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Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Helio Bicudo, Robert K. Goldman, Julio Prado Vallejo, Peter Laurie.
Dated: 5 March 2001
Citation: Miguel Castro Castro Prison v. Peru, Case 11.015, Inter-Am. C.H.R., Report No. 43/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANT: Sabina Astete
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I. SUMMARY

1. On May 18, 1992, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission” or “IACHR”) received a communication that Mrs. Sabina Astete lodged against the Republic of Peru (hereinafter “Peru”, “Peruvian State” or “State”). The communication alleges that on May 6, 1992, 500 Peruvian Army troops descended upon Lima’s “Miguel Castro Castro Prison” by air and overland. Targeting cellblock “1A” and armed with heavy artillery, their objective was to transfer the prisoners to the “Santa Mónica” Prison. But an attack on Miguel Castro Castro Prison ensued, leaving 34 inmates dead and another 18 wounded. The communication alleges that by these actions, the Peruvian State violated the rights to life, humane treatment, personal liberty, the principles of freedom from ex post facto laws and of non-retroactivity, and the right to equal protection before the law, recognized, respectively, in articles 4, 5, 7, 9 and 24 of the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”). The State did not file an objection claiming failure to exhaust the remedies under domestic law. The Commission is therefore deciding to admit the case and proceed with its analysis of the merits.

II. PROCESSING WITH THE COMMISSION

2. The Commission received Mrs. Astete’s communication on May 18, 1992 and within days obtained information about the events from a variety of sources, including communications sent by inmates. The Commission opened the case on June 12, 1992, and forwarded the pertinent parts of the petition to the Peruvian State, requesting that it supply pertinent information within 90 days.[FN1]

[FN1] The IACHR was asked to intervene as the events were in progress, and even sent a special mission to Peru. See IACHR, Report on the Situation of Human Rights in Peru, 1993, paragraphs 94 to 97.

3. On August 18, 1992, the IACHR decided to grant precautionary measures and requested the Government of Peru to send an official list of the persons who either died or disappeared as of the time of the events at “Miguel Castro Castro” prison, as well as information on the wounded and where they were taken.

4. On September 11, 1992, the State sent detailed information on the measures taken in connection with the Commission’s request; it sent additional information on October 26, 1992 and November 9, 1992.

5. On December 14, 1992, the Inter-American Court of Human Rights granted provisional measures in connection with the situation at the Peruvian prisons, including the “Castro Castro” penal institution.

6. On March 22, 1999, Mrs. Astete requested that the Commission make all information on this case available to attorneys Fiona McKay and Curtis Doebbler.

7. On April 4, 2000, Mrs. Astete informed the IACHR that Dr. Curtis Doebbler was no longer representing her in the case.[FN2] On June 30, 2000, Mrs. Astete sent the IACHR a list of the alleged victims of the May 1992 events at Castro Castro Prison and informed it that the list might be incomplete because the Government was refusing to supply any further information. Mrs. Astete sent additional information on October 16, 2000 and on December 4, 2000 submitted her observations on the new petition filed by Dr. Doebbler.

[FN2] By letter dated April 10, 2000, Dr. Doebbler informed the Commission that he was still interested in representing the alleged victims in the instant case. On June 28, 2000, the Commission sent Dr. Doebbler a letter informing him that it would have to defer to Mrs. Astete’s wishes in regard to Dr. Doebbler’s representation of her in the case, and would therefore be terminating any representation he might have had in the case.

Combining case 11.769-B with case 11.015

8. On June 5, 1997, the Commission received a petition filed by Dr. Curtis Doebbler, representing Mrs. Mónica Feria-Tinta. The petition alleged that she had been arrested, tortured and imprisoned in the Castro Castro prison. It also denounced the events that transpired at that prison in May 1992, when Mrs. Feria-Tinta was an inmate there.

9. The case was opened on July 8, 1997, and the pertinent parts of the petition were forwarded to the State, which was given 90 days in which to submit information on the case. The State has never responded to that request.

10. On November 20, 1997, Dr. Fiona McKay submitted to the Commission a power of attorney wherein Mrs. Mónica Feria-Tinta names her as her representative in the instant case.

11. On March 31, 2000, Mrs. Feria-Tinta informed the Commission that she was revoking the power of attorney that she had given to Dr. Curtis Doebbler. She also stated that henceforth, her sole representative would be Dr. Fiona McKay.[FN3]

[FN3] On June 29, 2000, the Commission sent a letter to Dr. Curtis Doebbler to the following effect: "On September 28, 1996, Mrs. Mónica Feria-Tinta gave you power of attorney to represent her. In that capacity, you filed a petition with the Commission dated June 5, 1997. In that petition, you stated that the petitioner in the case was Mrs. Mónica Feria-Tinta and you signed the petition as her legal representative. You further stated that you were acting as her representative by virtue of that power of attorney. Although in the original petition you stated that you were representing other victims as well, the petitioner in this case is Mrs. Feria-Tinta, and throughout the process you have repeatedly stated that you are serving as her legal representative. Given these facts and as required under Article 44 of the American Convention on Human Rights, the Commission has, since the start of the proceedings on this case, recognized Mrs. Feria-Tinta as the petitioner, wherein the alleged victims are Mrs. Feria-Tinta and the other persons named in the original petition. For these reasons, given the situation, the Inter-American Commission must defer to the petitioner's wishes that the power of attorney she gave you to represent her in the case in question be revoked and your representation thereby terminated. All this without prejudice to the other alleged victims' right to designate you as their representative vis-à-vis the Commission."

12. On June 29, 2000, in accordance with Article 40(1) of its Regulations, the Commission decided to divide case 11.769 into two new cases, identified as case 11.769-A and case 11.769-B. It also decided that thereafter, the petition that originated case 11.769, on the detention, trial and other allegations that directly and personally concerned attorney Mónica Feria-Tinta, would be case 11.769-A. The Commission also agreed that thereafter, the other allegations made in the petition that led to case 11.769, i.e., those that concerned the events that transpired at Castro-Castro prison in May 1992, would be addressed in case 11.769-B.

13. At the same time, the Commission also decided to combine case 11.769-B with case 11.015, and to continue to process both as case 11.015, pursuant to Article 40(2) of the Commission's Regulations. The parties were duly notified of the Commission's decision.

III. POSITION OF THE PARTIES

A. Position of the petitioners (Sabina Astete and Mónica Feria-Tinta)

14. The petitioners allege that at 4:30 a.m. on May 6, 1992, some 500 Army troops stormed cellblock "1A" of Miguel Castro Castro prison, by air and overland, carrying heavy weaponry like rifles, anti-tank weapons, grenades, dynamite and plastic explosives. Their plan was to move prisoners to the Santa Mónica prison. The petitioners contend that the operation amounted to an attack upon the prisoners, carried out in the predawn hours with no prior warning. Its opening move was demolition of the cellblock "1A".

15. The petitioners further allege that the attack on the prison went on throughout May 7, 8 and 9, 1992. They reported that because the prisoners had put up resistance and had moved to cellblock "4B", the government ordered deployment of 1000 troops—a combination of Army and special police units—to launch a final assault on the cellblock.

16. The petitioners state that the government rejected the inmates' call for formation of a committee composed of representatives of the International Red Cross and the Inter-American Commission on Human Rights, to negotiate a peaceful solution to the conflict. They point out that the prisoners made every effort to resolve the situation differently and even went so far as to sign a document with Attorney General Mirtha Campos, where the main point was the Red Cross' presence as a minimal requirement to guarantee the lives of the prisoners at the time of surrender. They added that in the end, the petitioners revolted when they realized that the real objective of the Army and police troops was to kill everyone.

17. The petitioners state that the confrontation continued until May 9, 1992, when the Army troops began to selectively execute prisoners, despite the fact that they had surrendered and were leaving the facility to be transferred to another facility.

18. They add that at 1:00 p.m. on May 22, 1992, 500 Army troopers, wearing hoods and heavily armed, again entered "Castro Castro" prison to move 300 prisoners from one area known as "no-man's land" to the demolished cellblock "1A". During this maneuver, the troops mistreated and beat the prisoners, exacerbating the condition of the wounded who were there. The petitioners state that the prisoners were held incommunicado, some without clothing or shoes. There were few mattresses and blankets, little food and no proper medical attention.

19. The petitioners point out that the operation that the Army and government police forces conducted against the Castro Castro prison left 34 prisoners dead and 18 wounded. They maintain that those immediately to blame for the events were the Prison Warden, Colonel Cahahuanca, the Assistant Warden, Commander Pinto, and Commander Guzmán. These three had a plan to isolate and annihilate the inmates.

20. The petitioners allege that the treatment of inmates at "Miguel Castro Castro" prison was inhumane, given the scarcity of food, the lack of heating in the cells, the lack of medical care for sick prisoners, the absolute ban on visits—both by family members and prisoners' attorneys—, the harassment, abuse and brutality of the guards charged with the custody of the prisoners and the safety of prisons.

21. They argue that the petition was submitted before the proceedings in the domestic courts had closed because of the urgency of the situation and to avoid further and possibly irreparable harm to the inmates at Miguel Castro Castro prison.

B. The State's position

22. The State alleges that the decision to transfer inmates prosecuted for terrorism from the Miguel Castro Castro facility to a similar facility called "Santa Mónica" prison, was because of the need to gradually reduce overcrowding and promiscuity between male and female inmates. It adds that the operation was planned by the Peruvian National Police, to transfer female inmates incarcerated at "Miguel Castro Castro" prison to the "Santa Monica" women's prison, and to house them in facilities especially equipped to handle them.

23. It points out that the representative from the Attorney General's Office, Mrs. Mirtha Campos Salas, and assistant government attorneys were present at the "Castro Castro" prison from May 6 to May 11, 1992, as required under domestic law and at the request of the head of Legal Support and the Peruvian National Police. The State mentions that the intervention of the representative of the Attorney General's Office was in response to the pressing need to monitor for and ensure respect for the law so as to defend the legal system, protect the lives and physical safety of the male and female inmates and, above all, to respect the human rights of those inmates.

24. The State disputes the petitioner's version of the facts and contends that the operation was conducted by National Police troops, since the Army troops, numbering 100 men, were in charge of guarding the outside perimeter of the prison and remained in waiting. The State contends that the Army troops never directly intervened in the incursion.

25. The State alleges that the operation was not planned as an assault on the prison. Instead, before police intervened, the government attorney in charge and national police officials attempted to persuade and convince the inmates to make the move. It goes on to state that whereas the male inmates who were members of the "Shining Path" rejected these overtures, a number of female inmates came out and were taken voluntarily and peaceably to the "Santa Monica" prison, after being given a medical check-up.

26. The State alleges that in a document dated May 8, 1992, an appeal was made to the rioting inmates to give up. According to the State, the inmates initially agreed to be transferred to other prisons. It alleges that the terms of the transfer were even worked out, especially immediate treatment of the wounded. It adds, however, that the rioting inmates did not honor the terms of the agreement and refused to exit the cellblocks peacefully.

27. The State also refutes the petitioner's allegation that it refused the intervention of the International Red Cross requested by the inmates. The State maintains that the document shows that representatives of the International Red Cross were present. It adds that at no time did the representatives of the Attorney General's Office obstruct or object to the presence and intervention of the representatives of the International Red Cross and that the inmates used that false argument to justify their failure to honor the terms of the document in question.

28. The State contends that Army troops did not selectively and summarily execute the prisoners as they were leaving the prison, since the Army troops did not have a direct hand in the operation against cellblock “1A” or “4B”; instead, they confined their activities to security outside the prison.

29. The State argues that the events occurred because of a confrontation initially instigated by the inmates, when they rioted and forcibly obstructed the transfer of female inmates prosecuted for terrorism to the Santa Mónica prison. It adds that in response to the surprise attack launched by the rioting prisoners, who were armed with “quesos rusos” [a package containing the contents of several dynamite charges, combined with nails and pieces of metal used for shrapnel to inflict greater damage; these contents are then wrapped in paper or plastic, and a fuse and detonator attached], firearms, and muriatic acid, the police forces directly handling the operation repelled the attack. It points out that prior to the police’s successful actions to take back the cellblocks that the inmates had taken over, the latter were urged to exit peacefully and to agree to the transfer. However, the rioting inmates rejected the appeal and responded by firing shots from inside cellblock “4B”. The police were forced to return fire, which is how some of the inmates died.

30. As for the allegations concerning the transfer that occurred on May 22, 1992, the State reiterates that the Peruvian Army did not directly participate in the operation; that there was absolutely no contact between the Army troops and the rioting inmates, and that the Army’s role was to serve as an escort for the operation.

31. Concerning the assertions of inhuman conditions in Peruvian prisons, the State points out that Attorney General Mirtha Campos made surprise, personal visits to the Santa Mónica, Yanamayo-Puno, San Sebastián and Cristo Rey prisons to inspect the real situation of the inmates at those facilities.

32. The State attached information to the effect that following the events at the “Castro Castro” prison, the attorneys and families of the inmates prosecuted for terrorism and housed at that prison filed a petition of habeas corpus with a judge in Lima, against the prison warden and other officials. The petition alleged, inter alia, the abduction, incommunicado incarceration, and harm done to the inmates by being denied sufficient food and medical care. The judge ordered that a summary inquiry be conducted to investigate the conduct of the State agents in the events to which the appeal referred. Later, however, on July 21, 1992, the judge declared the petition inadmissible.

IV. ANALYSIS

33. The IACHR will now deliver a preliminary decision concerning the representation claimed by Dr. Curtis Doebbler and the new petition filed. It will then examine the requirements for the petition’s admissibility, as set forth in the American Convention.

A. Preliminary issue: The new petition filed by Dr. Curtis Doebbler

34. As stated previously, on March 22, 1999, the petitioner sent a letter requesting that the Commission make all information concerning the case available to attorneys Fiona McKay and Curtis Doebbler. Later, on April 4, 2000, the petitioner sent the Commission an affidavit stating that she had revoked Dr. Curtis Doebbler's power of attorney to serve as her legal representative in the case.[FN4]

[FN4] By a letter dated April 10, 2000, Dr. Doebbler told the Commission that he was still interested in representing the alleged victims in the case in question. On June 28, 2000, the Commission sent Dr. Doebbler a letter explaining to him that the original petition was presented by Mrs. Astete in 1992 and that on March 22, 1999, she had authorized the Commission to make all case-related information available to Dr. Doebbler. However, there was no letter or statement from Mrs. Astete on record wherein he is named as her representative in the case. The Commission also informed Dr. Doebbler that with the situation as it was, it was deferring to the petitioner's wishes that any power of attorney she may have given to Dr. Doebbler be revoked, and was therefore terminating any such representation. All this notwithstanding the right of other alleged victims to designate Dr. Doebbler as their representative vis-à-vis the Commission.

35. By a communication dated July 6, 2000, Dr. Doebbler filed a new petition concerning the events that occurred at the Castro Castro prison, May 6 through 10, 1992 attaching a list of 610 inmates killed, wounded and those who had survived. Dr. Doebbler also presented a power of attorney from Mrs. Nila Cipriana Pacheco Neira, mother of victim Elvia Nila Zanabria, authorizing him to represent her in her daughter's case, who died at Castro Castro prison. On January 26, 2001, Dr. Doebbler confirmed his interest in continuing to represent other alleged victims in this matter and submitted powers of attorney from Madelleine Valle Rivera and Mercedes Rios Vera, two inmates who survived and who are named in the petition filed by Dr. Doebbler on July 6, 2000.

36. The Commission has the obligation to order proceedings on contentious cases and to ensure that they are treated seriously, that the various stages of the proceedings are carried out, and that both parties produce evidence. In that sense, the IACHR enjoys broad authority to combine petitions that deal with the same facts and to separate petitions to better safeguard the interests involved (Article 40 of the Commission's Regulations).

37. The Commission therefore decides that the new petition filed by Dr. Curtis Doebbler on July 6, 2000, and the powers of attorney and other attachments presented in connection with that complaint, are to be separated from case file 11.015. It is instructing the Secretariat of the Commission to process the new petition in accordance with the provisions of Article 30 and other relevant articles of the Commission's Regulations. When that initial processing is completed, the Commission will make its decision on that petition.

b. Competence of the Commission *ratione materiae*, *ratione personae*, *ratione loci* and *ratione temporis*

38. The petitioner in the instant case is authorized under Article 44 of the American Convention to file a petition with the IACHR. The petition names individual persons as the alleged victims, whose Convention-recognized rights Peru undertook to respect and ensure. The Commission notes that Peru is a State party to the American Convention, having ratified it on July 28, 1978. The facts alleged occurred within Peruvian territory. Hence, the Commission is competent, *ratione personae* and *ratione loci*, to examine the petition.

39. The Commission is also competent *ratione materiae* inasmuch as the facts alleged in the petition could constitute violations of rights protected by the American Convention.

40. The IACHR is competent *ratione temporis* because the facts alleged occurred in May 1992, when the obligation to respect and guarantee the rights recognized in the American Convention was already binding upon the Peruvian State.

c. Admissibility requirements of the petition

1. Exhaustion of domestic remedies

41. Under Article 46(1)(a) of the Convention, for the Commission to be able to admit a petition, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.

42. The Commission observes that, according to the information available in the case file, in the wake of events at the “Castro Castro” prison, the attorneys and families of the inmates housed at that facility for the crime of terrorism filed a petition of habeas corpus with the Lima examining magistrate, against the prison warden and other authorities because of the restrictions placed on visits by the inmates’ attorneys and family members. The judge ordered a summary inquiry to investigate the conduct of the State agents in the events that are the subject of the petition. However, on July 21, 1992, the judge declared the petition inadmissible.

43. The State, for its part, has not filed any objection asserting the rule requiring exhaustion of local remedies. The Inter-American Court has pointed out that “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.”[FN5]

[FN5] IACtHR, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 21, 1987, Series C, No. 1, par. 88; Fairén Garbi and Solís Corrales case, Preliminary Objections, judgment of June 26, 1987, Series C, No. 2, par. 87; Gangaram Panday Case, Preliminary Objections, judgment of December 4, 1991, Series C, No. 12, par. 38; Loayza Tamayo Case, Preliminary Objections, judgment of January 31, 1996, Series C, No. 25, par. 40.

44. For these reasons, the Commission concludes that the requirement concerning exhaustion of domestic remedies has been satisfied.

2. Deadline for filing the petition

45. Article 46 of the Convention states that for the Commission to admit a petition or communication presented in accordance with articles 44 or 45 of the Convention, it must be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”

46. The Commission notes that the petition filed in case 11.015 was lodged on an emergency basis, before the domestic remedies had been exhausted. That, however, does not preclude its admissibility at the current stage of the case, since the requirements for a petition’s admissibility must be examined, as a rule, as of the time the Commission rules on the question of admissibility.[FN6] The Commission further observes that the State did not make any argument regarding the six-month time period for filing petitions. The requirement set forth in Article 46(1)(b) of the American Convention is, therefore, met.

[FN6] IACHR, Report 52/00, Dismissed Congressional Employees, Cases 11.830 and 12.038, (Peru), par. 19.

3. Duplication of proceedings

47. It is the Commission’s understanding that the subject of the petition is not pending in another international proceeding for settlement and is not substantially the same as one previously studied by the Commission or by another international organization. Therefore, and notwithstanding paragraph 46 above, the requirements stipulated in articles 46(1)(c) and 47(d) are met.

4. Characterization of the facts

48. The Commission considers that the facts alleged, if proven, could constitute violations of rights recognized in the American Convention on Human Rights.

V. CONCLUSIONS

49. The Commission concludes, therefore, that under articles 46 and 47 of the American Convention, it is competent to take up this case.

50. For these reasons of fact and of law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To admit the present case, which is a combination of case 11.015 and case 11.769-B and concerns alleged violations of articles 4, 5, 7, 9, 24 and 1(1) of the American Convention on Human Rights. This shall not imply any prejudgment as to the merits of the case.
2. To notify the parties of this decision.
3. To proceed with the analysis of the merits of the case.
4. To publish this decision and include it in the IACHR's Annual Report to the OAS General Assembly.

Given and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the fifth day of March of the year 2001. (Signed) Claudio Grossman, Chairman; Juan Méndez, First Vice Chairman; Marta Altolaguirre, Second Vice Chair, and Commission members Hélio Bicudo, Robert K. Goldman, Julio Prado Vallejo and Peter Laurie.