

**REPORT No. 4/10**  
PETITION 664-98  
ADMISSIBILITY  
RIGOBERTO TENORIO ROCA *ET AL.*  
PERU  
March 15, 2010

**I. SUMMARY**

1. On November 13, 1998, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition that Mrs. Cipriana Huamaní Anampa and the National Committee of Relatives of Detainees, Disappeared and Refugees in Lima [*Comité Nacional de Familiares de Detenidos, Desaparecidos y Refugiados en Lima*] (hereinafter also “the petitioners”)<sup>1</sup> lodged on behalf of Rigoberto Tenorio Roca (hereinafter also “the alleged victim”) in which they alleged that the Republic of Peru (hereinafter also “Peru”, “the State” or “the Peruvian State”) had violated the American Convention on Human Rights (hereinafter also “the American Convention,” “the Convention” or “the ACHR”).

2. The petitioners stated that on July 7, 1984, Rigoberto Tenorio Roca was detained and taken to a Navy Marine garrison in the province of Huanta, department of Ayacucho. His whereabouts are unknown since then. The petitioners asserted that the complaints that the alleged victim’s next of kin filed produced no result in the two criminal inquiries instituted in the courts of ordinary jurisdiction, as those courts declined jurisdiction in favor of the military justice system, which closed them. The petitioners alleged that although the investigations were reopened within the courts of ordinary jurisdiction in 2003, the Public Prosecutor’s Office has still not taken the investigations into the case beyond the preliminary stage. The petitioners observed that although more than 25 years have passed since the disappearance of Rigoberto Tenorio Roca, his whereabouts have still not been established, the case has not been solved, those responsible have not been punished and reparations have not been made to his next of kin.

3. The State described the judicial proceedings conducted into the alleged forced disappearance of Rigoberto Tenorio Roca. It stated that the courts of ordinary jurisdiction declined the criminal case to the military justice system, which further filed them. It pointed out that in 2003, the Office of the First Supra-provincial Criminal Prosecutor of Ayacucho reopened the investigations into the alleged forced disappearance of Rigoberto Tenorio Roca and of other persons, and is taking a number of steps with a view to prosecuting those responsible.

4. After examining the positions of the parties in light of the admissibility requirements set forth in articles 46 and 47 of the Convention, the Commission concluded that it is competent to consider the petition and that it is admissible with respect to the alleged violation of the rights protected under articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to articles 1(1) and 2 thereof, and articles I and III of the Inter-American Convention on Forced Disappearance of Persons. The Commission also decided to notify the parties of this Admissibility Report, to make it public and include it in its Annual Report.

**II. PROCESSING BY THE COMMISSION**

5. The original petition was received on November 13, 1998, and registered as number P 664-98. The petitioners filed additional communications on February 1, 2007 and May 14, 2008.

6. In keeping with Article 30 of its Rules of Procedure, on April 13, 2009 the Commission forwarded to the State the relevant parts of the petition and of the additional communications filed by the petitioners. It asked the State to submit its response within two months.

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<sup>1</sup> The Asociación Pro Derechos Humanos (APRODEH) and the International Federation for Human Rights (FIDH) became co-petitioners on February 1, 2007.

7. The State submitted its response on June 15, 2009, and sent the respective annexes on June 23 of that year. Those documents were sent to the petitioners on June 29, 2009. Subsequent to that date, additional communications were received from the petitioners on August 11, September 10 and 25 and November 30, 2009. The State submitted additional communications on September 14 and December 31, 2009.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

8. The petitioners alleged that on July 7, 1984, Rigoberto Tenorio Roca, a noncommissioned officer in the Peruvian Army, was detained by Navy infantrymen as he was traveling between the provinces of Huanta and Huamanga in the department of Ayacucho. They maintained that as it was passing through the Huayhuas sector, the bus he was traveling in was stopped by some 30 Navy infantrymen, accompanied by officers with the Peruvian Investigative Police. The Marines and the Police entered the bus and searched those on board. The petitioners maintained that when he showed his documents, the alleged victim was taken to a troop transport vehicle that was part of a military convoy patrolling the area. They added that the alleged victim was taken to the Huanta Stadium, where the Marines had set up a military garrison.

9. According to the petitioners, Rigoberto Tenorio's wife, Mrs. Cipriana Huamaní Anampa, and dozens of other people witnessed Rigoberto Tenorio Roca's detention by Navy infantry. They stated that the Huanta Deputy Provincial Prosecutor, Simón Palomino Vargas, an examining magistrate from the same province and his secretary were in one of the vehicles in the military convoy and also witnessed the alleged victim's detention.

10. The petitioners maintained that some days after the detention of Mr. Tenorio Roca, his wife Huamaní Anampa filed a complaint with the Huanta Provincial Prosecutor, who reportedly told her that he could not intervene "because they had already threatened him."<sup>2</sup> They stated that the alleged victim's detention was reported to the commandant of an Army base in Huamanga province who, they claimed, received information from the commandant of the Navy Marine base set up in Huanta Stadium, Captain Álvaro Francisco Separio Artaza Adrianzén (alias "the truck"), to the effect that Rigoberto Tenorio had in fact been detained "for a small investigation." They claimed, however, that the militaries stationed at the Navy Marine base in Huanta told Mrs. Huamaní Anampa that her husband had never been taken to that base.

11. The petitioners attached copies of complaints signed by the alleged victim's brother, Mr. Juan Tenorio Roca, and addressed to the Chairman of the Joint Command of the Armed Forces and to the Attorney General of the Nation, dated August 24 and October 14, 1984, respectively. The petition also indicates that the alleged victim's wife, Mrs. Cipriana Huamaní Anampa, filed a petition of *habeas corpus* and numerous complaints with different agencies of the Judicial Branch, the Ministry of the Interior and the Congress of the Republic, but received no answer.<sup>3</sup>

12. As for the rule requiring exhaustion of local remedies, the petitioners maintained that two criminal inquiries had been instituted against Navy Captain Alvaro Artaza Adrianzén in the ordinary jurisdiction, but that the courts of ordinary jurisdiction declined the cases to the military justice system. The petitioners stated that on December 23, 1985, the Deputy Provincial Prosecutor of the Huanta Public Prosecutor's Office filed formal charges against Navy Captain Álvaro Artaza Adrianzén for the alleged

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<sup>2</sup> Communication received from the petitioners on February 1, 2007, p. 2.

<sup>3</sup> The petitioners did not specify with which authorities the complaints and the petition of *habeas corpus* were filed and on what dates.

criminal abduction of noncommissioned Army officer Rigoberto Tenorio Roca and civilian Juan Medina Garay. This case file was classified as number 01-86. The petitioners maintained that on January 3, 1986, the Huanta Examining Magistrate ordered that proceedings be instituted against Captain Álvaro Artaza Adriazén. They maintained that the case was referred to the military courts and was ultimately filed, as the military authorities claimed that Captain Álvaro Artaza Adriazén had been declared presumed dead.

13. The petitioners maintained that there were discrepancies in the Armed Forces' version of the supposed death of Officer Álvaro Artaza Adriazén. They pointed out that the Navy Marines' version was that Álvaro Artaza Adriazén had allegedly been abducted by unknowns on February 2, 1986, precisely when the ordinary justice system was moving forward with the preliminary inquiries into the disappearance of dozens of persons taken to the Huanta military base between July and August of 1984. At the time Captain Álvaro Artaza Adriazén was the base's commanding officer. The petitioners noted that the Final Report of the Truth and Reconciliation Commission (hereinafter "the CVR") raised serious doubts about the circumstances under which Captain Álvaro Artaza Adriazén was alleged to have disappeared and recommended to the Public Prosecutor's Office that it investigate the facts and take any and all necessary measures to dispel the doubts as to the officer's whereabouts.

14. The petitioners observed that the CVR's Final Report documented the discovery, on August 22, 1984, of 50 bodies in clandestine graves in the community of Pucayacu, province of Acobamba, Huancavelica department, only a few kilometers from Huanta province in the department of Ayacucho. The report states that the bodies were stripped to make identification difficult and many of them bore signs of torture. It mentions that 57 inhabitants of Huanta had been reported as disappeared between July and August 1984, after being detained and transported to the Navy Marine base set up in the local stadium. The section of the CVR report that documents the discovery of 50 bodies in shallow graves in Pucayacu makes reference to the alleged forced disappearance of Mr. Rigoberto Tenorio Roca<sup>4</sup>.

15. The petitioners asserted that based on the findings contained in the CVR's final report, on September 27, 2005 the Office of the First Supra-provincial Prosecutor of Ayacucho brought a formal criminal complaint against the then head of the Ayacucho Political Military Command, Adrián Huamán Centeno, the then head of the Huanta Political Military Command, Alberto Rivero Valdeavellano, and the then head of the Huanta Counter-subversive Base, Augusto Gabilondo García del Barco, for the alleged crimes of forced disappearance and murder of Rigoberto Tenorio Roca and of another 12 residents of the province of Huanta.<sup>5</sup> They added that on November 28, 2006, the Lima Supra-provincial Criminal Court declared that instituting the inquiry against the aforementioned Naval Marine officers was out of order.<sup>6</sup>

16. The petitioners pointed out that on September 25, 2007, the National Criminal Court confirmed the decision of the Supra-provincial Criminal Court of Ayacucho to drop the criminal inquiry against Alberto Rivero Valdeavellano as out of order. They reported, however, that the Criminal Chamber

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<sup>4</sup> Final Report of the CVR, 2003, Volume VII, Chapter 2.11, *Ejecuciones Extrajudiciales Comprobadas en las Fosas de Pucayacu (1984)* [Extrajudicial Executions Discovered in the Graves at Pucayacu (1984)], pp. 100 and 111, available in Spanish at <http://www.cverdad.org.pe/ffinal/index.php>.

<sup>5</sup> The copy of the criminal complaint which the petitioners supplied in their communication of February 1, 2007, shows that the Office of the First Supra-provincial Criminal Prosecutor of Ayacucho sought a criminal inquiry against other persons as well, persons accused of having killed six members of the Callquí Evangelical Presbyterian Church on August 1, 1984. This document also prays the court to commence an inquiry against the same three members of the military -Adrián Huamán Centeno, Alberto Rivero Valdeavellano and Augusto Gabilondo García del Barco- for the alleged murder of Nemesio Fernández Lapa and 49 other persons whose bodies were discovered in Pucayacu.

<sup>6</sup> In a communication received on February 1, 2007, the petitioners quoted the following excerpt from the court ruling handed down by Lima's Supra-provincial Criminal Court: "there is no evidence implicating (the accused) in the criminal events or indicating that they had direct knowledge of the events under investigation, evidence that would allow one to conclude that the suspects would have been able to avoid a negative outcome with any degree of probability. Although the prosecutor has established the hierarchy in 1984, the fact that they had command and control of their subordinates is not sufficient grounds to commence an inquiry against them."

nullified the finding of the court *a quo* that had dismissed the commencement of a criminal inquiry against Adrián Huamán Centeno and Augusto Gabilondo García del Barco. The National Criminal Court ordered that the criminal complaint was to be sent back to the Public Prosecutor's Office to introduce corrections in accordance with the Court's observations.

17. The petitioners argued that although more than 25 years have passed since Rigoberto Tenorio Roca was allegedly disappeared by agents of the State, the investigations are still in the preliminary phase in the Public Prosecutor's Office. They observed that the Peruvian Congress' adoption of amnesty laws (Laws 26479 and 26492) had the effect of obstructing efforts to solve the case and prosecute the military alleged to be involved. Finally, they added that while thus far those directly or immediately responsible for the disappearance of Rigoberto Tenorio Roca have not been prosecuted, both the Peruvian Public Prosecutor's Office and Peru's Judicial Branch were said to have attributed the event to agents of the State.

## **B. The State**

18. The State alleged that in the period between the filing of the petition and the start of processing, the Peruvian authorities had taken steps to solve the case and punish those responsible.

19. The State's narration of the measures taken by the next of kin of Mr. Rigoberto Tenorio Roca to establish his whereabouts was similar to that of the petitioners. It stated that the alleged victim's brother and wife filed complaints with the Public Prosecutor's Office on July 9, 16, 18, 21, 23 and 30, August 27 and October 12, 1984. It affixed copies of a portion of the court record of the proceedings conducted in the courts of ordinary jurisdiction and in the military justice system into the disappearance of Rigoberto Tenorio Roca, and the investigations into the discovery of 50 bodies in the community of Pucayacu on August 22, 1984.

### ***Proceedings on the complaints filed by the next of kin of Rigoberto Tenorio Roca (record of the case in ordinary jurisdiction No. 1-86, and in military jurisdiction No. 3186-524-86)***

20. In the case of the complaint that the Huanta Deputy Provincial Prosecutor filed on December 23, 1985, against Frigate Captain Álvaro Artaza Adrianzén for the criminal abduction of Rigoberto Tenorio Roca and Juan Medina Garay (Case No. 1-86), the State described the steps taken prior to bringing the case. It stated that while this trial was underway, the Permanent Council of the Peruvian Air Force had instituted an inquiry against the Marine officer for abuse of authority, whereupon case file No. 3186-524-86 was opened.

21. According to the State, on August 18, 1986, the Permanent Council of the Peruvian Air Force filed a motion claiming a conflict of competence, which it repeated on December 27, 1989. The State claimed that the military authority had asked the Huanta Examining Magistrate not to pursue the case since "both the victim and the accused are members of the Armed Forces and the crime charged was committed while in the line of duty (line of duty offense); thus, under Article 282 of the 1979 Political Constitution, Article 10 of Law 24150 and Article 328 of the Code of Military Justice, the case should be taken up by courts exclusively reserved for military justice."<sup>7</sup>

22. The State alleged that on January 22, 1990, the Huanta Examining Magistrate notified the President of the First Joint Chamber of the Superior Court that he was declining the case. It asserted that on September 27, 1988, the Permanent Examining Judge of the Peruvian Air Force declared Captain Alvaro Artaza Adrianzen to be a defendant *in absentia*. It noted that on June 19, 1995, the Supreme Council of Military Justice granted the aforementioned Captain the benefit of amnesty, in application of Law No. 26479. The State pointed out that on April 17, 1996, Lima's Sixth Civil Court declared Captain

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<sup>7</sup> Communication received from the State on September 14, 2009, p. 4, and annex, memorandum V-110-11-JILI-Nº 1279 issued by the Permanent Examining Judge of the Peruvian Air Force.

Artaza Adrianzén presumed dead, whereupon the Office of National Identification and Vital Statistics drew up the respective death certificate.

***Proceedings in connection with the 50 bodies discovered in graves at Pucayacu (case in the court of ordinary jurisdiction No. 30-84 and case in the court of military jurisdiction No. 784-84)***

23. According to the State, after various complaints from Huanta's residents to the effect that their family members had disappeared between July and August 1984, the Public Prosecutor's Office launched investigations and on August 22 discovered four graves in the area of Pucayacu, province of Acobamba, department of Huancavelica. The graves contained the remains of 50 persons<sup>8</sup> only one of whom had allegedly been identified by next of kin. The State indicated that on October 12, 1984, the Huanta Provincial Examining Magistrate instituted a criminal inquiry against Captain Álvaro Artaza Adrianzén for the alleged aggravated homicide of those persons. Case file No. 40-84 was thus opened.

24. The State indicated that as the court of ordinary jurisdiction instituted its inquiry, the Navy's Permanent Court-Martial instituted an inquiry against Captain Álvaro Artaza Adrianzén (Case No. 784-84), and claimed a conflict of competence. It asserted that in November 1984, the Huanta Judge of First Instance declined to continue hearing the complaint. On April 10, 1985, the Second Criminal Chamber of the Supreme Court decided jurisdiction in favor of the military justice system.

25. The State alleged that on November 17, 1985, the Navy's Substitute Examining Judge in Lima held that the commission of a crime by the accused Álvaro Artaza Adrianzén had not been proved. On January 21, 1986, the Superior Court Martial declared that Captain Álvaro Artaza, who had been reported missing since February 2, 1986, was presumed dead.<sup>9</sup>

***Reopening of the investigations in courts of ordinary jurisdiction.***

26. The State's account of the reopening of the investigations by the Office of the First Supra-provincial Prosecutor of Ayacucho was similar to that of the petitioners. It observed that on September 1, 2006, the Public Prosecutor's Office filed a complaint against three Marine officers, accusing them of the forced disappearance of Rigoberto Tenorio Roca and of another 12 persons. It asserted that on November 28, 2006, the Second Supra-provincial Criminal Court had ruled that the complaint was groundless.<sup>10</sup>

27. The State asserted that on September 25, 2007 the National Criminal Chamber issued a ruling that partially upheld the appeal filed by the Public Prosecutor's Office. This ruling decided that the investigations in the case of Alberto Rivero Valdeavellano were closed; it returned the complaint to the Public Prosecutor's Office to introduce corrections that would reflect the Criminal Chamber's observations. Only then would the Court decide whether to open a preliminary inquiry against Adrián Huamán Centeno and Augusto Gabilondo García del Barco.

28. According to the State, the National Criminal Chamber determined that the Public Prosecutor's Office had based the charge against military officers Adrián Huamán Centeno and Augusto Gabilondo García del Barco on the conclusions contained in the Final Report of the CVR, but had allegedly not supplied sufficient information on the "positive measures that the agents had taken or what

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<sup>8</sup> The criminal complaint brought by the Office of the Supra-provincial Public Prosecutor of Ayacucho on September 1, 2006, a copy of which the petitioners enclosed with their communication of February 1, 2007, describes that the mortal remains of some 49 persons were discovered in "three" graves in the community of Pucayacu on August "23", 1984. However, the CVR's Final Report and copies of a portion of the court record of the proceedings conducted in the military justice system, provided by the State, state that 50 bodies were discovered in "four" clandestine graves in Pucayacu on August "22", 1984.

<sup>9</sup> See paragraph 22 above.

<sup>10</sup> In its communication of June 23, 2009, the State describes that the ruling of the Second Supra-provincial Criminal Court was delivered on November 28, "2007". However, the copy in the attached court record indicates that the decision was delivered on November 28, "2006".

they were expected to do to avoid the outcome, in the event they were accused of the commission of a crime by omission.”<sup>11</sup>

29. The State asserted that on February 19, 2009, the Office of the First Supra-provincial Criminal Prosecutor of Ayacucho adopted Resolution No. 071-2008-1FPS-AYA, in which it ordered exhumation of the bodies discovered in the Pucayacu graves, DNA samples taken from the discovered bodies and from next of kin, delivery of the post mortems done on the date of the discovery, preparation of a forensic medicine report on the examinations conducted, gathering of case files in military jurisdiction and the service records of the two accused military officers, and other measures.

30. The State alleged that “the judicial branch has pointed out that no inquiry was being instituted against the three accused, but has not denied that illegal acts were committed against the victims in the province of Huanta; instead, it underscores the need to take measures that make the investigation credible, so that the alleged authors cannot turn around and challenge the investigation as arbitrary actions taken by the administration of justice.”<sup>12</sup>

31. Finally, the State indicated that on August 20, 2006, the Public Prosecutor’s Office decided to terminate the criminal case against Frigate Captain Álvaro Artaza Adrianzén, “based on the death certificate issued by the Municipality of Surco.” It added that the “declaration of Frigate Captain Álvaro Francisco Serapio Artaza Adrianzén’s presumed death (...) does not prevent the authorities who administer justice from pursuing the investigation and taking the necessary steps to establish the whereabouts of Rigoberto Tenorio Roca and punishing anyone it manages to identify as allegedly responsible, punishing those found guilty and making reparations for the human rights violations committed.”<sup>13</sup>

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<sup>11</sup> Communication from the State received June 23, 2009, pp. 9 and 10.

<sup>12</sup> Communication received from the State on June 23, 2009, p. 12.

<sup>13</sup> Communication received from the State received on June 23, 2009, p. 13.

#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

##### A. The Commission's competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

32. Under Article 44 of the Convention, the petitioners are authorized to file complaints. The alleged victim in the case was under the jurisdiction of the Peruvian State at the time the alleged events occurred. Furthermore, Peru ratified the American Convention on July 28, 1978. The Commission thus has competence *ratione personae* to examine the petition.

33. The Commission has competence *ratione loci* to take up the petition inasmuch as it alleges violations of rights protected by the American Convention, violations said to have occurred within the territory of a State party to the Convention.

34. The Commission also has competence *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected by the American Convention was already binding upon the Peruvian State on the date when the events alleged in the petition were said to have occurred.

35. Finally, the Commission has competence *ratione materiae* because, as will be explained in paragraphs 51 and 52 below, the facts alleged in the petition could tend to establish violations of rights protected by the American Convention on Human Rights and by the Inter-American Convention on Forced Disappearance of Persons, which Peru ratified on February 8, 2002.

##### B. Exhaustion of local remedies

36. Article 46(1)(a) of the American Convention provides that in order for a case filed with the Commission in accordance with Article 44 of the Convention to be admitted, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to afford national authorities the opportunity to address the alleged violation of a protected right and, where appropriate, resolve it before the matter is brought to the attention of an international body.

37. The requirement of prior exhaustion applies when the domestic system affords remedies that are effective and adequate in remedying the alleged violation. In this sense, Article 46(2) specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in rendering a final judgment under those remedies.

38. The Commission's doctrine holds that whenever an *ex officio* prosecuting crime is committed, the State has an obligation to set in motion and pursue the criminal process through to completion. In such cases, this is the appropriate avenue to clarify the facts, try those responsible, establish the corresponding criminal penalties and make other forms of pecuniary reparations possible. The facts set forth by the petitioners in connection with the disappearance of Rigoberto Tenorio Roca are, under the corresponding domestic law, criminal offenses whose investigation and prosecution the State is obliged to pursue *ex officio*, which means that this process is the appropriate remedy in the instant case.

39. In the present case, although the Peruvian State reported on the domestic judicial proceedings, it did not expressly invoke the objection claiming a failure to exhaust domestic remedies and thereby tacitly waived this defense argument.<sup>14</sup> From the information supplied by the parties, the Commission observes that various proceedings were instituted into the alleged forced disappearance of Rigoberto Tenorio Roca.

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<sup>14</sup> IACHR, Report 10/09, Petition 4071-02, Argentina, *Mercedes Eladia Farelo*, March 13, 2009, paragraph 37.

40. First, the next of kin of Rigoberto Tenorio Roca filed a series of complaints with the Office of the Huanta Provincial Prosecutor, starting on July 9, 1984. They also reported his disappearance to various institutions in the Judicial Branch, the Armed Forces, the Ministry of the Interior and the Congress of the Republic.<sup>15</sup> Since that date, a number of investigations and inquiries have been instituted in ordinary and military jurisdictions.

41. The information in the case file indicates that on January 3, 1986, the Huanta Examining Magistrate instituted a criminal inquiry against Captain Álvaro Artaza Adrianzén for the alleged criminal abduction of noncommissioned Army officer Rigoberto Tenorio Roca and civilian Juan Medina Garay, thereby opening Case File No. 1-86. On January 22, 1990, the Huanta Examining Magistrate disqualified himself from continuing to conduct the preliminary inquiry and declined jurisdiction in favor of the military justice system, whose proceedings on the case were classified as number 3186-524-86. According to information supplied by the State, on April 17, 1996 Lima's Sixth Civil Court declared Captain Artaza Adrianzén presumed dead. At the time he had been under indictment as a defendant *in absentia* since August 1986.

42. As for the second proceeding opened in the military justice system against Captain Álvaro Artaza Adrianzén for the alleged murder of 50 persons whose corpses were discovered in Pucayacu (case file No. 784-84), the available information indicates that on January 21, 1986 the Permanent Navy Court Martial adopted a decision to dismiss.<sup>16</sup> On May 7, 1986, this decision was confirmed by the Supreme Council of Military Justice, which ordered that the case be definitively closed.<sup>17</sup>

43. The Commission has held that the military justice system does not afford a proper remedy to investigate, try and punish human rights violations alleged to have been committed by the armed forces.<sup>18</sup> The Inter-American Court has written that military criminal justice is an appropriate forum only for prosecuting military for the commission of crimes or misdemeanors that affect military interests.<sup>19</sup> Therefore, the Commission concludes that for purposes of the admissibility requirement set forth in Article 46(1)(a) of the American Convention, the proceedings instituted in military jurisdiction to investigate the alleged forced disappearance of Rigoberto Tenorio Roca (case files Nos. 3186-524-86 and 784-84) are not an effective remedy.

44. As for the investigations reopened in the courts of ordinary jurisdiction in 2003, the information that the parties supplied indicates that on November 28, 2006, Lima's Supra-provincial Criminal Court declared the commencement of an inquiry against three Navy officers to be out of order. On September 25, 2007, the National Criminal Chamber confirmed the dismissal of the criminal inquiry against one of the accused and returned the complaint to the Public Prosecutor's Office to introduce corrections that take the Court's observations into account before filing new charges against the other two officers.

45. According to the State, the Office of the First Supra-provincial Prosecutor of Ayacucho has requested new measures to make corrections taking into account the observations made by the National Criminal Chamber in its ruling of September 25, 2007. From the information in the case file it

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<sup>15</sup> See paragraphs 10, 11 and 19 above.

<sup>16</sup> Attachment to the State's communication of June 23, 2009, case file No. 784-84, *Proceedings conducted against Lieutenant Commander Álvaro Artaza Adrianzén for the crime of murder*, at 226, Dismissal Ruling delivered January 21, 1986.

<sup>17</sup> Attachment to the State's communication of June 23, 2009, case file No. 784-84, *Proceedings conducted against Lieutenant Commander Álvaro Artaza Adrianzén for the crime of murder*, page number illegible, Dismissal issued by the Supreme Council of Military Justice on May 7, 1986, confirming the dismissal.

<sup>18</sup> IACHR, Report No.47/08, Petition 864-05, Colombia, *Luis Gonzalo "Richard" Vélez Restrepo and family*, July 24, 2008, paragraph 74.

<sup>19</sup> I/A Court H.R., *Durand and Ugarte Case v. Peru Case*. Judgment of August 16, 2000, Series C No. 68, paragraph 117; *Case of Almonacid Arellano et al. v. Chile*. Judgment of September 26, 2006. Series C No. 154, paragraph 131; and *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 124.

would appear that the Public Prosecutor's Office has not yet filed new changes. Hence, the investigations are still in the preliminary phase.

46. In the merits stage the Commission will examine whether, in the proceedings conducted in courts of ordinary and military jurisdiction, the Peruvian State provided an effected remedy, with due guarantees, to the alleged victim's next of kin vis-à-vis its obligations under articles 8 and 25 of the American Convention. However, at this stage of the proceedings, and without prejudging on the merits of the subject matter, the Commission considers that the more than 25 years that have passed since the alleged disappearance of Rigoberto Tenorio Roca, without a determination as to his whereabouts or a definitive determination of what transpired and punishment of those responsible, are sufficient to conclude that there has been an unwarranted delay in the terms of Article 46(2)(c) of the American Convention.

### **C. Time period for lodging the petition**

47. Under Article 46(1)(b) of the American Convention, in order to be admitted a petition must be lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment that exhausted the remedies available via the domestic system. However, this rule does not apply when one of the exceptions that Article 46(2) of the Convention establishes applies. In such cases, the Commission must determine whether the petition was lodged within a reasonable period of time, in accordance with Article 32 of its Rules of Procedure.

48. As indicated in paragraph 46 *supra*, the Commission concluded that in the present case, the unwarranted delay in rendering a final judgment, established as an exception in Article 46(2)(c) of the Convention, applies. Given that the alleged victim's forced disappearance would constitute a continuing violation and taking into consideration the failure to establish his whereabouts, the failure to determine responsibilities and the alleged denial of justice in proceedings that have since been closed and in proceedings that are still in progress, the Commission finds that the petition was lodged within a reasonable period of time.

### **D. Duplication of proceedings and international *res judicata***

49. Article 46(1)(c) of the Convention provides that one of the requirements that must be met in order for the Commission to admit a petition is that the subject of the petition "is not pending in another international proceeding for settlement." Article 47(d) of the Convention provides that the Commission shall consider inadmissible any petition or communication that is substantially the same as one previously studied by the Commission or by another international organization." Neither of the parties in the instant case has claimed that either of these conditions is present, nor can their presence be inferred from the case file.

### **E. Characterization of the facts alleged**

50. For admissibility purposes, the Commission must determine whether the petition states facts that tend to establish a violation of the rights guaranteed by the American Convention, as required under its Article 47(b), and whether the petition is “manifestly groundless or obviously out of order,” as stipulated in Article 47(c). The standard to assess these extremes is different from the one needed to decide the merits of a petition. At the admissibility phase of the proceedings, the IACHR is called upon to perform a *prima facie* evaluation and determine whether the complaint provides grounds for an apparent or potential violation of a right guaranteed by the American Convention, but not whether the violation has in fact occurred. The evaluation for admissibility purposes is a summary analysis that does not imply any prejudgment of or advance any opinion on the merits.

51. The Commission considers that the purported forced disappearance of the alleged victim, the fact that the military justice system was seized of the complaints filed in the case for various years, and the fact that no one has ever been punished for the crimes alleged, could constitute violations of rights protected in articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to the obligations set forth in Article 1(1) thereof, and of the rights established in Article I of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “the ICFDP”), all to the detriment of Rigoberto Tenorio Roca. The Commission also finds that these facts could constitute violations of the rights protected in articles 5, 8, and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Rigoberto Tenorio Roca’s next of kin.

52. In the merits phase, the Commission will examine whether the way in which forced disappearance is criminalized in Peruvian domestic law and the alleged negative effects of the amnesty laws on criminal prosecutions would constitute a failure to comply with the obligation to adopt domestic legal measures, undertaken in Article 2 of the American Convention and Article III of the ICFDP.

53. The petitioners have not alleged violation of specific provisions of the American Convention or other inter-American instruments. Therefore, based on all the information supplied thus far and by virtue of the principle of *jura novit curia*, the IACHR has characterized the possible violations of articles of the Convention and of the ICFDP described in the preceding paragraphs.

### **V. CONCLUSIONS**

54. Based on the considerations of fact and of law set forth herein and without prejudging the merits of the case, the Inter-American Commission concludes that the present case satisfies the admissibility requirements set forth in articles 46 and 47 of the American Convention and, therefore,

#### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

##### **DECIDES:**

1. To declare the present petition admissible with respect to articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to articles 1(1) and 2 thereof, and with respect to articles I and III of the Inter-American Convention on Forced Disappearance of Persons.
2. To notify the state and the petitioners of this decision.
3. To proceed to its examination of the merits of the case.
4. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 15<sup>th</sup> day of the month of March, 2010. (Signed: Felipe González, President Paulo Sergio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, Commissioners).