

# Quispialaya Vilcapoma v. Peru

## ABSTRACT<sup>1</sup>

*This case is about assault and battery committed by a training sub-official of the Peruvian Army against a volunteer soldier during a drill. The victim suffered the loss of an eye. The State failed to adequately investigate and prosecute the training sub-official and eventually the Court found Peru in violation of the American Convention.*

## I. FACTS

### A. Chronology of Events

**November 14, 2000:** Vlademir Quispialaya Vilcapoma is twenty-two years old and serves as a volunteer soldier at the Ninth of December Army Base in Huancayo, Peru, working with the No. 31 Communications Company.<sup>2</sup> Mr. Quispialaya Vilcapoma is declared “fit” and free from “any physical or psychological limitation” at the time of recruitment.<sup>3</sup>

**December 5, 2000:** During his service, Mr. Quispialaya Vilcapoma suffers a blow to his right eye with the butt of his rifle, which slightly impairs his vision.<sup>4</sup>

**January 26, 2001:** While members of the No. 31 Communications Company practice shooting, the instructor, Mr. Juan Hilaquita Quispe, a noncommissioned officer of the Peruvian Armed Forces, becomes annoyed with Mr. Quispialaya Vilcapoma because he fails to hit his

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1. Brenna McGill, Author; Edgar Navarrete, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Quispialaya Vilcapoma v. Peru, Admissibility Report, Report No. 19/05, Inter Am. Comm’n H.R., Case No. 54/04, (Feb. 25, 2005) ¶ 8.

3. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser.C) No. 308, ¶ 58 (Nov. 23, 2015).

4. *Id.* ¶ 59.

target.<sup>5</sup> As a result, Mr. Hilaquita Quispe insults and torments Mr. Quispialaya Vilcapoma throughout the training session.<sup>6</sup>

Suddenly, in the middle of shooting practice, Mr. Hilaquita Quispe takes Mr. Quispialaya Vilcapoma's rifle and strikes him with it on his forehead, above his right eye, causing him to fall to the ground and lose consciousness.<sup>7</sup> Mr. Quispialaya Vilcapoma is assisted by two fellow members of the army.<sup>8</sup> When he regains consciousness, Mr. Hilaquita Quispe warns him not to report him and threatens to make him disappear if he does.<sup>9</sup>

This was not the victim's first violent interaction with Mr. Hilaquita Quispe; on previous occasions, Mr. Hilaquita Quispe hit Mr. Quispialaya Vilcapoma's legs and back with a stick.<sup>10</sup> Mr. Quispialaya Vilcapoma goes to the infirmary and is given only eye drops to treat his injuries.<sup>11</sup>

**June 27, 2001:** Five months after the incident, Mr. Quispialaya Vilcapoma returns to the infirmary and complains of a fever and persistent headaches.<sup>12</sup> The physician, Dr. Patricia Chanjan Pino, questions him about the blow he received to the back of his head.<sup>13</sup> Fearing Mr. Hilaquita Quispe's retaliation, Mr. Quispialaya Vilcapoma gives a limited account of the incident, merely stating it was the result of an accident involving Mr. Hilaquita Quispe.<sup>14</sup>

**July 3, 2001:** Mr. Quispialaya Vilcapoma is diagnosed with *ametropia* (i.e. generic vision disorders, often caused by a congenital malformation), and *ptisis bulbi* (i.e. a shrunken, non-functional eye) at the Daniel A. Carrion Hospital in Huancayo.<sup>15</sup>

**July 6, 2001:** Dr. Chanjan Pino submits a medical report to Brigadier General Commander of the 31st division and details the eye injury and

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5. Quispialaya Vilcapoma v. Peru, Admissibility Report, ¶ 9.

6. *Id.*

7. *Id.*

8. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 62.

9. Quispialaya Vilcapoma v. Peru, Admissibility Report, ¶ 9.

10. *Id.*

11. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 63.

12. *Id.* ¶ 64.

13. *Id.*

14. *Id.*

15. *Id.* ¶ 65.

gradual loss of vision Mr. Quispialaya Vilcapoma sustained due to Mr. Hilaquita Quispe's use of force.<sup>16</sup>

**July 10, 2001:** The Commander of Communications Company No. 31 reports to the Commander General of the 31st Infantry Division regarding the investigation into the assault on Mr. Quispialaya Vilcapoma.<sup>17</sup>

**July 12, 2001:** The medical examiners at the Central Hospital of Peru determine Mr. Quispialaya Vilcapoma's vision loss is attributable to a severe traumatic injury.<sup>18</sup> The examiners find the loss of vision is more severe due to the extensive period during which Mr. Quispialaya Vilcapoma did not receive any treatment for the injury, thus making it unlikely his vision could be repaired.<sup>19</sup>

**December 21, 2001:** The Office of Legal Counsel determines Mr. Hilaquita Quispe will not be held criminally responsible for the assault.<sup>20</sup>

**January 2002:** The Division Military Center evaluates Mr. Quispialaya Vilcapoma and determines that he "shows signs of an emotional disorder resulting from a conflict he experienced which manifested itself in behaviors showing insecurity, fear, and demands for emotional support."<sup>21</sup>

**January 25, 2002:** Mr. Quispialaya Vilcapoma undergoes a "cataract extraction, intraocular lens implantation and trabeculotomy (a surgical operation that lowers the intraocular pressure) in the right eye."<sup>22</sup> However, the surgery fails to improve his vision due to the advanced nature of his condition.<sup>23</sup>

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16. *Id.*

17. *Quispialaya Vilcapoma v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 73.

18. *Id.* ¶ 66.

19. *Id.*

20. *Id.* ¶ 74.

21. *Id.* ¶ 71.

22. *Id.* ¶ 67.

23. *Quispialaya Vilcapoma v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 67.

**January 26, 2002:** Five unknown individuals beat Mr. Quispialaya Vilcapoma while he returns from visiting his mother.<sup>24</sup> After the attack, he returns to the December 9 Barracks, and while talking to his former colleagues, he notes they had changed their version of their witness accounts because Mr. Hilaquita Quispe threatened them.<sup>25</sup>

**January 30, 2002:** Mr. Quispialaya Vilcapoma unsuccessfully attempts suicide.<sup>26</sup>

**February 2002:** Several members of the Army make statements about Mr. Quispialaya Vilcapoma's case in the course of the investigation.<sup>27</sup>

**February 28, 2002:** The victim's mother, Ms. Victoria Vilcapoma Taquia, files three complaints with the Prosecutor's Office:<sup>28</sup> "(1) the pressure imposed by Mr. Hilaquita Quispe to prevent Mr. Quispialaya Vilcapoma from making a report; (2) the beating that occurred one month prior; and (3) the discovery that Mr. Quispialaya Vilcapoma's colleagues changed their stories of what happened in fear of repercussions."<sup>29</sup> Ms. Vilcapoma Taquia also reports that Mr. Hilaquita Quispe contacted Mr. Quispialaya Vilcapoma again, threatening him and "suggesting the possibility of a 'settlement.'" <sup>30</sup>

The Human Rights Commission (*Comisión de Derechos Humanos*; COMISEDH) files a complaint against Mr. Hilaquita Quispe for a "crime against humanity in the form of torture."<sup>31</sup>

**March 2, 2002:** Mr. Quispialaya Vilcapoma makes a statement regarding his case to the Investigating Officer of the Inspectorate of the Central Military Hospital of Lima.<sup>32</sup>

**June 11, 2002:** A legal medical certificate states Mr. Quispialaya Vilcapoma has complete and permanent loss of vision in his right eye.<sup>33</sup>

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24. *Id.* ¶ 97.

25. *Id.*

26. *Id.* ¶ 72.

27. *Id.* ¶ 75.

28. *Id.* ¶ 97.

29. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 97.

30. *Id.*

31. Quispialaya Vilcapoma v. Peru, Admissibility Report, ¶ 11.

32. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 39.

33. *Id.* ¶ 68.

The certificate attributes the loss of vision to both the minor injury of December 5, 2000, and the more serious injury from January 26, 2001.<sup>34</sup>

**September 18, 2002:** The Head of the Department of Ophthalmology at the Central Military Hospital concludes that no treatment could successfully restore Mr. Quispialaya Vilcapoma's vision in his right eye.<sup>35</sup>

**October 28, 2002:** The General Inspectorate of the Army determines that Mr. Quispialaya Vilcapoma's injury is "a result of [his military] service."<sup>36</sup>

**November 6, 2002:** The Military Prosecutor of First Instance files a complaint against Mr. Hilaquita Quispe for abuse of authority.<sup>37</sup>

**November 14, 2002:** Mr. Quispialaya Vilcapoma files a pension request with the Peruvian Army.<sup>38</sup> The request is denied, "on the grounds that the disability was not total, and that the injury sustained occurred outside the act of service."<sup>39</sup>

**November 29, 2002:** Mrs. Vilcapoma Taquia requests protection services from the Sub-Prefect of the Province of Huancayo for herself and her family against Mr. Hilaquita Quispe.<sup>40</sup>

**December 2002:** The Human Rights Commission appeals the decision, and adds abuse of authority to the complaint.<sup>41</sup> In response, the Fifth Criminal Court investigates the matter.<sup>42</sup> The Criminal Court orders the arrest of Mr. Hilaquita Quispe, but the arrest is never made.<sup>43</sup>

The Fifth Military Court, however, initiates proceedings against Mr. Hilaquita Quispe for the crime of abuse of authority based on the incident.<sup>44</sup> The Fifth Military Court requests the Fifth Criminal Court

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34. *Id.*

35. *Id.* ¶ 69.

36. *Id.* ¶ 77.

37. *Id.* ¶ 76.

38. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 27.

39. *Id.*

40. *Id.* ¶ 98.

41. Quispialaya Vilcapoma v. Peru, Admissibility Report, ¶ 12.

42. *Id.* ¶ 13.

43. *Id.*

44. *Id.* ¶ 14.

stay its proceedings.<sup>45</sup> This creates a possible jurisdictional conflict and domestic legislation requires the proceedings be resolved by the Criminal Chamber of the Supreme Court of Justice.<sup>46</sup>

**December 13, 2002:** Mrs. Vilcapoma Taquia testifies before the Department of State Security and states that Mr. Hilaquita Quispe “was roaming around her house and [she] assumed he could assault her and her family.”<sup>47</sup>

**December 16, 2002:** Another service member who testified against the mistreatment he experienced in the barracks files a complaint against Mr. Hilaquita Quispe with the Ombudsman’s Office for “intimidation and coercion.”<sup>48</sup>

**December 19, 2002:** Mr. Quispialaya Vilcapoma testifies that Mr. Hilaquita Quispe “hit [him] many times in [his] back and [on his] legs with a stick.”<sup>49</sup>

**January 28, 2003:** Mr. Quispialaya Vilcapoma makes a statement to the Permanent Military Judge of Huancayo, and indicates that his previous statement on March 2, 2002 was made under duress.<sup>50</sup>

**February 4, 2003:** Mr. Quispialaya Vilcapoma reports to the Ombudsman’s Office that “he had received threats and coercion” when he arrived home that day, and was met by “members of the Peruvian Army, who harassed him” after a news station interviewed him about the abuse.<sup>51</sup>

**May 12, 2003:** The Permanent Criminal Chamber of the Supreme Court issues a decision on the conflict of venue, and rules in favor of the military court based on the fact that the alleged acts are “an offense in the court of duty [*delito de function*]” since they occurred in the line of military service.<sup>52</sup> Judicial proceedings regarding such acts are under the

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45. *Id.*

46. *Id.*

47. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 101.

48. *Id.* ¶ 99.

49. *Id.* ¶ 79.

50. *Id.* ¶ 39.

51. *Id.* ¶ 104.

52. Quispialaya Vilcapoma v. Peru, Admissibility Report, ¶ 15.

exclusive jurisdiction of the military courts.<sup>53</sup> The Human Rights Commission and the State agree that this decision exhausts all domestic remedies available to Mr. Quispialaya Vilcapoma.<sup>54</sup>

**September 8, 2003:** The Human Rights Commission is notified of the Permanent Criminal Chamber of the Supreme Court's decision to grant the military tribunal jurisdiction over this case.<sup>55</sup>

**October 16, 2003:** The Provincial Prosecutor's Office for Criminal Matters in Huancayo dismisses the complaint against Mr. Hilaquita Quispe because the act in question does not satisfy the legal definition of torture, based on the account provided by Mr. Quispialaya Vilcapoma.<sup>56</sup>

**December 23, 2003:** The Fifth Military Court issues Final Report No. 005-2003/5 to JMPH-2 ZJE.<sup>57</sup> Part of the analysis rests on the fact that only one of the fifteen soldiers present saw the incident occur, and that Mr. Quispialaya Vilcapoma experienced vision problems prior to entering the service.<sup>58</sup> Since none of the evidence irrefutably proves Mr. Hilaquita Quispe caused Mr. Quispialaya Vilcapoma's vision loss through a criminal act, he is not held liable.<sup>59</sup>

#### *B. Other Relevant Facts*

Mr. Quispialaya Vilcapoma's case is not the first of its kind to occur in the State.<sup>60</sup> On November 24, 1998, the Minister of Defense Julio Salazar Monroe addresses the Commanders of all branches of the military and recognizes that abuses had taken place.<sup>61</sup> Mr. Monroe orders the leaders of each branch "to take preventative measures to avoid abuse of authority, among other things."<sup>62</sup>

The State, along with other Latin American countries, has a "prevailing sentiment ... that the military is above the reach of the

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53. *Id.*

54. *Id.* ¶ 32.

55. *Id.* ¶ 37.

56. *Id.* ¶ 11.

57. *Id.* ¶ 24.

58. *Quispialaya Vilcapoma v. Peru*, Admissibility Report, ¶ 24.

59. *Id.*

60. *Quispialaya Vilcapoma v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 53-55.

61. *Id.* ¶ 53.

62. *Id.*

people.”<sup>63</sup> The military is bound by the Constitution in theory, but restrictions are rarely practiced.<sup>64</sup> In 1993, the Peruvian military expresses discontent at the invasion of “outside influence in the form of human rights scrutiny.”<sup>65</sup> The military feels it is an autonomous group and the country’s “ultimate strength and resource,” and therefore, above civilian law.<sup>66</sup>

An armed conflict between 1980 and 2000 causes almost 70,000 deaths or forced disappearances.<sup>67</sup> While many are casualties of radical political organizations, others are “victims of human rights violations by state agents.”<sup>68</sup> Despite the overwhelming number of victims, “only a tiny number of the human rights violations committed during the armed conflict [are ever] brought to trial.”<sup>69</sup>

In 2002, the Ombudsman’s Office publishes Defense Report No. 42, which documents “118 cases of torture and cruel, inhumane, or degrading treatment in military installations” from 1998-2002.<sup>70</sup> The Inter-American Court of Human Rights takes notice of this pattern of abuse and mistreatment within the State’s military.<sup>71</sup> The Defense Report contains the following:

...inhumane or degrading treatment is directly linked to the performance of military service activities, these are manifested in physical aggression, excessive physical exercise (many of them considered a manifestation of disciplinary power) and psychological abuse. It should be noted that this practice would be deeply ingrained and would be intrinsic to the way in which military service is being provided.... The main and most recurrent forms of torture and cruel, inhuman or degrading treatment [consist of] punches and kicks in the abdomen, stomach, bladder, testicles and back (especially lungs and kidneys). Some testimonials refer to ear studs and in the lower part of the tongue. There are also frequent blows to the head

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63. Nathaniel C. Nash, *In Peru, a ‘Second Coup’ Reveals the Upper Hand*, N.Y. TIMES (May 2, 1993), <http://www.nytimes.com/1993/05/02/weekinreview/the-world-in-peru-a-second-coup-reveals-the-upper-hand.html?mcubz=3>.

64. *Id.*

65. *Id.*

66. *Id.*

67. *World Report 2017: Peru*, HUMAN RIGHTS WATCH (Jan. 2017) <https://www.hrw.org/world-report/2017/country-chapters/peru>.

68. *Id.*

69. *Id.*

70. *Quispialaya Vilcapoma v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 49.

71. *Id.*



with the butt of rifles, back and legs and in some cases, submersion in water wells, blows to the buttocks with rods of metal, wood, and rubber. Finally, some recruits have stated that they are victims of rape or sexual abuse. Such torture and cruel, inhumane or degrading treatment would be recurrent, to the extent that they were sanctioned and some of their modalities are known in the military service with their own names, such as the “piñata” (hanging of recruit followed by a beating), the “balloon” or “globito” (forcing recruit to inflate his cheeks and then be hit in the face), “little neck” or “gargantita” (forcing fingers down recruits’ throats and pulling the outer part of their trachea) .... Some methods and practices in the military training appear to be oriented to humiliation, vehemence, abuse and arbitrariness as means to achieve certain results in the training of recruits. This “culture” is transmitted from group to group over time, the oldest being the ones in charge of transmitting it to the younger ones with their own attitudes and behaviors and then these, to those who just enter the troop.<sup>72</sup>

After the publication of this report, the Ombudsman’s Office receives seventy-two complaints of torture, cruel, inhumane or degrading treatment within the military between 2002 to 2006.<sup>73</sup> From 2009 to 2013, there are fewer reports of abuse, but through interviews, it is discovered that a majority of soldiers did not report mistreatment due to a fear of retribution.<sup>74</sup> The Court determines that the evidence is insufficient to support a finding of an organized pattern or policy of State violence towards military members.<sup>75</sup> However, it recognizes that a “context of...abuse in the military” exists due to a “culture of violence and abuse” engrained in military discipline and authority.<sup>76</sup> The Court keeps the aforementioned in mind when evaluating the facts in the case of Mr. Quispialaya Vilcapoma.<sup>77</sup>

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72. *Id.*

73. *Id.* ¶ 54.

74. *Id.* ¶ 55.

75. *Id.* ¶ 56.

76. *Quispialaya Vilcapoma v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 57.

77. *Id.*

## II. PROCEDURAL HISTORY

*A. Before the Commission*

**February 3, 2004:** The Human Rights Commission submits a complaint to the Inter-American Commission on Human Rights alleging the State violated certain rights guaranteed to Mr. Quispialaya Vilcapoma by the American Convention of Human Rights.<sup>78</sup> The Human Rights Commission alleges Mr. Quispialaya Vilcapoma was tortured and subjected to inhumane treatment while serving in the State's armed forces.<sup>79</sup>

**April 7, 2004:** The Commission acknowledges receipt of the complaint.<sup>80</sup>

**May 24, 2004:** The Commission opens the case under petition number 54-04.<sup>81</sup>

**February 25, 2005:** The Commission finds that no official investigation was ever launched into the allegations, despite the fact that the Human Rights Commission filed an official complaint with the National Prosecutor.<sup>82</sup>

The Commission concludes that there is sufficient evidence suggesting that a human rights violation occurred.<sup>83</sup> The Court declares the petition "admissible in relation to Article 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 1(1) (Obligation of Non-Discrimination) of the American Convention and to the Inter-American Convention to Prevent and Punish Torture."<sup>84</sup>

*B. Before the Court*

**August 5, 2014:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>85</sup>

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78. Quispialaya Vilcapoma v. Peru, Admissibility Report, ¶¶ 1-2.

79. *Id.* ¶ 1.

80. *Id.* ¶ 4.

81. *Id.* ¶ 5.

82. *Id.* ¶ 42.

83. *Id.* ¶ 47.

84. Quispialaya Vilcapoma v. Peru, Admissibility Report, "Decides."

85. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 4.

**November 26, 2014:** The representatives present their brief of pleadings, motions and evidence, in which they request the benefit of the Legal Assistance Fund of Victims of the Inter-American Court (“Legal Assistance Fund”).<sup>86</sup>

**March 2, 2015:** The State files a brief containing “preliminary objections, a reply to the letter of submission of the case and observations to the brief containing pleadings and motions.”<sup>87</sup> The State raises the “alleged lack of exhaustion of domestic remedies.”<sup>88</sup> The Court concludes that all domestic remedies had in fact been exhausted, as the Criminal Chamber of the Supreme Court made a final ruling on May 12, 2003.<sup>89</sup>

**March 19, 2015:** The President of the Court approves the application for the Legal Assistance Fund and grants the necessary funds.<sup>90</sup>

**August 24, 2015:** A public hearing is held in the city of Tegucigalpa, Honduras.<sup>91</sup> Mr. Quispialaya Vilcapoma provides a statement, and the Commission, the representatives, and the State present oral observations and arguments.<sup>92</sup>

**September 24, 2015:** The representatives and the State produce final written arguments and evidence, and the Commission presents final written observations.<sup>93</sup>

### 1. Violations Alleged by Commission<sup>94</sup>

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

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86. *Id.* ¶ 5.

87. *Id.* ¶ 6.

88. *Id.*

89. *Id.* ¶ 26.

90. *Id.* ¶ 7.

91. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 10.

92. *Id.*

93. *Id.* ¶ 11.

94. *Id.* ¶ 106; Quispialaya Vilcapoma v. Peru, Admissibility Report, “Decides.”

2. Violations Alleged by Representatives of the Victims<sup>95</sup>

Same Violations Alleged by Commission.

## III. MERITS

*A. Composition of the Court*<sup>96</sup>

Humberto Antonio Sierra Porto, President  
 Roberto F. Caldas, Vice President  
 Manuel E. Ventura Robles, Judge  
 Alberto Pérez Pérez, Judge  
 Eduardo Vio Grossi, Judge  
 Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary  
 Emilia Segares Rodriguez, Deputy Secretary

*B. Decision on the Merits*

**November 23, 2015:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.<sup>97</sup>

The Court found unanimously that the State had violated:

Article 5 (Right to Humane Treatment), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Quispialaya Vilcapoma,<sup>98</sup> because:

*Mr. Quispialaya Vilcapoma, as a military member, was under the State's custody and control, and therefore, the State had a responsibility to guarantee and protect his rights and to provide adequate health care.<sup>99</sup> The Court previously acknowledged there is a presumption of responsibility when someone in good health is detained and then suffers*

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95. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 109.

96. Judge Diego García-Sayán, a national of the State, did not participate in the knowledge or the deliberation of the present case, in accordance with the provisions of Article 19.1 of the Rules of Procedure of the Court. *Id.* n.1.

97. *Id.* "Declares."

98. *Id.*

99. *Id.* ¶ 119.

a negative effect on their health.<sup>100</sup> While a higher level of discipline is required in the military than in normal society, the military must uphold this standard while protecting the personal integrity of its members.”<sup>101</sup> Accordingly, “the State has a duty to: (1) safeguard the health and well-being of the military in active service; (2) ensure that the manner and method of training do not exceed the inevitable level of suffering inherent in that condition; [and] (3) provide a satisfactory and convincing explanation of the health effects of persons performing military service.”<sup>102</sup> Mr. Quispialaya Vilcapoma’s injuries clearly caused him physical and mental suffering, which “cannot be justified as ... educational or disciplinary measure[s].”<sup>103</sup>

In reaching its decision, the Court considered the abuse of military power, the violence directed toward Mr. Quispialaya Vilcapoma, his subsequent loss of vision and suicide attempt, and the fear he experienced because of the threats he received.<sup>104</sup> As a result, the Court determined the State subjected Mr. Quispialaya Vilcapoma to cruel treatment, and violated his rights under Article 5 (Right to Humane Treatment).<sup>105</sup>

Articles 8 (Right to Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Quispialaya Vilcapoma,<sup>106</sup> because:

To comply with these articles, the State must do everything in its power to protect all persons involved in judicial proceedings (including investigators, witnesses, and relatives of victims) from “harassment and threats” designed to infringe upon due process rights or create obstacles in the pursuit of justice.<sup>107</sup> In this case, Mr. Hilaquita Quispe threatened Mr. Quispialaya Vilcapoma and witnesses to the attack with death and serious injury if they testified against him, and by doing so,

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100. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 118.

101. *Id.* ¶ 122.

102. *Id.* ¶ 124.

103. *Id.* ¶ 128.

104. *Id.* ¶ 129.

105. *Id.*

106. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, “Declares.”

107. *Id.* ¶ 195.

demonstrated a clear intent to obstruct justice.<sup>108</sup> Additionally, despite the fact that a criminal complaint was filed, there was no investigation by the Public Prosecutor into the matter of any sort.<sup>109</sup>

The Court concluded that the State's interest was in protecting its own military officials, and not in obtaining justice for Mr. Quispialaya Vilcapoma.<sup>110</sup> It is not enough for citizens to have a right to be heard if there is no duty imposed on States to "investigate, prosecute and punish" attached to that right.<sup>111</sup> Claims must be explored "seriously, and not as a simple formality."<sup>112</sup>

When Mr. Quispialaya Vilcapoma reported his claims, nothing came of his reports.<sup>113</sup>

Additionally, the Court has held that the military court does not have jurisdiction over cases involving human rights violations, but instead is limited to "crimes or misdemeanors that ... infringe upon legal rights inherent in the military order."<sup>114</sup> The correct method to investigate and prosecute human rights violations is through an ordinary criminal proceeding, and not in the military courts.<sup>115</sup> As a result, the Court determined the State infringed upon Mr. Quispialaya Vilcapoma's rights under Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection).<sup>116</sup>

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Vilcapoma Taquia,<sup>117</sup> because:

The Court determined that *praesumptio iuris tantum*, the presumption of truth unless proven otherwise, applies to direct relatives of victims

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108. *Id.* ¶¶ 195-97.

109. *Id.* ¶ 199.

110. *Id.* ¶ 200.

111. *Id.* ¶ 207.

112. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 208.

113. *Id.* ¶¶ 154-55.

114. *Id.* ¶¶ 145-46.

115. *Id.* ¶ 152.

116. *Id.* "Declares."

117. *Id.*

(including spouses, parents, and children) because they can also be victims by witnessing the violations of their loved ones' rights.<sup>118</sup>

The Court viewed Ms. Vilcapoma Taquia and her son as a single-family group that endured suffering jointly, not only due to the physical aggression against Mr. Quispialaya Vilcapoma but also from the threats and harassment they both received.<sup>119</sup> Finally, the Court considered the lack of response by the State to Ms. Vilcapoma Taquia's request for protection.<sup>120</sup> Therefore the Court found that the State violated Ms. Vilcapoma Taquia's rights under Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 25 (Right to Judicial Protection).<sup>121</sup>

The Court found unanimously that the State had not violated:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention on Human Rights,<sup>122</sup> because:

*States are required to not only adopt domestic measures implementing the rights included in the American Convention, but must also avoid passing legislation that could infringe on these rights.<sup>123</sup> Here, the State's penal code imposes an enhanced sentence for cases where an act of torture results in a serious injury.<sup>124</sup> Therefore, the State's legislation complies with the obligation to prevent and punish torture and cruel, inhuman, or degrading treatment.<sup>125</sup>*

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi focused on a procedural step that he believed the State took correctly, but the rest of the Court

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118. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 244.

119. *Id.* ¶ 245.

120. *Id.* ¶ 249.

121. *Id.* "Declares."

122. *Id.* "Decides" ¶ 5.

123. *Id.* ¶ 219.

124. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 233.

125. *Id.* ¶ 234.

condemned.<sup>126</sup> The Court criticized the State for trying the case first in military court.<sup>127</sup> The Court believed the State violated Mr. Quispialaya Vilcapoma's rights by keeping the case in military court for five years, before finally moving it to the ordinary criminal court.<sup>128</sup> Judge Vio Grossi acknowledges that though the military court may have been the incorrect jurisdiction initially, the State eventually heard the case in the correct criminal jurisdiction.<sup>129</sup> This correction occurred without any international intervention, and therefore, should not be considered a violation of Mr. Quispialaya Vilcapoma's rights under articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Recourse Before a Competent Court).<sup>130</sup>

#### IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

##### *A. Specific Performance (Measures of Satisfaction and Non-Repitition Guarantee)*

###### 1. Continue the Investigation

“The State must continue, with due diligence, the ongoing criminal investigation and/or prosecution” for the harm caused to Mr. Quispialaya Vilcapoma, and “identify, prosecute, and where appropriate punish those responsible” within a reasonable time.<sup>131</sup>

###### 2. Implement Preventive Measures

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126. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser.C) No. 308, ¶ 1 (Nov. 23, 2015).

127. *Id.* ¶ 2.

128. *Id.* ¶ 3.

129. *Id.* ¶ 4.

130. *Id.* ¶ 6.

131. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 262.



The State must continue to fulfill its obligations to hold human rights training for the military, as required in previous cases.<sup>132</sup> The State must also establish certain mechanisms to make reporting abuses more accessible to members of the military.<sup>133</sup>

### 3. Provide Adequate Military Training

The State must also ensure that all officials comprehend the provisions outlined in the Convention Against Torture and understand that violators will be prosecuted.<sup>134</sup> The Court requires that military training include “courses on the limits of military discipline,”<sup>135</sup> and ensure all voluntary military service members receive the “Charter of Duties and Rights of Military Personnel,” which explains the method to submit complaints.<sup>136</sup>

### 4. Implement Measures for Monitoring and Investigation

When complaints are received, the proper State authorities must make random visits to ensure rights are being protected and any mistreatment does not continue.<sup>137</sup> Finally, the State must provide the resources necessary to effectively “gather evidence and document complaints” to carry out thorough investigations.<sup>138</sup>

### 5. Publish the Judgment

The State must publish the following: (1) a summary of the Judgment in the official newspaper, *El Peruano*; (2) the same summary in a local newspaper in Huancayo; and (3) the entire Judgment on an official website of either the State’s Army or the Ministry of Defense, in addition to another national website.<sup>139</sup>

## *B. Compensation*

The Court awarded the following amounts:

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132. *Id.* ¶ 275.

133. *Id.* ¶ 264.

134. *Id.* ¶ 275.

135. *Id.*

136. *Id.* ¶ 280.

137. *Quispialaya Vilcapoma v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 280.

138. *Id.*

139. *Id.* ¶ 296.

### 1. Pecuniary Damages

The State cannot arbitrarily attach an amount to Mr. Quispialaya Vilcapoma's material damages, and places the responsibility on the victim to provide proof of damages related to this case.<sup>140</sup> The Court determined that retroactive payment of the military pension is not appropriate considering the granting of a disability pension.<sup>141</sup>

The State must issue a Retirement Withdrawal Certificate for Mr. Quispialaya Vilcapoma because of the injury sustained during his military service, immediately provide disability benefits, and grant him access to technical education programs.<sup>142</sup>

The State must also provide him with medical and psychological or psychiatric treatment at no cost to the victim, including any required prescriptions, for as long as necessary.<sup>143</sup>

### 2. Non-Pecuniary Damages

The Court awards the amounts of \$50,000.00 (USD) and \$20,000.00 (USD) to Mr. Quispialaya Vilcapoma and his mother, respectively, for the suffering they experienced.<sup>144</sup>

### 3. Costs and Expenses

The Court awarded \$10,000 (USD) to the representatives of the victims.<sup>145</sup> The Court ordered the State to reimburse the Legal Assistant Fund in the amount of \$1,673.00 (USD).<sup>146</sup>

### 4. Total Compensation (including Costs and Expenses ordered):

\$81,673.00.

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140. *Id.* ¶ 303.

141. *Id.* ¶ 305.

142. *Id.* ¶ 287.

143. Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 292.

144. *Id.* ¶ 307.

145. *Id.* ¶ 323.

146. *Id.* ¶ 326.

*C. Deadlines*

Within six months from the Judgment notification date, the State must publish the required summaries and Judgment, which must be accessible to the public for at least one year.<sup>147</sup>

The State must pay all compensation within one year.<sup>148</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

**March 15, 2015:** The State asked to Court to interpret two aspects of the judgment.<sup>149</sup> First, the State requested the Court clarify what facts supported the violation of Mr. Quispialaya Vilcapoma’s rights under Article 5(1) (Right to Physical, Mental, and Moral Integrity); and second, the State asked for a review of the number of votes in which the Court determined this violation.<sup>150</sup>

**November 21, 2016:** The Court emphasized that the State’s violations clearly stem from ineffective and inadequate investigations following an allegation of torture, and therefore the State’s request does not comply with the framework established in Article 67 of the American Convention for an interpretation of judgment because there is no imprecise or ambiguous point for the Court to clarify.<sup>151</sup> As to the State’s second inquiry, the Court established that Judge Vio Grossi’s vote was a concurring opinion, not a dissenting one, and thus the Court’s decision was unanimous.<sup>152</sup>

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

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147. *Id.* ¶ 296.

148. *Id.* “Decides” ¶ 15.

149. *Quispialaya Vilcapoma v. Peru*, Interpretation of Judgment, Inter-Am. Ct. H.R., (ser. C), No. 320, ¶ 2 (Nov. 21, 2016).

150. *Id.* ¶ 2.

151. *Id.* ¶ 24.

152. *Id.* ¶ 25.

[None]

## 2. Decisions on Merits, Reparations and Costs

[Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser.C\) No. 308, \(Nov. 23, 2015\).](#)

[Quispialaya Vilcapoma v. Peru, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Vio Grossi, Inter-Am. Ct. H.R. \(ser.C\) No. 308, \(Nov. 23, 2015\).](#)

## 3. Provisional Measures

[Quispialaya Vilcapoma v. Peru, Order of the President of the Court, Inter-Am. Ct. H.R. \(June 24, 2015\).](#)

[Quispialaya Vilcapoma v. Peru, Order of the President of the Court, Inter-Am. Ct. H.R. \(Mar. 19, 2015\).](#)

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[Quispialaya Vilcapoma v. Peru, Interpretation of Judgment, Inter-Am. Ct. H.R., \(ser. C\), No. 320 \(Nov. 21, 2016\).](#)

### *B. Inter-American Commission*

#### 1. Petition to the Commission

[Not Available]

#### 2. Report on Admissibility

[Quispialaya Vilcapoma v. Peru, Admissibility Report, Report No. 19/05, Inter.-Am. Comm'n H.R., Case No 54.04 \(Feb. 25, 2005\).](#)

## 3. Provisional Measures

[None]

## 4. Report on Merits

[None]

## 5. Application to the Court

[None]

## VIII. BIBLIOGRAPHY

Nathaniel C. Nash, *In Peru, a 'Second Coup' Reveals the Upper Hand*, N.Y. TIMES (May 2, 1993), <http://www.nytimes.com/1993/05/02/weekinreview/the-world-in-peru-a-second-coup-reveals-the-upper-hand.html?mcubz=3>.

*World Report 2017: Peru*, HUMAN RIGHTS WATCH (JANUARY 2017) <https://www.hrw.org/world-report/2017/country-chapters/peru>.