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**REPORT No. 78/18**  
**PETITION 1025-07**  
REPORT ON ADMISSIBILITY

GREGORIO CUNTO GUILLÉN *ET AL.*  
PERU

Approved electronically by the Commission on June 28, 2018.

**Cite as:** IACHR, Report No. 1025-07. Petition 1025-07. Admissibility. Gregorio Cunto Guillén *et al.* Peru. June 28, 2018.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	<i>Asociación para el Desarrollo Humano Runamasinchiqpaq</i> (Association for Human Development)
<b>Alleged victim:</b>	Gregorio Cunto Guillén <i>et al.</i> <sup>1</sup>
<b>Respondent State:</b>	Peru <sup>2</sup>
<b>Rights invoked:</b>	Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights <sup>3</sup>

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

<b>Filing of the petition:</b>	August 7, 2007
<b>Additional information received at the stage of initial review:</b>	December 14, 2011
<b>Notification of the petition to the State:</b>	December 6, 2012
<b>State's first response:</b>	December 26, 2012
<b>Notification of the possible archiving of the petition:</b>	October 31, 2017
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	November 30, 2017

**III. COMPETENCE**

<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 (deposit of ratification instrument on July 28, 1978); Inter-American Convention to Prevent and Punishment Torture (deposit of ratification instrument on March 28, 1991); Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará" (deposit of ratification instrument on June 4, 1996)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 19 (Child) and 25 (Judicial Protection) of the Convention in relation to its Articles 1.1 and 2; Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; Article 7 of the Convention of Belém do Pará

<sup>1</sup> The other alleged victims are Claudio Palomino Curo, Gerardo Palomino Ricra, Esperanza Ruíz Soto, Alejandro Cunto Yaranga, Dionisia Villarroel Villanueva and Faustino Cunto Tincopa and their families.

<sup>2</sup> In accordance with 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 this matter.

<sup>3</sup> Hereinafter "Convention" or "American Convention".

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

<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

## V. ALLEGED FACTS

1. The instant petition concerns the alleged illegal detention, torture and subsequent extrajudicial execution of seven people in the Province of Huanta, Department of Ayacucho, in August 1985. The events, allegedly perpetrated by military officers of the Castro Pampa barracks, are yet to be punished.

2. The petitioners indicate that on July 31, 1985, in the Province of Huanta, members of the Civil Guard arrested Claudio Palomino Curo and Gerardo Palomino Ricra when they were travelling by public transport. The petitioners assert that there was no warrant for the arrest and that the police officers told the men that a relative of theirs was wanted by the authorities. They submit that the men stayed at the police station of Luricocha until the evening of August 1, 1985, that was when military officers took them by force to the Castro Pampa barracks.

3. They claim that on July 31, 1985, in the city of Huanta, Esperanza Ruíz Soto was arrested by military officers when she was walking in street. The witnesses indicate that military officers, without a warrant, tied her hands, blindfolded her, put her in a truck and then took her to the Castro Pampa barracks.

4. They submit that on August 3, 1985, in the town of Pampa Chacra, Province of Huanta, Gregorio Cunto Guillén, Faustino Cunto Tincopa (aged 17) and Alejandro Cunto Yaranga were arrested while they were sleeping in their house. The petitioners explain that a troop of some 25 uniformed officers wearing balaclavas violently broke into the house without a judicial warrant, tied up the alleged victims and took them to the Castro Pampa barracks. They also assert that before leaving, the officers threatened the alleged victims' family members and seized some belongings from the house, such as a radio cassette player and money in cash.

5. They claim that in the evening of August 4, 1985, in the city of Huanta, Dionisia Villarroel Villanueva was arrested by members of the Army. They indicate that the officers, without a warrant, violently broke into her house claiming that her husband, Marino Suárez Huamani, had been caught some days before because he participated in subversive meetings. Subsequently, the officers forced all the family members to lie down on the floor at gunpoint, and took the alleged victim to the Castro Pampa barracks, where her husband was held too.

6. The petitioners submit that at the Castro Pampa barracks the alleged victims were beaten, tortured and subjected to long interrogations about the purported subversive groups operating in the region. In particular, in regard to Mrs. Dionisia Villarroel Villanueva, they allege that several military officers beat her and raped her in front of her husband while he was with hands tied on the floor.

7. They assert that on August 7, 1985 all the alleged victims, except for Mr. Marino Suárez Huamani, were taken in a truck of the army to the area called Pucayacu, where the military officers dug a grave and then killed them by shooting them on the head. They indicate that afterward the officers buried the seven bodies in the common grave.

8. They submit that in view of the arrest of the alleged victims, their family members filed reports before the Prosecutor's Office of the Province of Huanta. Likewise, they indicate that on August 28, 1985, they reported to the Prosecutor's Office that in the surrounding area of the bridge Allco Machay, in the area of Pucayacu, a grave with human remains had been found, and that they requested that the bodies were removed and identified. Consequently, on August 29, 1985 the alleged victims' bodies were exhumed and then the corresponding necropsies were undertaken, according to which all the deaths were due to severe traumatic brain injuries.

9. They affirm that on October 4, 1985 the Prosecutor's Office officially opened the criminal investigation for aggravated murder against three military officers involved in the events, and that on the same date the Examining Judge of Huanta ordered the pretrial detention of the latter. However, on October 25, 1985 the Permanent Military Court of Ayacucho initiated a conflict over jurisdiction, claiming that the facts under investigation were the result of military operations undertaken by the accused officers in an area declared in a state of emergency. Consequently, on November 18, 1985 the Examining Judge of Huanta decided not to hear the case. The Provincial Prosecutor's Office appealed against this decision before the Criminal Chamber of the Superior Court of Ayacucho, which on April 9, 1986 forwarded the appeal to the Criminal Chamber of the Supreme Court. Finally, on April 16, 1986 this court decided to overturn competence of the ordinary jurisdiction and forward the case to the military jurisdiction.

10. They assert that on May 18, 1989, in the framework of the proceeding in the military jurisdiction, the Permanent Council of War of the Army's Second Judicial District ruled to acquit the defendants, establishing that although these admitted to having shot the seven civilians dead, the cause of death of the seven alleged victims were traumatic brain injuries, not gunshots. This judgment was confirmed by the Supreme Council of Military Justice on July 24, 1990, after which the proceeding concluded.

11. They also allege that in 2003 Peru's Truth and Reconciliation Commission investigated the extrajudicial execution of the alleged victims and forwarded the case to the Attorney General's Office. They indicate that on October 7, 2011 the National Criminal Chamber of the Supreme Court of Justice sentenced a military officer to 17 years in prison for the criminal offense of aggravated murder. Likewise, it declared another military officer immune from prosecution and, as a security measure, it ordered his commitment to a hospital for 17 years so that he would undergo medical treatment. Moreover, it decided to suspend the prosecution of a third accused because he was a fugitive from justice. Finally, it established the sum of a hundred thousand Nuevos Soles (100,000,00 PEN) in civil damages in favor of alleged victims' families, payable by the only person sentenced in joint responsibility with the State. The petitioners indicate that they lodged an appeal for annulment against the judgment since they considered that the reparation was not full reparation. They claim that this remedy was rejected by the Supreme Court of Justice, which also exempted the State from the payment of civil damages.

12. They claim that said legal resolution was ineffective because the security measure ordered in relation to the military officer found immune from prosecution was not complied with. They indicate that in view of the lack of special hospitals, said officer was transferred to a military criminal facility where he is in a flexible system and with several benefits proper to a special prison. Lastly, they assert that up to date the third accused has not been caught by the Peruvian authorities.

13. In turn, the State submits that the criminal proceeding in which two of the persons responsible of the extrajudicial execution of the alleged victims conformed to the safeguards of due process and the domestic legal framework. Likewise, it explains that the investigation undertaken to clarify the facts is still underway; and that, therefore, the domestic legal remedies have not been exhausted.

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

14. The petitioners claim that the alleged victims' families lodged a complaint before the Provincial Prosecutor's Office of Huanta as an appropriate remedy for the initial investigation into the alleged victims' arrest and disappearance, and that in view of the finding of human remains, the Federal Attorney General's Office continued the prosecution for the violent deaths. However, the case was forwarded to the military criminal jurisdiction and it ended with the acquittal of the persons involved, on July 24, 1990. They indicate that afterward, in the framework of the recommendations by the Truth and Reconciliation Commission, the investigations were open in the ordinary jurisdiction, and are still underway. They claim that, as a result, the appeal filed by the military criminal jurisdiction prevented the alleged victims' families from accessing appropriate remedies in the domestic legal framework; and that there is also an unwarranted delay of justice. For its part, the State indicates that the remedies have not been exhausted because the criminal proceeding is underway and the investigation is in process.

15. The Commission has repeatedly stated that the military jurisdiction is not an appropriate forum and, therefore, does not provide the adequate remedy for investigating, prosecuting, and punishing the violations of the human rights enshrined in the American Convention, allegedly committed by members of the State Security Forces or with its cooperation or permission.<sup>5</sup> Thus, it believes that, since the case for the alleged extrajudicial executions was heard by the military criminal court, the exception set forth in Article 46.2.b of the Convention is applicable. Likewise, the Commission notes that the criminal investigation in the ordinary jurisdiction into the death of the alleged victims started in 2003 and that in 2011 a military officer was sentenced and another was declared immune from prosecution, while the prosecution of a third officer was suspended in view of his being on the loose. As a result, since to date there is not a final judgment in relation to all the alleged responsible, and in view of the characteristics of this case and the existing precedents concerning similar events,<sup>6</sup> the Commission believes that the exception to the exhaustion of domestic remedies established in Article 46.2.c of the American Convention applies to the instant case.

16. On the other hand, as an exception to exhaustion applies, the Commission concludes that the petition has been submitted within a reasonable time based on Article 32.2 of its Rules. This, given that although the events have taken place since 1985 and the petition was received on August 7, 2007, several of its effects, such as the alleged lack of punishment of all the alleged perpetrators, would extend to the present. Therefore, in view of the context and the characteristics of the facts included in this report, the Commission considers that the petition was submitted within a reasonable time and that the admissibility requirement regarding the statute of limitations for petitions must be satisfied.

## VII. ANALYSIS OF COLORABLE CLAIM

17. Considering the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that the purported wrongful detentions, torture and extrajudicial execution of the alleged victims, the burial of their bodies in common graves as well as the alleged lack of effective judicial protection regarding these facts all could establish possible violations of Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention in relation to its Articles 1.1. and 2, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victims and their families; in the case of the latter, due to the lack of investigation into the alleged facts. Likewise, and considering that Faustino Cunto Tincopa was a minor at the time of the events, there is a possible violation of Article 19 (Rights of the Child) of the Convention.

18. Moreover, the Commission believes it is to be analyzed in the merits stage whether the alleged affliction, anguish and suffering undergone by Mr. Marino Suárez Huamani in view of the fact that he was made to watch the beating and the sexual assault on his wife, Mrs. Dionisia Villarroel Villanueva, could establish violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of both. Likewise, concerning the alleged sexual assault of Mrs. Villarroel Villanueva by military officers, these facts could establish a violation of Article 7 of the Convention of Belém do Pará. Both Conventions apply in regard to the lack of investigation into the alleged events, following the date of their ratification and the deposit of the ratification instruments.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 19 and 25 of the American Convention in connection with its Articles 1.1 and 2; Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará; and

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<sup>5</sup> IACHR, Report No. 34/15, Petition 191-07 et al. Admissibility. Álvaro Enrique Rodríguez *et al.* Colombia. July 22, 2015, par. 247. IACHR, Report No. 50/17, Petition 464-10 B. Admissibility. José Ruperto Agudelo Ciro and family. Colombia. May 25, 2017, par. 9.

<sup>6</sup> IACHR, Report No. 17/16, Petition 1132-06. Admissibility. Hortencia Neyid Tunja Cuchumbe *et al.* Colombia. April 15, 2016, par. 28.

2. To notify the parties of this decision; to continue with the analysis on the merits; and 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 on the 28<sup>th</sup> day of the month of June, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.