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| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 19/05; Petition 54/04 |
| Session: | Hundred Twenty-Second Regular Session (23 February – 11 March 2005) |
| Title/Style of Cause: | Valdemir Quispialaya Vilcapoma v. Peru |
| Doc. Type: | Decision |
| Decided by: | President: Clare K. Roberts; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Jose Zalaquett, Evelio Fernandez Arevalos, Freddy Gutierrez, Florentin Melendez. In accordance with the provisions of Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Susana Villaran, a Peruvian national, did not participate in either the deliberations or the decision in this case. |
| Dated: | 25 February 2005 |
| Citation: | Quispialaya Vilcapoma v. Peru, Petition 54/04, Inter-Am. C.H.R., Report No. 54/04, OEA/Ser.L/V/II.124, doc. 5 (2005) |
| Represented by: | APPLICANT: the Human Rights Commission |
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I. SUMMARY

1. On February 3, 2004, the Human Rights Commission (COMISEDH) (hereinafter the “petitioner”), submitted a complaint to the Inter-American Commission on Human Rights (hereinafter the “Commission,” “Inter-American Commission,” or “IACHR”), alleging that the State of Peru (hereinafter “Peru,” the “State,” or the “Peruvian State”) violated certain rights enshrined in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) to the detriment of Valdemir Quispialaya Vilcapoma (hereinafter “the victim”), by torturing him and subjecting him to inhumane treatment on January 23, 2002, when he was performing military service with No. 31 Communications Company, December 9 Battalion, the Peruvian Army, in the city of Huancayo, capital of Junín Department. These acts were investigated and tried as abuse of authority by a military criminal court, which ultimately acquitted the noncommissioned officer involved, thereby violating the right to an impartial, competent judge.

2. In its defense, the State of Peru contended that it conducted a criminal trial in the military jurisdiction in this case, since the act in question involved an offense in the course of duty [delito de función] committed by a military officer while serving on a military base, and thus did not constitute the crime of torture.

3. The Commission has concluded in this report that the petition is admissible, since it pertains to alleged violations of the right to humane treatment, the right to a fair trial, and the

right to judicial protection, established in Articles 5, 8, and 25, respectively, all of which are considered in relation to Article 1(1), of the American Convention, and violations of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Valdemir Quispialaya Vilcapoma. It has further decided to notify the parties of this decision, to publish the present report, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. In a communication dated February 3, 2004, COMISEDH lodged a complaint against the State of Peru related to the torture of Valdemir Quispialaya Vilcapoma, as well as to the investigation and trial for the crime of abuse of authority conducted by the military justice system. On April 7, 2004, the IACHR sent a letter to the petitioner acknowledging receipt of the complaint.

5. On May 24, 2004, the Commission opened petition 54-04. On May 25, 2004, it transmitted the pertinent portions to the State, with the request that it provide information. On the same date, it notified the petitioner of its action and requested it to send additional information.

6. In a communication dated July 23, 2004, the State submitted a request for an extension, since the report of the official in question was pending. This extension was granted by the IACHR in a letter dated August 30, 2004.

7. On October 4, 2004, the State submitted Report No. 063-2004-JUS/CND-SE, prepared by the Executive Secretariat of the National Council of Human Rights, in which it responded to the complaint lodged, and included copies of the domestic judicial proceedings. The information submitted by the Peruvian State was transmitted to the petitioner on November 11, 2004. On December 7, 2004, a communication was received from the petitioner in which it submitted its observations on the content of the State's response. These comments were transmitted to the State with a letter dated December 21, 2004, and it was granted one month to submit its observations.

III. POSITIONS OF THE PARTIES

A. The petitioner

8. The petitioner alleged that in November 2000, Valdemir Quispialaya Vilcapoma, a 24-year old youth, began service as a volunteer soldier at "December 9" Army Base in the city of Huancayo, capital of Junín Department, and was sent to serve with No. 31 Communications Company.

9. It further alleged that on January 23, 2002, at approximately 10:00 a.m., members of the No. 31 Communications Company were engaged in a shooting practice, in which first noncommissioned officer of the Peruvian Armed Forces, Juan Ilaquita Quispe, was serving as instructor. During the practice, said officer became annoyed, because Valdemir Quispialaya Vilcapoma was missing the target, and so he insulted and reprimanded him, and told him to improve his marksmanship. When Soldier Quispialaya Vilcapoma did not improve during the

practice, he grabbed his rifle and hit him hard with the butt of the rifle on the forehead and near the right eye. As a result of the violent blow, the soldier fainted and fell to the ground, unconscious. Later on, he warned the alleged victim not to report him, because "...if you do, I will make you disappear." This was not the first time that Valdemir Quispialaya Vilcapoma had been punished by noncommissioned officer Ilaquita Quispe, as he had hit him on the legs and back with a stick on previous occasions.

10. Because of the medical condition of the alleged victim, military physicians had him transferred to the Central Military Hospital in the city of Lima, where he underwent surgery on his right eye. Despite that operation, he suffered an irreparable loss of vision in the right eye.

11. On February 28, 2002, COMISEDH lodged a complaint with the National Prosecutor [Fiscal de la Nación] against noncommissioned officer Juan Ilaquita Quispe, for a crime against humanity in the form of torture. The investigation fell to the Provincial Prosecutor's Office [Fiscalía Provincial] for Criminal Matters in Huancayo, and on October 16, 2003, it announced its decision regarding the complaint against the noncommissioned officer in the Peruvian Armed Forces, Juan Ilaquita Quispe, for the crime of serious injuries. It dismissed the complaint of torture, on the grounds that based on the description of the events given by the injured party and on the legal definition of the crime, the behavior in question did not constitute torture.

12. The complainant filed an appeal [recurso de queja] against that decision to the Fiscal Superior [higher-ranking public prosecutor] in December 2002, and that official decided to expand the complaint by adding the offense of abuse of authority, and to uphold the dismissal of the complaint of torture.

13. In response to the petition filed with the Huancayo Provincial Prosecutor's Office, the Fifth Criminal Court of Huancayo initiated an investigation into the crime of serious injuries, and then expanded the charges to include abuse of authority. It even ordered the arrest of Juan Ilaquita Quispe, but this order was not executed.

14. At the same time, the Fifth Military Court of the Army's Second Judicial Zone instituted proceedings for the crime of abuse of authority against Juan Ilaquita Quispe on the basis of the same acts, and requested the Fifth Criminal Court of Huancayo to stay its proceedings in this case, suggesting a positive conflict of jurisdiction which, under domestic legislation, must be resolved by the Criminal Chamber of the Supreme Court of Justice.

15. The Permanent Criminal Chamber of the Supreme Court of Justice issued a decision on May 12, 2003, in which it ruled on the conflict of venue in favor of the military court, on the grounds that the acts described constituted an offense in the course of duty [delito de función] as they were committed in the line of service, because the shooting practice took place at the facilities of the military base, and noncommissioned officer Ilaquita Quispe was the instructor of that practice not only for the soldier in question, but also for the troops under his responsibility, or in other words he was performing his duties. Consequently, the crime involved was a crime in the course of duty, and comes exclusively under the jurisdiction of the military courts.

16. When the hearing to issue judgment was convened on August 19, 2004, the Military Court acquitted Juan Ilaquita Quispe. This decision was appealed by the military prosecutor, and at the present time it is in the judge's chamber's for review [a despacho para vista].[FN2]

[FN2] Electronic message of January 19, 2003, from the petitioner.

17. The petitioner concludes that the Peruvian State violated Article 8 of the American Convention when it decided in favor of the military criminal court and assigned the trial to that jurisdiction, as it is not an impartial and competent tribunal. It further reiterates that Law 26926 of February 21, 1998 incorporated into the Peruvian Criminal Code Title XIV-A on crimes against humanity, including the crime of torture, which in turn states in its Article 5 that crimes of this sort are to be judged in the courts of the ordinary jurisdiction.

B. The State

18. The State indicated that in general terms it agreed with the factual account of the acts that occurred at the military unit against Valdemir Quispialaya Vilcapoma, and with the judicial proceedings conducted in the ordinary courts and in the military courts[FN3].

[FN3] Report No 63-2004-JUS/CNDH-SE, received on October 4, 2004. I Background information.

19. It stated that in accordance with the Organic Law of Military Justice, Article 4 of Decree-Law 23201, the Supreme Court of Justice is the authority responsible for settling jurisdictional disputes that arise between the military courts and ordinary courts, and that the judgments it issues in these matters are unappealable, and the final recourse in the procedures followed by the petitioner.

20. The principal argument used by the Criminal Chamber of the Supreme Court of Justice to determine the jurisdiction was that the conduct of noncommissioned officer Juan Ilaquita Quispe involved acts performed in his capacity as a noncommissioned officer in the Peruvian Army, in the line of duty and on a military base, and that such conduct therefore constitutes a crime in the course of duty, as it affects exclusively military legal interests and the disciplinary order of the Armed Forces, and should be referred to the military courts and the military code of justice.

21. In accordance with Article 139, paragraph 1, of the Political Constitution, Military Jurisdiction is an exception to the principle of the exclusivity and unity of the Judiciary, and it is restricted in nature and has constitutional limits pertaining to the functional activities of that jurisdiction.

22. The State of Peru points out that in a judgment issued by the Constitutional Court on August 24, 2004 regarding an unconstitutionality case brought by the Ombudsman's or Public

Defenders' Office [Defensoría del Pueblo] against various articles of Law 24150, it found that violations of the jurisdiction of the military courts are violations of its own specific and relevant legal interests related to the existence, organization, operations, and fulfillment of the purposes of the military institution. It further stated that such a violation is a violation of the duty-related obligation that the agent was obliged to maintain, to fulfill, or not to fulfill.

23. The State contends that the author injured a legally protected military interest that implicates the functions constitutionally and legitimately assigned to the Armed Forces and the Police, while the agent was in active service and performing his military duties. These are requirements that must all be met at the time that the act occurs.[FN4]

[FN4] Id. II Considerations.

24. It further states that as the trial against Juan Ilaquita Quispe proceeded under military jurisdiction, the Fifth Military Criminal Court issued Final Report No. 005-2003/5to JMPH-2. ZJE on December 23, 2003. It stated as follows:

VII. Analysis of the Facts

Having concluded the present investigation and evaluated the evidence presented, it is established that the injured party, soldier SM QUISPALAYA VILCAPOMA Valdemir, has a total and permanent loss of vision in the right eye, caused by advanced post-traumatic glaucoma and cataract, as certified in the Medical Report and the Legal Medical Certificate which appear on pages 47 and 95, and that this injury was produced by a blow or contusion in the ocular region of the right eye, as certified by the confirmation and testimony of Corporal San Felix ZAPANA CALISAYA and Dr. Carlos PAZ CABRERA, which can be found on pages 162, 163, 178 and 179. On December 5, 2000, the injured party suffered an accidental blow from an FAL gun to the right eye, which diminished his visual acuity, and on January 26, 2001, he again received a blow from the butt of an FAL to his forehead and the orbital area of his right eye, further impairing his vision, according to the records in the background information section of the Medical Report, the Legal Medical Certificate, and the preventive declaration of the injured party, soldier SM QUISPALAYA VILCAPOMA Valdemir, which appear on pages 47, 95, 70 and 71. As regards the blow from the FAL rifle butt, which the defendant, Soldier HILAQUITA QUISPE Juan, inflicted on the injured party on January 26, 2002, during a shooting exercise, the direct accusation of the injured party is corroborated only by the testimony of former Corporal SM HUAYRA ARANCIBIA Edson, which appears on pages 39, 40 and 41, a piece of evidence which does not irrefutably verify the responsibility of the defendant, when considered together with the 15 statements of testimony by military personnel who were at the shooting practice, who emphatically declared that they had not seen the defendant wield a blow, and that, on the contrary, the injured party had entered the military service with vision problems. This account is corroborated by the statement of Mrs. Hayda Isoliza CONDEZO, director of the Institute Superior Juan Enrique PESTALOZI, where the injured party attended courses prior to entering the military service. (This testimony appears on pages 173 and 174.) Further support comes from the judicial inspection conducted by the ordinary court that was part of the proceeding, which

showed that the Azapampa firing range is an open place, where personnel from the OO, TCOS, and SSOO who were there could have easily seen any abuse. Consequently, in the course of this investigation, it has been proven that the injured party has a loss of vision in his right eye, produced by a blow to the ocular area, that could have been the result of a blow caused by the injured party as he was maintaining his FAL. In any event, since it cannot be irrefutably proven that the defendant was the perpetrator of the blow that occurred during the shooting practice, in application of the principle of *indubio pro reo*, the defendant SO1 OC HILAQUITA QUISPE Juan, is neither responsible nor liable for penal sanctions.

VIII. CONCLUSION

For the reasons set forth, the judge of the Fifth Permanent Military Court of Huancayo is of the OPINION:

That SO1 OC HILAQUITA QUISPE Juan is neither the perpetrator nor responsible for the crime of abuse of authority, established and penalized in Article 180, para. 2 of the Code of Military Justice.

25. Finally, the State reiterates that the facts which have affected the personal integrity of the presumed victim do not constitute a crime of torture but only of serious injuries, in accordance with Article 121 of the Peruvian Penal Code[FN5], since the presumed victim lost the vision of his right eye, which was committed by a government employee. The State argued that the soldier Valdemir Quispialaya Vilcapoma was not in a situation of custody or detention in that moment in order to allege that the conduct in question would be considered torture as the concept has been developed by international consensus. Therefore, the presumed victim would not have exhausted domestic remedies because he still would have the ability to make a criminal denouncement of the crime of serious injuries, because the conduct in question is not prescribed and, in the understanding of the State, in this case the universal principle of *nom bis in idem* is not violated because despite the fact that they would prove the same fact, the abuse of authority, Juan Ilaquita Quispe was investigated, processed, and acquitted by a military court in a judgment issued on August 19, 2004, since the crime of serious injuries is a crime within the jurisdiction of the ordinary courts from which a final judicial decision has not been issued.[FN6]

[FN5] Article 121 – Serious injuries. One that causes serious harm to the body or health of another, will be punished by a deprivation of liberty of no less than three and no more than eight years. Serious injury includes: 1. That which puts the life of the victim in imminent danger. 2. That which mutilates a part or principal organ of the body or which makes that part or organ unable to function normally, which causes a person to be incapacitated for work purposes, which causes a disability or permanent psychological anomaly, or which permanently and seriously disfigures. 3. That which inflicts any other type of damage to bodily integrity or physical or mental health of a person that requires thirty or more days of treatment or rest, according to medical prescription. When the victim dies as a consequence of the injury and the agent could have prevented this result, the sentence will be no less than five but not more than ten.

[FN6] Report 18-2005-JUS/CNDH-SE/CESAPI, January 27, 2005, from the Peruvian government.

IV. ANALYSIS

A. The Commission's jurisdiction *ratione personae*, *ratione temporis*, and *ratione loci*

26. The Commission has jurisdiction to examine the subject matter of this petition, which refers to alleged violations of rights established in Articles 5, 8, and 25 of the American Convention, considered in relation to Article 1(1) of that Convention, and violations of the Inter-American Convention to Prevent and Punish Torture.

27. The petitioner is authorized by Article 44 of the American Convention to lodge complaints with the IACHR. The petition indicates that the alleged victim is an individual, in respect of whom Peru has undertaken a commitment to respect and guarantee the rights enshrined in the American Convention. The Commission there has personal jurisdiction to examine the petition.

28. The State of Peru has been a party to the American Convention since July 28, 1978. Furthermore, Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991. The petition in question refers to events that occurred after the date that these international instruments were ratified.

29. The Commission has jurisdiction of place to consider the petition, because it alleges violations of rights protected by the American Convention that took place within the territory of a state party to that agreement.

B. Requirements for admissibility of the petition

1. Exhaustion of domestic remedies

30. Article 46 of the American Convention states as follows:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;

(...)

2. The provisions of paragraphs 1.a. y 1.b. of this article shall not be applicable when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

(.....)

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

31. The cited provisions of the Convention require the exhaustion of available domestic remedies in accordance with generally recognized principles of international law. The jurisprudence of the Inter-American Court of Human Rights has established that the rule of prior exhaustion of domestic remedies is designed to benefit the state. Hence, it may expressly or tacitly waive pursuit of such remedies. In order to assume that the state has not tacitly waived pursuit of such remedies, this must be stated expressly and opportunely in the initial stages of the processing of the case by the Commission. The presentation of information on the status of domestic judicial proceedings alone is not equivalent to explicit reference to prior exhaustion of domestic remedies.[FN7]

[FN7] Inter-American Court, Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, para. 40; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, para. 40; Castillo Petruzzi Case, Preliminary Objections, Judgment of September 4, 1998, paragraph 56; Mayagna (Sumo) Awas Tingi Case, Judgment of February 1, 2000, paragraphs 54 to 56.

32. Both the petitioner and the State agree that the domestic remedies available with respect to the complaints lodged by the petitioner regarding the jurisdiction of the investigation and the court proceedings in the case in question were exhausted with the judgment issued by the Permanent Criminal Chamber of the Supreme Court of Justice on May 12, 2003, which settled the jurisdictional dispute between the ordinary courts and the military criminal courts.[FN8]

[FN8] Id. footnote 3, II Considerations, 2.3 and COMISEDH Complaint, February 3, 2004, para 35.

33. In the second communication, supra 25, the State argued that the presumed victim did not exhaust the domestic legal remedies, and that he had the meanings to present a criminal denouncement against the subofficial Hilaquita Quispe, for the crime of serious injuries, since there was no final judicial resolution in the ordinary channel, even though it was a matter within its jurisdiction. The State argued that it would violate the non bis in idem principle.

34. For the Commission, those argues are so contradictory that lack convincing support, precisely because a criminal court of the Supreme Judicial Court (Sala Penal de la Corte Suprema de Justicia) defined the conflict of jurisdiction in a resolution of May 12, 2003, in favor of the military justice and considered that the facts constitute a crime committed by a Peruvian subofficial of the Army, while in service "... they solved the conflict of jurisdiction in favor of the Permanent Fifth Military Court in Huancayo - Second Judicial Zone of the Army, where the

case against Juan Hilaquita Quispe, for the crime of serious injuries caused to Valdemir Quispialaya Vilcapoma, would be sent;...”

35. The Commission has stated that whenever a crime is committed that can be prosecuted on the State’s own initiative, the State has the duty to set in motion the criminal justice process, and to follow it through to its ultimate consequences and that, in those cases, this is the suitable way to clarify the facts, prosecute the persons responsible, and establish the corresponding criminal sanctions, in addition to making possible other forms of economic reparation[FN9].. The Commission observed that the Peruvian government has not initiated a new criminal action for the crime of serious injuries, thru the Office of the Prosecutor, as its established on the laws and Constitution[FN10], obligation that can not be transferred to the presumed victim or his family, as a requirement of exhausting domestic remedies[FN11].

[FN9] IACHR, Sport 14-04, Case 11,562, Luís Antonio Galindo Cárdenas, February 27,2004, para. 38. IACHR, Report 83-01, Case 11.581, Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura vs Peru, October 10, 2001, para. 25

[FN10] Political Constitución of Peru, Article 159 and Criminal Process Code, Decree 957, Article IV.

[FN11] IACHR, Report 14-04, Case 11.562, Luis Antonio Galindo Cárdenas, February 27, 2004, para. 38, IACHR Report 52-97, Case 11.218, Arges Sequeira Mangas vs. Nicaragua, February 18, 1998, para. 96.

36. According to the foregoing, the IACHR is of the opinion, based on the statements by the parties and the content of Article 4 of the Organic Law of Military Justice,[FN12] and Article 361 of the Code of Military Criminal Justice,[FN13] that the judgment of the Supreme Court of Justice that settled the conflict of jurisdiction exhausted domestic remedies, as it is not subject to an appeal of any kind.

[FN12] Organic Law of Military Justice, Art. 4°. The Supreme Court of Justice is responsible for : 1. Resolving jurisdictional disputes that arise between Military and Ordinary Courts.

[FN13] Code of Military Justice, Art. 361. Jurisdictional disputes that involve the military jurisdiction shall be resolved: b) By the Supreme Court of Justice, when they arise between military and ordinary courts.

2. Time period for lodging a petition

37. As regards the time period for lodging a petition, the petitioner stated in its very first brief that although the judgment of the Supreme Court of Justice put an end to domestic proceedings, it was issued on May 12, 2003, and they were not notified until September 8, 2003.[FN14] Evidence of this is provided in the annexed copy of the brief requesting photocopies of the judgment, and the photocopy sent with notes and dated September 9, 2003.

[FN14] COMISEDH Petition, February 3, 2004, para. 29.

38. In its initial response after the complaint was forwarded to it, the State did not object to that date. The complaint in this case from COMISEDH was received by the IACHR Secretariat by regular mail on February 3, 2004, which falls within the term of six months from the date on which the alleged victim was notified of the final decision.

39. For these reasons, the IACHR is of the view that the requirements pertaining to the time for lodging the complaint with the inter-American system for protection of human rights, pursuant to Article 46 1(b) of the American Convention, have been met.

3. Duplication of procedures and res judicata

40. The Commission understands that the subject of the petition is not pending in another international proceeding for settlement, and that it is not a replication of a petition already examined by it or another international organization. Consequently, the requirements established in Articles 46 (1)(c) and 47(d) of the Convention have been met.

a. Characterization of the alleged facts

41. The petitioner alleges violations of his rights to humane treatment and to a fair trial, protected in Articles 5 and 8, respectively, of the American Convention, and thus noncompliance by the State of Peru with the international obligation established in Article 1(1) of the Convention.

42. With the elements of proof alleged by the petitioner and the State, the IACHR finds that even though there was a clear, direct complaint of acts of torture against a specific person, i.e., the complaint lodged by COMISEDH with the National Prosecutor [Fiscal de la Nación] alleging a crime against humanity in the form of torture, the State of Peru, through the Huancayo Provincial Public Prosecutor's Office for Criminal Matters, refrained from conducting an official investigation into the events, as it only brought criminal action before a judge for the crime of serious injury, and it rejected the conduct of torture, on the grounds "...that the description of the acts related by the injured party did not constitute [such conduct]." This decision was upheld by the Fiscal Superior, who was of the opinion that it was appropriate to expand the complaint to include the crime of abuse of authority.

43. Subsequently, in view of the jurisdictional dispute initiated by the Judge of the Fifth Military Court of the Second Judicial Zone of the Army, beginning with the investigation into the same acts conducted for the crime of abuse of authority against Ilaquita Quispe, the Supreme Court of Justice ruled that the military courts had jurisdiction to hear the case. This decision also had the effect of supporting the decision not to have the civil courts investigate the alleged conduct of torture, and of determining that what was involved was a crime in the course of duty. This decision in turn exhausted domestic remedies, since such decisions are not subject to appeals of any kind.

44. Given the procedural status of this petition, with the account of the facts by the petitioner, and the fragmented documentation submitted by the State, to which the petitioners claim to have no access to because it is a military case, the Commission is of the opinion that it may ultimately be established, if proof is presented, that the State violated its international obligation, and specifically its obligation to ensure an investigation by the ordinary courts into the acts of torture that were alleged by COMISEDH.

45. Likewise, as the investigation and the criminal proceedings in the case of the acts described in the complaint progress in the military courts, since the case involves conduct that could be covered by the legal definition in Article 321 of the Peruvian Criminal Code,[FN15] as well as Article 2 of the Inter-American Convention to Prevent and Punish Torture,[FN16] which the Peruvian State has signed and ratified (Supra 26), such acts could constitute a violation of Articles 8 and 25 of the American Convention, considered in relation to its Article 5, because of the injuries suffered by the alleged victim.

[FN15] Chapter III: Torture. Article 321. A public servant or official, or any person with their consent, who inflicts serious physical or mental pain or suffering on another person, or who submits another to conditions or methods that obliterate their personality or diminish their physical or mental capacity, even though they do not cause physical pain or mental affliction, for the purpose of obtaining from the victim or a third party a confession or information, or of punishing that person for any act that he may have committed or suspected of having committed, or of intimidating or coercing the person, shall be reprimanded with the punishment of deprivation of liberty for no less than five and no more than ten years. If the torture causes the death of the injured party or produces serious injury and the agent could have foreseen such results, the punishment of deprivation of liberty shall be for no less than eight and no more than twenty years in the first case, and no more than six or less than twelve years in the second one.

[FN16] Article 2. For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures provided that they do not include the performance of the acts or use of the methods referred to in this article.

46. The Commission has consistently maintained that military courts are not the appropriate forum, and therefore do not provide adequate recourse, for investigating, prosecuting, and punishing human rights violations established in the American Convention or in other regional instruments that are allegedly committed by members of police or security forces or with their cooperation or assent.[FN17] In this vein, the Inter-American Court of Human Rights has ruled that in a democratic state under the rule of law, said jurisdiction should have a restricted, exceptional scope, designed to protect special legal interests linked to the functions assigned to

military forces by the law. Consequently, it should only judge soldiers for crimes or misdemeanors which, by their nature, are a violation of the military's own legal interests.[FN18]

[FN17] IACHR, Admissibility Report N° 13/04. Petition 136/03, Eduardo Nicolás Cruz Sánchez et al., Peru, February 27, 2004, paragraph 59. 11,748, Pueblo Bello, Colombia (2002), para. 24; Third Report on the Human Rights Situation in Colombia (1999), p. 175; Second Report on the Human Rights Situation in Colombia (1993), p. 246; Report on the Human Rights Situation in Brazil (1997), pp. 40-42.

[FN18] Inter-American Court, Case of Nineteen Merchants, Judgment of July 5, 2004, Series C No. 109, para. 165. Las Palmeras Case, Judgment of December 6, 2001, Series C No. 90, para. 51; Cantoral Benavides Case, Judgment of August 18, 2000, Series C No. 69, para. 113; and Durand and Ugarte Case, Judgment of August 16, 2002, Series C No. 68, para. 117.

47. At this point, for the purposes of admissibility, the Commission concludes that there is sufficient evidence to sustain the position that the acts, if proven, could constitute violations of human rights, and that the complaint does not qualify as clearly unfounded or obviously without merit.

V. CONCLUSIONS

48. The IACHR has established in this report that it has jurisdiction to examine the petition lodged regarding the alleged violation of the right to humane treatment, to a fair trial, and to judicial protection of Valdemir Quispialaya Vilcapoma.

49. The Commission concludes that the petition is admissible, in accordance with Article 47(a) of the American Convention. On the grounds of the aforementioned factual and legal arguments,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible in relation to Articles 5, 8, 25, and 1(1) of the American Convention and to the Inter-American Convention to Prevent and Punish Torture.
2. To notify the petitioners and the State of this decision.
3. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed by the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 25th day of February, 2005. (Signed): Clare K. Roberts, President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners José Zalaquett, Evelio Fernández Arévalos, Freddy Gutiérrez and Florentín Meléndez.