

REPORT N° 12/93

CASE 10.531

PERU

Marzo 12, 1993

BACKGROUND:

1. The Inter-American Commission on Human Rights received a petition dated March 21, 1990, according to which:

By means of this letter, we request your urgent intervention with the authorities of our country in behalf of citizen Simerman Rafael Antonio Navarro, identified by electoral passbook number 20006474, 21 years of age, an economics student at the Universidad Nacional del Centro and a student of law and political science at the Andes Private University and formerly a corporal in the Peruvian army, based on the following alleged events:

1. On March 7, 1990, at approximately 10:30 p.m., 12 uniformed members of the Peruvian army, arrived at the residence of the aforementioned person, located some 150 meters from the 9 de Diciembre Barracks, in a white closed pickup truck, with red stripes, located at Pasaje Union No. 105, Chilca district, Huancayo province, Junin department, headquarters of the military political command of the Central National Security Subzone.
2. After breaking down the door of the residence, they went into the room of Simerman Antonio and took him forcibly to the vehicle which was parked some 30 meters from the house. Despite the requests of his parents, he was put into the pickup truck and taken in the direction of the 9 de Diciembre Barracks.
3. A few minutes later, his parents arrived at the barracks with clothing for their son since he had been carried away in his underwear, but once at the military base, they denied that such an operation had taken place.
4. According to eyewitness versions, it has been determined that the aforementioned citizen had been taken to the Teodoro Penaloza Barracks in the city of Jauja, where he remained until the 13th, since which time nothing has been known about him and even though many legal efforts have been made, he remains a detained-disappeared person.
5. In view of the foregoing, we request your urgent intervention with the chief of the military political command of the zone, Brigade General Manuel Delgado Rojas, and other pertinent authorities.

2. The petition is based on the attached probatory documents which include charges made to the prefect of the department of Junin, the senior attorney of the same department and the Attorney General of the Nation, letters addressed to Brigade

General Manuel Delgado Rojas, the chief of the political-military command of Junin department, and to army commander Guillermo Lewis Lopez, the chief of the political military command of Jauja province, and finally, a writ of habeas corpus filed on March 15, 1990, to the instructions judge of Huancayo.

3. In a letter dated March 22, 1990, the Commission started its processing of the case and requested the Government of Peru for pertinent information regarding the material events of the communication, as well as any other background information that would enable it to determine whether in this case all remedies under domestic jurisdiction had been exhausted, and gave the government 90 days to respond to the request.

4. Having received no response before the expiration of the legally established term, on March 25, 1991 the Commission sent to the Government of Peru a communication reiterating its request for information, with the further warning that unless the information requested were received within 30 days it would consider applying Article 42 of the Regulations of the Commission, according to which it presumes as truthful the events related in the petition if there is no other evidence that would lead to a different conclusion.

5. The Commission also received no reply to the latter communication, despite the seriousness of the alleged events, the numerous proofs and background information sent to the governmental authorities.

6. At its 82 session, the Commission adopted Report No. 23/92, which was referred to the Government of Perú so that the latter might make whatever observations it deemed pertinent within three months of the date of transmission.

ANALYSIS:

1. That the Commission is competent to take up this case since it deals with violations of rights recognized in the American Convention on Human Rights, Article 4, pertaining to the right to life, Article 5, the right to humane treatment, Article 7, right to personal liberty, and Article 25, the right to judicial protection, as provided for in Article 44 of the aforementioned Convention, of which Peru is a state party.

2. That the petition meets the formal requirements of admissibility contained in the American Convention on Human Rights and the Regulations of the Commission.

3. That the petition is not pending under any other international proceeding and is it not substantially the same as any previous petition already examined by the Commission.

4. That, according to the complaint and the information provided in the course of the proceeding, the facts of this case occurred as follows:

a. On the night of March 7, 1990, Simerman Rafael Antonio Navarro, a 21 year old student and former soldier, was arrested at his home in the District of Chilca, Huancayo Province, Junin Department, by a detachment of about twelve soldiers of the Peruvian army who, after breaking down the door of his house, put him into a pickup

truck waiting thirty meters away and headed in the direction of December 9 Barracks.

b. The members of the group were dressed in military uniforms, were well armed and, wore ski masks over their faces. During the raid they fired shots into the air, occupied the house for about ten minutes, and when they withdrew, left an explosive that destroyed the front door.

c. Because Simerman Navarro's house is less than 150 meters from the December 9 Barracks, what the armed group did could not have passed unnoticed. Yet, in a situation that was clearly irregular the military did nothing.

d. The Chief Government Attorney of Junin confined himself to a statement on May 28, 1990, that the Military Political Chief of National Security Subzone No. 7 of the Center, Brigadier General Manuel J. Delgado Rojas of the Peruvian Army, had reported that despite numerous indications to the contrary, Simerman Navarro had not been taken by soldiers under his command.

5. All remedies under domestic law have been exhausted, as is evident from the following documents provided by the complainant:

- a. Complaint made to the Prefect of the Department of Junin on March 12, 1990.
- b. Complaint made to the Chief Government Attorney of Junin on March 13, 1990.
- c. Another complaint sent by cable to the Chief Government Attorney of Junin on March 16, 1990.
- d. Request for information made by the District Attorney of Jauja to the Military Political Chief of the province on March 13, 1990.
- e. Broadening of the action for habeas corpus before the investigating magistrate of Huancayo on March 16, 1990.
- f. Complaint made to the Attorney General of the Nation on March 22, 1990.
- g. Letter of the Chief Government Attorney of Junin dated May 28, 1990.

6. That the facts denounced in this case indicate that an operation such as this - in which shots were fired and explosives were set off in the middle of the night, near a military garrison in a city like Huancayo, which was in a state of emergency and under the control of the Military Political Command, without any action being taken by the troops of the garrison in all that time- could have occurred only if members of the Army participated. That responsibility also follows from the account of the captors given by the members of the victim's family, who followed the captors in the direction of the Army barracks. Another point to be remembered is the complete lack of effect of the many legal appeals presented, which warrants the assumption of interference to prevent them from succeeding.

7. That even though more than two years have passed since the Commission first started processing this case, and despite the seriousness of the charges made, the Government of Peru has not provided any response relating to the events discussed in

this case.

8. That in its judgment of July 29, 1988, in the Velásquez Rodríguez case, the Inter-American Court of Human Rights stated the following:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. (Paragraph 176).

9. That in the same case the Inter-American Court states the following concerning the duty to investigate the situations denounced:

[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 the victim or his family or upon their offer of proof, without an effective search for the truth by the government. (Paragraph 177).

10. By failing to reply the Government of Peru has not fulfilled its international obligation to provide information within a reasonable period as required by Article 48 of the Convention.

11. That Article 42 of the Regulations of the Commission establishes the following:

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

12. That the Commission has stated many times its complete and total rejection of the serious phenomenon of forcible disappearance of persons, expressing in several documents that:

...this procedure is cruel and inhuman and that disappearance not only constitutes an arbitrary deprivation of liberty but also an extremely serious threat to the humane treatment, security and life itself of the victim.¹⁹

13. That the General Assembly of the Organization of American States has emphasized in several resolutions the need for countries in which forced

¹⁹ Annual Report 1978, 1980-81, 1982-83, 1985-86, 1986-87.

disappearances have occurred to put an immediate end to this practice, and has also urged the governments to carry out the necessary efforts to determine the status of these persons. In addition, the General Assembly of the Organization has declared that the forced disappearance of persons is an affront to the conscience of the hemisphere and constitutes a crime against humanity.²⁰

14. That the Inter-American Court of Human Rights in the Velásquez Rodríguez case stated that:

The practice of the disappearances, besides directly violating numerous provisions of the Convention...signifies a radical rupture of that treaty in that it implies crass abandonment of the values that emanate from human dignity and the principles that most profoundly underpin the inter-American system and the Convention itself. (Paragrapah 158).

15. That, since the friendly settlement procedure provided for in Article 48.1.f of the American Convention on Human Rights is not applicable owing to the nature itself of the alleged events and owing to the lack of response from the government, the Commission should comply with the provisions of Article 50.1 of the Convention and issue its conclusions and recommendations on the claim submitted to it for consideration.

16. That the Government of Perú has not presented its observations on Report No. 23/92.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

1. To presume to be true the events contained in the claim relating to the illegal arrest and later disappearance of Simerman Rafael Antonio Navarro by members of the Peruvian army in the province of Huancayo, department of Junin, on March 7, 1990.

2. To declare that the Government of Peru has not complied with the obligations to respect human rights and guarantees imposed by Article 1 of the American Convention on Human Rights, of which Peru is a state party.

3. To declare that the Government of Peru is responsible for the violation of the rights to life, humane treatment, personal liberty and judicial protection that are recognized in Articles, 4, 5, 7 and 25, respectively, of the American Convention on Human Rights.

4. To recommend to the Government of Peru that it undertake an exhaustive

²⁰ Resolutions AG/RES. 443 (IX-0/79), 510 (X-0/80), 543 (XI-0/81), 618 (XII-0/82), 666 (XIII-0/83) and 742 (XIV-0/84).

investigation into the alleged events in order to clarify the circumstances of the arrest, to determine the whereabouts of the victim and to identify the persons responsible and bring them to justice so they might receive the punishment they deserve.

5. To publish this report in the Annual Report to the General Assembly, pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, inasmuch as the Government of Perú did not adopt measures to correct the situation denounced, within the time period stipulated in Report No. 23/92.