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REPORT No. 206/19

PETITION 939-10

REPORT ON ADMISSIBILITY

**NATIVIDAD ÁVILA RIVERA AND FAMILY
PERU**

Approved electronically by the Commission on December 6 2019.

Cite as: IACHR, Report No. 206/19, Petition 939-10. Admissibility. Natividad Ávila Rivera and Family. Peru. December 31, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	National Coordinator of Human Rights
Alleged victim:	Natividad Ávila Rivera and Family
Respondent State:	Peru ¹
Rights invoked:	Articles 4, 5, 7, 8, and 25 in conjunction with Article 1.1 of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	June 21, 2010
Additional information received at the stage of initial review:	May 9, 2017
Notification of the petition to the State:	May 23, 2017
State's first response:	August 24, 2017
Additional observations from the petitioner:	August 9, 2017; February 21, June 24, August 17, 2018; January 21, and July 30, 2019
Additional observations from the State:	December 20, 2017; June 8, 2018

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of instrument made on July 28, 1978); Inter-American Convention to Prevent and Punish Torture ⁴ (deposit of instrument made on March 28, 1991); and Inter-American Convention on Forced Disappearance of Persons ⁵ (deposit of instrument made on February 13, 2002)

IV. 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>:	No
Rights declared admissible	Articles 3, 4, 5, 7, 8, 11 and 25 of the American Convention, in relation to its Article 1.1; as well as Articles 1, 6, and 8 of the IACPPT; as well as Article 1 of the IACFD
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception in Article 46.2.c applicable
Timeliness of the petition:	Yes, in the terms of Section VI

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in either the discussions or decision in the present case.

² Hereinafter "the American Convention" or "the Convention".

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ Hereinafter the "IACPPT".

⁵ Hereinafter the "IACFD".

V. FACTS ALLEGED

1. The petitioners bring a complaint about the illegal detention, torture and forced disappearance of a married couple, Natividad Ávila Rivera and Benigno Sullca Castro, (hereinafter "the alleged victims") allegedly committed by members of the Peruvian army in 1992. They indicate that in the early hours of June 17, 1992, a group of armed soldiers burst into the alleged victims' house in the community of Pucayacu, Department of Huánuco. They report that the soldiers then beat them and threw on the floor with their four children, while they ransacked the house. They indicate that while the children pleaded for the release of their parents, the soldiers forcibly detained the alleged victims, put them in a pick-up truck, and then left for the Madre Mía Military Base, located in the Tocache region, Department of San Martín.

2. They point out that Mr. Jorge Ávila Rivera, Mrs. Natividad Ávila Rivera's brother, was also detained that night, and that his wife and the daughter of the alleged victims went to the Military Base looking for their relatives and to bring them food. However, they indicate that they were prevented from entering and were ordered to leave. They argue that after this setback, Mrs. Teresa Avila Rivera visited the Military Base in order to meet with its commander, known there as "Captain Carlos".⁶ They argue that although Mrs. Teresa spoke with him directly and asked for the release of their relatives, the aforementioned officer denied that they were there and then told her that "if her sister was in his grip, he would not hesitate to kill her, because every rotten apple had to be crushed." They indicate that he asked her to return that night with her identity document, but that Mrs. Teresa did not do so out of fear.

3. They indicate that on the following days, the family members began their own inquiries and investigations with soldiers belonging to the Military Base, who confirmed that the alleged victims were there, that they had been tortured, killed and their bodies had been thrown into the Huallaga river. The petitioners point out that at that time the military prohibited residents from collecting discarded bodies; however, between June 25 and 26, 1992, the relatives of the alleged victims searched for them in the river and the surrounding areas. They indicate that they managed to find the handcuffed corpse of Benigno Sullca Castro with a gunshot to the forehead, but that out of fear, they buried him on the banks of the river. They indicate that years later, the relatives returned to the area in order to recover the body, but were unable to do so due to changes in the area's geography, the dense forest and the changes to the course of the river.

4. The petitioners argue that due to widespread fear and the context of violence in the area, the alleged victims' relatives did not appear before the judicial authorities. However, on July 5, 1992, one of the sons of the Sullca Ávila couple, visited the headquarters of the International Committee of the Red Cross located in Tingo María, to report the events. On the other hand, they point out that one of Mrs. Natividad Ávila Rivera's sisters, appeared before the Truth and Reconciliation Commission to do the same.

5. They maintain that on February 14, 2006, Mrs. Teresa Ávila Rivera filed a formal complaint about the disappearance of the alleged victims and the responsibility of O.M.H.T., Commander of the Military Base and the members of the military patrol before the Mixed Provincial Prosecutor's Office of Tocache. They state that on August 4, 2006, the Provincial Prosecutor only filed formal charges against O.M.H.T., for the crimes of forced disappearance and torture. On September 8, 2006, the Fourth Supra-provincial Criminal Court of Lima opened an investigation for the same offenses.

6. The petitioners point out that at this procedural stage, some witnesses who initially indicated that O.M.H.T. was responsible for the disappearance and torture of the alleged victims, later recanted due to pressures and bribes received from the defendant's lawyers. They indicate that by virtue of the above, on March 10, 2009, the Superior Prosecutor issued an opinion to archive the case. They allege that despite the fact that this opinion acknowledged the existence of sufficient evidence of the commission of the offenses, no analysis or evaluation of the detailed retractions outlining the responsibility of the then head of the military base was undertaken.

⁶ The petitioners argue that the aforementioned "Captain Carlos" was later identified as Ollanta Moisés Humala Tasso, (hereinafter "O.M.H.T.") against whom they filed judicial claims detailed hereafter.

7. They indicate that the aforementioned decision was ratified by the National Criminal Chamber on April 27, 2009, declaring that there were no grounds for the case to progress to the oral proceedings stage. They point out that this decision was confirmed by the Second Transitory Criminal Chamber of the Supreme Court of Justice on December 21, 2009. Additionally, this decision ordered the remission of copies of the case file to the National Police to continue the investigations to clarify the facts. However, the petitioners point out that only on June 1, 2017, did the Fourth Supraprovincial Criminal Prosecutor's Office of the District of Lima decide to reopen the preliminary investigation against the perpetrators of the forced disappearance of the alleged victims. They emphasize that these proceedings did not annul the dismissal ordered in 2009 against the principal perpetrator and that, until now, there has been no conviction against the material or intellectual perpetrators of these events.

8. For its part the State indicates that there has been a failure to exhaust domestic remedies, since the case is still under consideration by the Fourth Supraprovincial Criminal Prosecutor's Office of Lima. Therefore, it points out that remedies established in the applicable procedural rules relating to the Prosecutor's investigation and criminal proceedings must be exhausted, which it points out, does not require further explanation at this state of the investigation. It also points out that the Supreme Court of Justice's decision on the nullity appeal presented by the petitioners contained a rigorous and reasoned analysis and upheld the ruling issued by the National Criminal Chamber. On the other hand, it maintains that reparations are being provided in internal procedures, since the alleged victim Natividad Ávila Rivera is registered in the Unified Victims Registry. It also points out that according to national law, the alleged victims' brothers are not entitled as beneficiaries of the reparation measures.

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

9. The petitioners maintain that there has been an unjustified delay in the investigations carried out by the authorities, and therefore that the exception provided for in Article 46.2.c of the American Convention applies. They also emphasize that they have not received any compensation as a result of the events, and that whatever indemnification might be forthcoming would be inadequate to provide comprehensive reparations. For its part, the State indicates that domestic remedies have not been exhausted since the criminal investigation is still ongoing, and the remedies established in the criminal procedural rules are available.

10. The Commission has indicated that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, preserve the evidence and even safeguard the rights of any person considered as a suspect in the context of the investigation. From the information provided by the parties, the alleged victims' next of kin reported their disappearance before the International Committee of the Red Cross on July 5, 1992; they explained the case before the Truth and Reconciliation Commission; and they filed a complaint in the Provincial Mixed Prosecutor's Office of Tocache on February 14, 2006. To date, there has been no clarification or determination of responsibility for the material and intellectual authorship of the events. Therefore, the Commission considers that the exception provided for in Article 46.2.c of the Convention is applicable.

11. On the other hand, the Commission observes that the alleged facts relevant to the petition took place on June 17, 1992, that their effects extend up to the present, and that since then the alleged victims' next of kin have denounced the events before different national instances. Therefore, in view of the context, the characteristics of the present case and the continuing nature of the alleged forced disappearances, the Commission concludes that the petition was filed within a reasonable time and that the admissibility requirement regarding timeliness for filing is fulfilled.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that the alleged raids and illegal detentions, torture and forced disappearances committed against the alleged victims by members of the armed forces, the

alleged prohibition against the search for bodies, and the lack of effective judicial protection for these events could characterize possible violations of Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy) and 25 (judicial protection) of the American Convention in relation to its Article 1.1, to the detriment of the alleged victims and their next of kin; as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons, due to the continuing nature of the offense of forced disappearance and the alleged failure to investigate alleged facts after the date of ratification and deposit.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 11 and 25 of the American Convention in relation to its Article 1.1; in relation to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and in relation to Article I of the Inter-American Convention on Forced Disappearance of Persons;

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 6th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.