, para. 30) "But it must also be understood that the declaration of a state of emergency --whatever its breadth or denomination in internal law-- cannot entail the suppression or ineffectiveness of the judicial guarantees that the convention requires the States Parties to establish for the protection of the rights not subject to derogation or suspension by the state of emergency." (Judicial guarantees, *supra*, para. 25.).

96. This includes also --according to the Inter-American Court of Human Rights-- the right to legal due process contained in article 8, which "includes the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination." [FN4] (Judicial guarantees, *ibid.*, para. 28). The Court has concluded that "the principles of due process of law cannot be suspended in states of exception insofar as they are necessary conditions for the procedural institutions regulated by the Convention to be considered judicial guarantees." [FN5] (*ibid.*, para. 30).

[FN4] *Ibid.*

[FN5] *Ibid.*

97. The Peruvian State has violated its obligation to institute effective judicial mechanisms capable of protecting persons from illegal detention and violation of their physical integrity. It is now evident that the judicial authorities did not take the necessary steps to locate the persons detained. In particular, there is no evidence that the judge responded to the habeas corpus writ by entering the military base and verifying whether the persons indicated were being held arbitrarily.

98. The Commission concludes that the Peruvian State is responsible for having violated the right to personal liberty and security, by arbitrarily imprisoning Peruvian citizens Camilo Alarcón Espinoza, Jerónimo Villar Salomé, Alvaro Hechiguy Izquierdo, Daniel Huamán Amacifuen and Sara Mozombite Quiñonez. It also violated their right to recourse to a competent judge or court to rule on the legality of their detention, as established in Article 7 of the American Convention on Human Rights.

Right to Judicial Protection (Article 25 of the Convention)

99. Judging by the information submitted by the parties, it has been ascertained that the Peruvian State failed to investigate and initiate judicial proceedings in this case.

100. The Inter-American Court of Human Rights has stated that the principles of international law "refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46(2)." (Velásquez Rodríguez case, Judgment, *op.cit.*, para. 63). It has explained further that the requirement of an effective and not a formal remedy, implies not just an exception to the exhaustion of domestic remedies but also a violation of article 25 of the Convention. (Velásquez Rodríguez case. Preliminary Objections. Judgment of June 26, 1987, para. 91).

101. Criminal proceedings under the domestic laws of the Peruvian State have consisted of nothing more than formal and irrelevant paperwork and the investigations have not cast even the slightest light on who was responsible for the detention and for the cruel and barbaric murder of Sara Luz Mozombite Quiñonez. Nor did the Habeas Corpus action brought on behalf of the other victims yield any positive results. It turned out in practice to be a totally useless recourse. Six years after the events, their situation is still uncertain.

102. Peruvian law requires that the Public Ministry is to intervene in the investigation of crimes and to initiate criminal proceedings. Consequently, it should foster and take all the necessary steps (presentation of evidence, inspections, and whatever) to establish the veracity of the denunciation, and, where appropriate, to identify those presumably responsible and bring criminal charges against them.

103. The jurisprudence of the Inter-American Court of Human Rights confirms the provisions of domestic law when it refers to the obligation of States and sets forth in relation to what was mentioned in the previous paragraph that: "The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation." (Velásquez Rodríguez case. Judgment *op.cit.*, para. 174).

104. The State may not elude, under any pretext whatsoever, its duty to investigate a case involving violation of fundamental human rights. The Court says as much when it states that 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 (...) family (...) without an effective search for the truth by the government." (Velásquez Rodríguez case. Judgment, *ibid.*, para 177).

105. These aspects of how criminal inquiries and the Habeas Corpus writ were handled under domestic law constitute a violation by the Peruvian State of Articles 8 and 25 of the Convention.

C. On the obligation of States to guarantee and respect rights

106. In this case it has been demonstrated that the Peruvian State has not complied with the prescription in Article 1.1. that [States Parties undertake] "to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms." For that reason the Peruvian State is deemed to have violated the rights contemplated in Articles 4, 5, 7, 8, and 25 of the Convention.

107. The first obligation of States, in light of article 1.1, is to respect the rights and freedoms of all persons subject to their jurisdiction. Referring to this obligation, the Court stated that: "under international law a State is responsible for the acts of its agents (...) and for their omissions, even when those agents act outside the sphere of their authority or violate internal law." (Ibid., para. 170). It held, furthermore, that "any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State." (Ibid., para. 172).

108. The Commission concludes that the disappearance of Camilo Alarcón, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo, and Daniel Huamán Amacifuen, the disappearance and extrajudicial execution of Sara Mozombite, and the subsequent refusal to administer justice, are public acts perpetrated by State agents, which means that the Peruvian State violated the rights of the victim contemplated in Article 1.1. in relation to violations of Articles 3, 4, 5, 7, 8, and 25 of the Convention.

109. The second obligation envisaged in article 1.1 is to ensure free and full exercise of the rights and freedoms recognized in the Convention. The jurisprudence of the Court establishes that: "This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention (...)." (Velásquez Rodríguez case. Judgment, op.cit., para. 166).

110. In the event of a "forced disappearance", the State is duty-bound to establish the fate and current circumstances of the victim, punish those responsible, and compensate the victim's relatives. In the case at hand, those obligations have not been met. For that reason, the Commission concludes with the determination that the State of Peru has violated Article 1.1, because it failed to safeguard the exercise of the rights and guarantees of Camilo Alarcón Espinoza, Jerónimo Villar Salomé, Alvaro Hachiguy Izquierdo, Daniel Huamán Amacifuen and Sara Luz Mozombite Quiñonez.

111. On the basis of the findings set forth in this report, the Commission has arrived at the following conclusions and recommendations:

VI. CONCLUSIONS

i. That Peruvian Army soldiers stationed at the Aucuyacu District Military Base secretary detained Camilo Alarcón Espinoza, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo, Daniel Huamán Amacifuen and Sara Luz Mozombite Quiñonez, and that, therefore, the Peruvian State

is responsible for violating the right to juridical personality (article 3), the right to life (article 4), the right to humane treatment (article 5), the right to liberty (article 7) and the right to due process (article 8) of the American Convention on Human Rights, as well as the general obligation to respect and ensure the exercise of these rights set forth in the Convention.

ii. That the State of Peru is responsible for the violation of the right to an effective judicial remedy (article 25) and has failed to comply with the general obligation to respect and ensure the exercise of the rights set forth in the Convention.

VII. RECOMMENDATIONS

i. Recommends that the Peruvian State, through the competent organs, to reactivate the investigation into the case in order to establish the whereabouts of Camilo Alarcón, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo, and Daniel Huamán Amacifuen, to identify those responsible for illegally detaining and murdering Sara Mozombite Quiñonez, and, through appropriate criminal proceedings, to punish those responsible for these events.

ii. Recommends that the Peruvian State consider without force any domestic measure, be it legislative or of some other nature, tending to prevent the investigation, trial, and punishment of those responsible for the detention and disappearance of Camilo Alarcón, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo, Daniel Huamán Amacifuen and Sara Mozombite Quiñonez. To that end, the Peruvian State should declare Laws Nos. 26.479 and 26.492 to be without force.

iii. Recommends that the Peruvian State proceed to compensate the relatives of the victims for violation of the human rights of Camilo Alarcón, Jéronimo Villar Salomé, Alvaro Hachiguy Izquierdo, Daniel Huamán and Sara Luz Mozombite Quiñonez and for the suffering derived from not knowing the fate of the victims (which in itself constitutes cruel and inhumane treatment).

VIII. PUBLICATION

112. The Commission considered this case again during its 97th regular session, and on October 16, 1997, it adopted Report No. 40/97, its article 51 report on the case and transmitted it to the State of Peru on October 29, 1997. The Commission requested Peru to adopt reparatory measures in this case within a period of two months from the date of transmittal, in order for it to decide on the publication of the report.

113. The Peruvian State replied to the Commission by Note 7-5-M-466 dated December 29, 1997 in which the Government stated that it reaffirmed its conclusions set forth in Note No. 7-5-M/271 of August 1, 1997. The Commission considered this case again during its 98th regular session and on February 19, 1998 it took the decision to publish this Report.

114. In virtue of the fact that the Peruvian State responded expressing its decision to not comply with the recommendations issued by the Commission for the reasons expressed therein, and in conformity with articles 51.3 of the American Convention and 48 of its Regulations, the

Commission decides to reiterate the conclusion and recommendations in chapters VI and VII supra, to make public the present report and to include it in its Annual Report.