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**REPORT No. 124/17**  
**PETITION 21-08**  
REPORT ON ADMISSIBILITY

FERNANDA LÓPEZ MEDINA ET AL.  
PERU

Approved by the Commission at its session No. 2098 held on September 7, 2017  
164<sup>th</sup> Extraordinary Period of Session

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**PETITION P-21-08**  
 REPORT ON ADMISSIBILITY  
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**I. INFORMATION ABOUT THE PETITION**

|                           |   |
|---------------------------|---|
| <b>Petitioning party:</b> | Association for Human Development Runamasinchipaq ( <i>ADHER</i> ), Rosa Luz Pallqui Medina, Juan Macedonio Barboza Paredes, Asunta Medina Huaman and Juana López de Orejón   |
| <b>Alleged victims:</b>   | Fernanda Graciela López Medina et al. <sup>2</sup>  |
| <b>State denounced:</b>   | Peru  |
| <b>Rights invoked:</b>    | Articles 1.1 (Obligation to Respect Rights), 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 <sup>3</sup> |

**II. PROCEDURE BEFORE THE IACHR<sup>4</sup>**

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|--|------------------------------------|
| <b>Date on which the petition was received:</b>                    | January 4, 2008                    |
| <b>Additional information received at the initial study stage:</b> | August 1, 2011                     |
| <b>Date on which the petition was transmitted to the State:</b>    | March 21, 2014                     |
| <b>Date of the State's first response:</b>                         | June 25, 2014                      |
| <b>Additional observations from the petitioning party:</b>         | December 1, 2014 and April 9, 2016 |
| <b>Additional observations from the State:</b>                     | May 18, 2017                       |

**III. COMPETENCE**

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| <b>Competence <i>Ratione personae</i>:</b> | Yes  |
| <b>Competence <i>Ratione loci</i>:</b>     | Yes  |
| <b>Competence <i>Ratione temporis</i>:</b> | Yes  |
| <b>Competence <i>Ratione materiae</i>:</b> | Yes, American Convention (the instrument of ratification was deposited on July 28, 1978) |

<sup>1</sup> Pursuant to provisions in Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the discussion or the decision on the present matter.

<sup>2</sup> Jaime Ayala Sulca, Crista Fernández Hernando, Juan Ramírez Hurtado, Santiago Felipe Loayza Cahuana, Yuri Agama Anaya, César Arana Alcázar, Víctor Venacio Rivas, Gerardo González Guzmán, Teófilo Munárriz Velásquez, Juan Medina Garay, Cirilo Barbosa Sánchez, Alejandro Guitiérrez Taype, Nemesio Fernández Lapa.

<sup>3</sup> Hereinafter "the American Convention," "the Convention" or "the ACHR."

<sup>4</sup> The observations presented by each party were duly transmitted to the opposing party.

**IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

|   |   |
|---|---|
| Duplication of procedures and International <i>res judicata</i> :             | Yes, under the terms of Section VI  |
| Rights declared admissible  | Articles 3 (Right to Juridical Personality), 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 19 (Rights of the Children) and 25 (Judicial Protection) of the American Convention, in relation to its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects); Articles I and III of the Inter-American Convention on Forced Disappearance of Persons |
| Exhaustion of domestic remedies or applicability of an exception to the rule: | Yes; exception in Article 46.2.c of the ACHR applies  |
| Timeliness of the petition:   | Yes, under the terms of Section VI  |

**V. ALLEGED FACTS**

1. The petitioners indicate that in the framework of the internal armed conflict in Peru, the department of Ayacucho was put under the direct supervision of the Army and the Navy since 1983. They assert that the Army had its main military base in the Domingo Ayarza headquarters (also known as “*Los Cabitos*”); and the Navy was based in the Municipal Stadium of Huanta, in the province of Huanta. They indicate that this base of the Navy worked as a detention center where persons suspected of terrorism were tortured.

2. The petitioners assert that between July and August 1984 navy officers arrested the alleged victims in an arbitrary and violent way and took them to the base. They indicate that since then the alleged victims’ families have not seen or been able to contact the alleged victims. Seven of the alleged victims – Fernanda Graciela López Medina, Crista Fernández Hernando, Juan Ramírez Hurtado, Víctor Venacio Rivas Ventura, Juan Medina Garay, Nemesio Fernández Lapa and Teófilo Munarríz Velásquez– were arrested early in the morning, when they were at their domiciles or at their neighbors’ houses; and the Navy entered by tearing down doors and walls or jumping over the fences. Rigoberto Tenorio Roca and Santiago Felipe Loayza Calmana were arrested by navy officers as they were travelling by bus in the Ayacucho area, Yuri Agama Anaya and Gerardo González Guzmán were arrested when they were walking near their houses. César Arana Alcázar was arrested while hospitalized in Huanta’s *Hospital General*; Cirilo Barboza Sánchez and Alejandro Gutiérrez Taype were arrested when they were in line to be registered in a census ordered by the Armed Forces. Only one of the alleged victims, Jaime Boris Ayala Sulca, entered Huanta’s Municipal Stadium voluntarily, as he went to report an illegal search into his mother’s domicile. It is alleged that Yuri Agama Anaya and Alejandro Gutiérrez Taype were children at the time of their alleged disappearance. In addition, Nemesio Fernández Lapa’s remains were found in the graves of Pucayacu on August 23, 1984. According to the petitioners, all the other persons are still missing.

3. The petitioners indicate that these facts were denounced and investigated in the same year that they took place. They claim, however, that the legal proceedings were unsuccessful and the alleged perpetrators acquitted, since the trial was held in the military jurisdiction. Moreover, they assert that in view of the amnesty laws then in force, many cases were archived or did not progress until 2001, when said laws were repealed. Subsequently, in 2002 the petitioners requested that a new investigation be conducted by the Prosecutor’s Office for Human Rights of Ayacucho. The investigation finished in 2006 and a formal accusation was filed before the Second Criminal ‘Supraprovincial’ Court (File No. 30-06) against three of the alleged perpetrators<sup>5</sup> as coauthors of the crime against humanity in the form of forced disappearance, and the crime against a person’s life, body and health in the form of a murder. Nevertheless, on November 28, 2006, said

<sup>5</sup> The petitioners indicate that these are: Adrián Huaman Centeno, Head of the Political Military Commando of the Department of Ayacucho; Alberto Rivero Valdeavellano, Head of the Political Military Commando of Huanta and La Mar; and Augusto Gabilondo García del Barco, Head of the Counter-Subversion Base of Huanta.

Court refused to arraign them. The petitioners indicate that they filed a judicial remedy but do not specify which. They claim that despite the prosecutor's favorable opinion on the advancement of the investigation, the abovementioned court denied the request. Consequently, in 2007 the Prosecutor's Office for Human Rights of Ayacucho lodged another accusation before the First Criminal Federal Court (in the past known as First Criminal 'Supraprovincial' Court), which returned the complaint to the prosecutor so that he would amend the accusation by including relevant information. Later, the prosecutor filed again the accusation (File No. 109-2011); however, by a resolution of May 2, 2011, said court again returned the case file to the prosecutor so that he would amend again the accusation by including additional information.

4. In their last communication to the Commission, in April 2016, the petitioners denounce that since then the case has not progressed significantly in view of the fact that either the case file is repeatedly sent back for the prosecutor to amend it or the prosecutor continually requests deadline extensions to the court.

5. For its part, the State claims that this petition must be declared inadmissible by the Inter-American Commission, for lack of exhaustion of domestic remedies, as it believes that the denounced facts do not establish violations of the rights enshrined in the American Convention. It also claims that in regard to certain alleged victims, this petition duplicates procedures. Given the nature of the facts, there is a narrow connection between the two first arguments presented by the State.

6. Concerning the rights invoked by the petitioners, the State indicates that they were not violated, since the denounced facts were investigated by the Prosecutor's Office and the Judiciary, and the corresponding procedures undertaken. It claims that the fact that the criminal responsibility of the accused persons has not yet been proved does not constitute a situation of impunity, but the application of the principle of presumption of innocence; assuring thus at the same time full access to justice for the petitioners and their legal representatives. In this regard, it claims that due process must be seen as an obligation in terms of means not of results, and considers that it must be taken into account the fact that this is a complex investigation with a large number of victims involved. Consequently, the State believes that the right of access to justice within a reasonable time has not been violated. Moreover, it claims that the State's duty to fully comply with the requirement of material justice is superior to the right concerning reasonable time.

7. The State indicates that at the time of the facts, the military jurisdiction was thought to be in line with the Inter-American Court's standards then in force. Likewise, the State believes that it has already complied with its duty to clearly establish the powers of military and ordinary courts so that certain crimes committed by army or police officers are exclusively heard by ordinary courts. The State also asserts that the appropriate measures were in due course implemented to repeal the amnesty laws, and that it has sought to grant reparations in favor of the victims by creating a single list of victims in order to financially compensate the victims' families.

8. Lastly, the State claims that this petition is inadmissible due to the duplication of procedures in relation to Mr. Rigoberto Tenorio Roca, whose case was the object of a judgment issued by the Inter-American Court,<sup>6</sup> and in relation to Mr. Jaime Boris Ayala Sulca, who appears as a victim in a merits report of the Inter-American Commission<sup>7</sup> issued in the decade of the nineteen eighties.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

9. The petitioners claim that the domestic legal proceedings have initially extended from 1984 and then from 2002, without any concrete results. The State, for its part, alleges non-exhaustion of domestic remedies in view of the fact that the criminal proceedings for the denounced facts are underway and that there is a complex investigation that involves a large number of victims.

<sup>6</sup> I/A Court H.R., Case of Tenorio Roca *et al.* v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016. Series C No. 314.

<sup>7</sup> IACHR, Resolution No. 17/87, Case 9425, Jaime Ayala Sulca. Peru, March 28, 1987.

10. In this regard, the Commission recalls that in cases like this, where wrongful detentions, torture and forced disappearance are involved, the domestic remedies to be considered for the purpose of admissibility are those concerning the investigation and punishment of the persons responsible for said facts. In this regard, in view of the position of each party and the information available in the case file, the Commission notes that the State's investigation into the facts began in 1984 and that the investigation conducted by the ordinary court has been in progress since 2002, but that no final decision has been made yet, since the trial has not begun and the inquiry stage is still underway. Therefore, the Commission concludes that although the domestic proceedings are in progress, the exception for unwarranted delay established in Article 46.2.c of the American Convention is applicable in this case.

11. Likewise, the Commission notes that the petition was received on January 4, 2008. The denounced facts allegedly have taken place since July 1984. After a first investigation made by the military jurisdiction, the petitioners requested in 2002 in that a new investigation be conducted by the Prosecutor's Office for Human Rights of Ayacucho, and the effects of the denounced facts allegedly continue in the present. Consequently, the Commission believes that the petition was filed within a reasonable time pursuant to Article 32.2 of the IACHR Rules.

12. The State also asserts that the claims as regards Rigoberto Tenorio Roca are inadmissible, since he is the beneficiary of a judgment issued by the Inter-American Court concerning said facts. The petitioners do not controvert the State's claim. The Commission notes that said judgment is about the detention and subsequent disappearance of Mr. Tenorio Roca committed by the Navy, the legal proceedings before the ordinary and the military courts, and the reopening of the investigations in the ordinary jurisdiction in 2003 until the deadline extension in 2012. In this regard, the Inter-American Court ordered the State of Peru to conduct the domestic procedures in an impartial, effective and timely manner in order to fully determine the facts, identify the persons responsible and impose the punishment applicable.<sup>8</sup> As a result, the Commission concludes that the petition is inadmissible regarding Mr. Rigoberto Tenorio Roca.

13. Furthermore, the State alleges the inadmissibility of the claims regarding Mr. Jaime Boris Ayala Sulca in view of the fact that he appears as a victim in a merits report of the Inter-American Commission issued in 1987. The Commission moreover notes that Nemesio Fernández Lapa is also a victim in another merits report made by the Commission and issued in 1988.<sup>9</sup> The Commission notes that both reports are about their forced disappearance only and do not include the subsequent facts that were denounced in both petitions and which concern the alleged denial of justice, such as the delay in the legal proceedings begun in 2002. Therefore, as regards to both alleged victims, the Commission will in the merits stage assess all those arguments on which it has not ruled yet in the abovementioned reports.

## VII. COLORABLE CLAIM

14. In view of the elements of fact and law presented by the petitioners, and the nature of the matter brought to its attention,<sup>10</sup> the Commission believes that the denounced facts may establish violations of the rights enshrined in Articles 3 (Right to Juridical Personality), 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, to the detriment of the alleged victims pursuant to the information in the previous section. The facts may also establish the violation of Article 19 (Rights of the Child) to the detriment of Yuri

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<sup>8</sup> I/A Court H.R., Case of Tenorio Roca *et al.* v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016. Series C No. 314.

<sup>9</sup> IACHR, Resolution No. 16/88, Case 9506, Nemesio Fernández Lapa, Peru, March 24, 1988.

<sup>10</sup> The bodies of the Inter-American System have dealt with the forced disappearance of persons in the armed conflict in Peru in several of its decisions. For instance, the Commission has issued: Admissibility Report No. 163/11, Petition 11.054, Teresa Díaz Aparicio, *et al.*; Admissibility Report No. 108/11, Petition 422-03, Cory Clodolia Tenicela Tello, *et al.*; Admissibility Report No. 76/10, Petition 11.845, Jeremías Osorio Rivera, *et al.*; Admissibility Report No. 10/07, Petition 735-05, Walter Munárriz Escobar; Merits Report No. 101/01, among other reports. For its part, the Court has addressed this subject matter, for example, through its recent Judgment on the Merits, Reparations and Costs concerning the Case of Peasant Community of Santa Barbara v. Peru, issued on September 1, 2015; among others.

Agama Anaya and Alejandro Gutierrez Taype. Likewise, if proved, the denounced facts may constitute violations of the rights enshrined in Articles 5, 8 and 25, to the detriment of Rosa Luz Pallqui Medina, Juan Macedonio Barboza Paredes, Asunta Medina Huaman and Juana López de Orejón and all the other relatives individualized in the merits stage of this petition. All of the above articles are in connection with the general obligations set forth in Articles 1.1 and 2 of the American Convention.

15. In addition, the Commission declares this petition admissible in relation to Articles I and III of the Inter-American Convention on Forced Disappearance of Persons, which Peru ratified on February 13, 2002. In the merits stage of this case, the Commission will analyze the compatibility between the criminal legislation currently in force concerning the crime of forced disappearance of persons, and the standard established by the Inter-American Convention on Forced Disappearance of Persons.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 2, 3, 4, 5, 7, 8, 19 and 25 of the American Convention, in connection with its Article 1.1;

2. To find the instant petition admissible in relation to Articles I and III of the Inter-American Convention on Forced Disappearance of Persons;

3. To find the instant petition inadmissible in relation to Rigoberto Tenorio Roca, and in relation to Jaime Boris Ayala Sulca and Nemesio Fernández López in connection with the facts already determined and analyzed by the IACHR in the abovementioned merits reports in which they are included;

4. To notify the parties of this decision;

5. To continue with the analysis on the merits; and

6. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of México, on the 7 day of the month of September, 2017. (Signed): Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.