

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 54/05; Petition 150/01
Session: Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause: Raul Garcia Linera, Silvy de Alarcon Chumacero, Raquel Gutierrez Aguilar, Alvaro Garcia Linera, Victor Ortiz Quispe, Silverio Maidana Macias, Macario Tola Cardenas, Santiago Yanique Apaza, Juan Carlos Pinto Quintanilla, Felipe Quispe Huanta, Alejandro Choque and Mario Apaza Bautista v. Bolivia
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez, Jose Zalaquett, Fredy Gutierrez, Florentin Melendez.
Dated: 12 October 2005
Citation: Garcia Linera v. Bolivia, Petition 150/01, Inter-Am. C.H.R., Report No. 54/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANTS: Rosario Baptista Canedo (later replaced by Jorg Stippel)
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I. SUMMARY

1. On March 10, 2001, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition submitted by Ms. Rosario Baptista Canedo, who was later replaced by Jörg Stippel (hereinafter “the petitioner”)[FN1], in representation of Raúl García Linera, Silvy de Alarcón Chumacero, Raquel Gutiérrez Aguilar, Álvaro García Linera, Víctor Ortiz Quispe, Silverio Maidana Macías, Macario Tola Cárdenas, Santiago Yanique Apaza, Juan Carlos Pinto Quintanilla, Felipe Quispe Huanta, Alejandro Choque, and Mario Apaza Bautista (hereinafter “the alleged victims”). The complaint was based on the alleged violation of Articles 5, 7, 8, 11, 17, 21, and 25 in relation to the obligations of Article 1(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), by the Republic of Bolivia (hereinafter “the State” or “the Bolivian State”) for the arbitrary detention, harassment of family members, torture, and wrongful prosecution and persecution of the alleged victims, who were accused of committing 14 crimes.

[FN1] On January 18, 2004, the IACHR received a communication in which the Commission was informed that Mr. Jörg Stippel would be assuming the representation of the petitioners, replacing Ms. Rosario Baptista Canedo.

2. With respect to the issues of admissibility of the petition, the alleged victims invoked the exceptions to the rule of prior exhaustion of domestic remedies provided for in Article 46(2)(a)(b), and (c) of the American Convention, and argued that they met all the other formal admissibility requirements.

3. In response, the Bolivian State asked that the petition be declared inadmissible. It argued, in support of its position, that the State's domestic mechanisms are still responding to the instant case, and therefore the domestic jurisdiction has not been exhausted. Accordingly, the State asked that this petition be declared inadmissible in keeping with Articles 46(1)(a) and 47(d) of the American Convention.

4. After analyzing the parties' positions, the Commission concluded that it was competent to decide on the claim submitted by the alleged victims, and that the case was admissible, in light of Articles 46 and 47 of the American Convention. Accordingly, the Commission decided to notify the parties, make this admissibility report public, and include it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

5. On March 10, 2001, the Commission received a petition presented by Rosario Baptista Canedo in representation of Raúl García Linera, Silvya de Alarcón Chumacero, Raquel Gutiérrez Aguilar, Álvaro García Linera, Víctor Ortiz Quispe, Silverio Maidana Macías, Macario Tola Cárdenas, Santiago Yanique Apaza, Juan Carlos Pinto Quintanilla, Felipe Quispe Huanta, Alejandro Choque, and Mario Apaza. The complaint alleged the arbitrary detention, harassment of family members, torture, and wrongful prosecution and persecution of the alleged victims, based on actions in a criminal proceeding in which they were accused of committing 14 crimes.

6. The Commission assigned the petition number 150/2001, and on May 9, 2001, it requested information from the alleged victims. On August 27, 2001, the alleged victims submitted the additional information requested by the Commission.

7. On September 21, 2001, the Commission informed the alleged victims that the information provided showed that steps were being taken to exhaust domestic remedies, and that therefore, it was not proper to continue studying the petition.

8. On January 18, 2004, the alleged victims asked that the petition be reopened, arguing that more than three years after their initial communication, they had not been allowed to exhaust domestic remedies. Based on that argument, the alleged victims asked that the exceptions to Article 46(2) of the American Convention be applied to the instant case.

9. On May 20, 2004, the Commission transmitted the pertinent parts of the petition to the State, which was given two months to respond, in keeping with Article 30(3) of its Rules of Procedure.

10. On November 30, 2004, the State asked for a 60-day extension to submit its observations. By note of December 7, 2004, the Commission granted the State a 45-day extension, counted from the date of transmittal of said communication.

11. On February 28, 2005, the State submitted its observations on the petition, requesting a declaration of inadmissibility for failure to meet the requirement of prior exhaustion of domestic remedies.

III. THE PARTIES' POSITIONS

A. The petitioners' position

12. The petition alleges the arbitrary detention, harassment of family members, torture, and wrongful prosecution and persecution of 11 Bolivians and one Mexican[FN2] accused of committing 14 crimes.[FN3] It is further alleged that the criminal prosecution was plagued by several procedural irregularities and violations of the minimum guarantees of due process, as well as the refusal of the competent authorities to initiate an investigation into the allegations of torture and other violations, even though they were reported both to the criminal judges hearing the case, and through a public report presented by the Human Rights Committee of the Bolivian Chamber of Deputies in 1995.[FN4]

[FN2] Raquel Gutiérrez Aguilar.

[FN3] Armed rebellion (Article 121), public instigation to engage in criminal conduct (Article 130), criminal association (Article 132), aggravated terrorism (Article 133), other destruction (Article 207), public disorder or disturbances (Article 134), manufacture, trading and/or possession of explosives (Article 211), attacks on the security of public services (Article 214), destruction or deterioration of government property and national wealth (Article 223), aggravated robbery (Article 332), material falsehood (Article 198), ideological falsehood (Article 199), use of counterfeit instrument (Article 203), and qualified damages (Article 558).

[FN4] On the facts described in the petition, in 1994, the Asamblea Permanente de los Derechos Humanos of Bolivia, the Federación Departamental Única de Trabajadores Campesinos of La Paz, and Amnesty International asked the Chamber of Deputies to undertake an investigation into the situation of the persons detained and prosecuted on charges of uprising and other crimes. On April 8, 2004, the President of the Chamber of Deputies entrusted the Human Rights Committee of the Chamber of Deputies with that investigation. On July 12, 1995, Deputy Juan del Granado Cosío, Chairman of the Human Rights Committee, submitted a detailed report on the subject to the plenary of the Chamber of Deputies. See Comisión de Derechos Humanos de la Cámara de Diputados, Denuncia de torturas a ciudadanos sindicados de alzamiento armado, Centro de Documentación e Información (CEDOIN), La Paz, Bolivia, 1995.

13. According to the brief filed, from March to August 1992, the alleged victims were detained by the security forces of the Bolivian State, accused of belonging to the guerrilla group Ejército Guerrillero Tupac Katari (EGTK). In each case, irregularities are alleged in the arrests,

incommunicado detention following the arrest, torture aimed at getting the persons detained to incriminate themselves, and delays in their being brought before the judicial authorities.

14. Accordingly, it is alleged that on March 9, 1992, Raúl García Linera and his wife Silvy de Alarcón Chumacera were detained by members of the police accompanied by a prosecutor from the Public Ministry, in a violent operation and without a previously issued judicial warrant. The prosecutorial authorities alleged flagrancy as the grounds for the detention, due to the alleged illegal bearing of weapons of war. After the arrest, the husband and wife were detained and held incommunicado for 19 days in secret facilities of the military forces, even though, according to the law in force, they should have been brought before a judicial authority within 24 hours.[FN5]

[FN5] The Constitution in force at the time of the events establishes:

ARTICLE 10.- Detention in flagrancy

Every criminal “in flagranti” may be apprehended, even without a warrant, by any person, for the sole purpose of being brought before the competent authority or judge, who shall take his or her statement within twenty-four hours.

15. It is alleged that on April 9, 1992, approximately 20 plainclothes agents appeared at the residence of Víctor Ortiz Quispe and arrested Ms. Raquel Gutiérrez Aguilar in the presence of Mr. Ortiz’s wife, who was pregnant, and their four minor children. It is alleged that the agents searched the residence violently, destroying the Ortiz family’s belongings. After detaining Ms. Gutiérrez, the security agents stayed at the residence for 14 days, during which time they did not allow Ms. Ortiz or her children to leave the house or to receive food.

16. The petition argues that the next day, Víctor Ortiz Quispe, Álvaro García Linera, and Silverio Maidana Macías were detained by official agents. The three of them denounced that they had suffered beatings during their detention. In addition, it is alleged that the prosecutorial authority, at the moment of the arrest, had formally ordered the arrest only of Álvaro García Linera, thus the detention of Víctor Ortiz and Silverio Maidania had no legal basis. It was also alleged that the three detainees had hoods placed over them, were beaten, and were taken to military facilities, where they remained incommunicado for five days, during which time they were physically tortured, to get them to incriminate themselves of several crimes.[FN6] Finally, on April 15, 1992, Ms. Raquel Gutiérrez and Messrs. Víctor Ortiz, Álvaro García Linera, and Silverio Maidana were brought before the Second Criminal Court (Juzgado Segundo de Partido en lo Penal).

[FN6] The torture was said to have consisted of constant beating and kicking, in addition to the form of torture called the “chancho” (“pig,” which consisted of being suspended by the hands with the legs open, to beat the most sensitive parts of the body) and electric shocks.

17. Also, on April 10, Messrs. Macario Tola Cárdenas and Santiago Yanique Apaza were detained. They were detained when they went, separately and at different times, to the residence of Víctor Ortiz. According to the alleged victims, upon arriving at the residence they were received by police from the Grupo Especial de Seguridad (GES, Special Security Group), who, “kicking them, pushed them into” the house. Tola Cárdenas alleges, moreover, that after being beaten, he was taken to his house, which was searched, and all of his personal effects were searched and confiscated, some being destroyed and others stolen. In both cases it is alleged that the detentions took place without any warrants for arrest, confiscation, or search. In both cases, the detention and incommunicado detention lasted five days, during which time the detainees were subjected to mistreatment and torture.[FN7]

[FN7] Both reported that they had been victims of beatings using the practice known as the “chancho.” In the report by the Human Rights Committee of the Chamber of Deputies, the testimony of Macario Tola is described, in which he denounces that:

in two-tier cots, in other words upside down, with the hands down here, that style known as the chancho ... a captain ... beat me about the stomach ... he said: it must be done, we are doing it as if to an adolescent, you must be given more ... in front of a wall all day long, without sleeping, without eating.

Comisión de Derechos Humanos de la Cámara de Diputados, Denuncia de torturas a ciudadanos sindicados de alzamiento armado, Centro de Documentación e Información (CEDOIN), La Paz, Bolivia, 1995, p. 150.

18. Three days later, on April 13, 1992, Mr. Juan Carlos Pinto Quintanilla, coordinator of Youth Ministries for the Archdiocese of Cochabamba, was detained as he left his workplace. According to the versions of the alleged victims, approximately eight police agents threw him to the floor, placed a hood on him, and placed him in a vehicle in which he was taken to a private place of detention, which, according to the allegations, was apparently “a supposed house of the Ministry.”[FN8] There, the alleged victim was stripped and tied to the ceiling with a rope. Every 15 to 20 minutes the alleged victim was beaten with a rod to get him to say he was a member of the EGTK. For the next five days, Mr. Pinto was submitted to various forms of torture such as the “bell” method, asphyxiation using plastic bags, punches, and deprivation of sleep, food, and rest, among others. Finally, on April 12, i.e. eight days after his arrest, he was turned over to the Public Ministry.

[FN8] Comisión de Derechos Humanos de la Cámara de Diputados, op cit., p. 129.

19. Months later, on August 19, 1992, Messrs. Felipe Quispe Huanta, Alejandro Choque, and Mario Apanza Bautista were arrested in the city of La Paz when having a conversation in the street. It is alleged that the First Court of Criminal Investigation (Juzgado Primero de Instrucción Penal) had issued an arrest warrant for Mr. Quispe. Nonetheless, when they were arrested, there was no judicial order seeking the arrest of Alejandro Choque or Mario Apanza Bautista.

20. On March 26, 1992, the Second Criminal Court (Juzgado Segundo de Partido en lo Penal), at the request of the Public Ministry, opened an investigation into the possible participation of the persons indicated in the petition as alleged victims in the crimes of armed rebellion, public instigation to criminal conduct, association for criminal ends, aggravated terrorism, other harm, disorders, or public disturbances, manufacture, trading, and/or possession of explosives, attacks on the security of public services, destruction or deterioration of property of the state and national wealth, aggravated robbery, material falsehood, ideological falsehood, use of a counterfeit instrument, and qualified damages. The alleged victims argue that there were several violations of their minimum due process guarantees in this case. Among these, it is reported that the judicial authorities assessed as legitimately obtained the self-incriminating statements, even though all of the persons put on trial stated in their sworn statements (indagatoria) that the self-incriminating statements had been obtained under torture. In addition, violations were alleged of the right to defense, such as lack of access to the record, and refusal to allow forensic exams to determine the torture. Also alleged is the unwarranted delay in all the procedural acts. As an example, they note that the investigative phase lasted more than 510 days, i.e. 25 times what is established by domestic legislation.[FN9] It is also alleged that there was an unwarranted delay of more than four years in receiving statements (declaraciones confesorias)[FN10], even though the persons tried had been held in preventive detention more than the maximum term of 18 months.[FN11]

[FN9] Article 171 of the former Code of Criminal Procedure of Bolivia provided:

ARTICLE 171. (Term for the preliminary investigative phase). The term within which the preliminary investigative phase should be concluded shall be 20 days, which shall run from the time the accused is informed of the initial order of investigation, along with a copy of the complaint. This notification will be made as soon as the accused has given his or her sworn statement (indagatoria).

[FN10] Thus, Raúl García Linera, detained on March 26, 1992, gave a statement on March 30, 1996. Silvy de Alarcón Chumacera, detained on March 26, 1992, gave a statement on August 9, 1996. Raquel Gutiérrez Aguilar, detained on April 15, 1992, gave a statement on August 12, 1996. Álvaro García Linera, detained on April 15, 1992, gave a statement on August 1, 1996. Víctor Ortiz Quispe, detained on April 15, 1992, gave a statement on August 19, 1996. Silverio Maidana Macías, detained on April 15, 1992, gave a statement on August 15, 1996. Macario Tola Cárdenas, detained on April 14, 1992, gave a statement on August 15, 1996. Santiago Yanique, detained on April 15, 1992, gave a statement on May 15, 1996. Juan Carlos Pinto, detained on August 21, 1992, made a statement on April 16, 1996. Felipe Quispe Huanca, detained on August 21, 1992, made a statement on August 13, 1996. Alejandro Choque, detained on August 21, 1992, made a statement on April 16, 1996. Mario Apanza, detained on August 21, 1992, made a statement on April 16, 1996.

[FN11] The alleged victims were subjected to preventive detention, in prisons, which was prolonged as follows: Raúl García Linera, five years, two months, and 11 days. Silvy de Alarcón Chumacera, five years, two months, and 14 days. Raquel Gutiérrez Aguilar, five years and ten days. Álvaro García Linera, five years, one month, and 19 days. Víctor Ortiz Quispe, five years, one month, and 19 days. Silverio Maidana Macías, four years, 11 months, and 12 days. Macario Tola Cárdenas, five years, one month, and 19 days. Santiago Yanique Apaza, four years, 11 months, and 12 days. Juan Carlos Pinto, four years, 11 months, and six days. Felipe

Quispe Huanta, four years, 10 months, and 22 days. Alejandro Choque, four years, six months, and 24 days. Mario Apanza, four years, six months, and 24 days.

21. They allege that on August 23, 1995, the alleged victims' defense counsel moved to vacate the entire criminal proceeding, bearing in mind the results of the investigation by the Chamber of Deputies that described the torture, arbitrary detentions, and other irregularities.[FN12] The Second Criminal Court denied the motion to vacate. That decision was appealed on February 16, 1996, before the Superior District Court of La Paz, which affirmed the decision of the court of first instance. Months later, the court of first instance handed down a final order in the preliminary investigative phase (auto final de instrucción) by which it called the alleged victims to trial, using as evidence for the decision the statements to police officials that the alleged victims had denounced subsequently in their sworn statement (indagatoria) for having been made under torture. On August 14 and 20, 1996, the persons being prosecuted appealed that order. One year later, in May 1997, through resolution 202/97, the Superior District Court of La Paz affirmed the order by the court of first instance.

[FN12] In its conclusions the Chamber of Deputies noted that:

In general this Committee is in a position to uphold the general presumption that in most of the cases, the acts of torture alleged did happen, in conditions and circumstances in which the responsibility lies exclusively with the various state security agencies, although the individual responsibility in no way ends with the officials who have been identified in this report, and the details on whom are part of the specific conclusions.

Nonetheless, we are not in the presence of just any police matter, or isolated conduct of state officials who violated human rights. The investigation, as appears from the meticulous account of facts, appears to find a dangerous 'line of state action' in connection with acts against armed political groups.

In view of these conclusions, the Human Rights Committee prepared a draft call for a judicial investigation into the conduct of more than 30 prosecutorial and police officials for the alleged crimes of mistreatment, torture, bodily injury, coercion, search of homes, and deprivation of liberty. See Comisión de Derechos Humanos de la Cámara de Diputados, Denuncia de torturas a ciudadanos sindicados de alzamiento armado, Centro de Documentación e Información (CEDOIN), La Paz, Bolivia, 1995, pp. 221-251.

22. They argue that on May 31, 2000, certain provisions of the new Code of Criminal Procedure took effect, including provisions that provided for the prescription of criminal actions in certain circumstances.[FN13] Based on this law, on July 19, 2000, more than eight years after the criminal case was brought, the alleged victims formally moved for extinction of the criminal action, and that the record be archived. According to the legislation in force at the time, the court had three days to rule on the motion. One month later, on August 28, 2000, the judge rejected the request without examining the arguments put forth. In its ruling, the court argued that as the accused were not "held as detainees, they opted to quasi-forget" the judicial process. For this reason, the proceeding was in the stage of offering evidence, and not in the evidentiary stage, "rendering unviable the petitions of the accused." [FN14] This resolution was appealed on

September 3, 2000. On October 2, 2000, as no ruling was issued within the term established by law, Raquel Gutiérrez Aguilar filed a writ of habeas corpus, which was denied by the Second Civil Chamber of the Superior Judicial District Court by resolution of October 26, 2000. On March 28, 2001, several of the accused filed a constitutional Amparo remedy, asking that the investigation be archived due to the prescription of the criminal action. On May 15, 2001, the Constitutional Court declared the motion for prescription to be unfounded based on the argument that the term of prescription in the case had been interrupted when the criminal investigation began (March 26, 1992) without any evidence that the case, after it was opened, had come to a standstill, therefore, the applicable procedural law was the previous one, and the provisions on interruption and suspension did not apply.[FN15] Accordingly, the criminal investigation has been drawn out for more than 13 years.

[FN13] Article 29 of Law 1970 of 1999 establishes that:

The criminal action prescribes:

- (1) In eight years, for those crimes for which a penalty of deprivation of liberty is indicated whose legal maximum is six years or more than six years;
- (2) In five years for those for which penalties of deprivation of liberty are indicated whose legal maximum is less than six years and more than two years;
- (3) In three years, for all other crimes sanctioned by penalties of deprivation of liberty; and,
- (5) In two years for the crimes sanctioned with penalties that do not include deprivation of liberty.

In addition, Article 133 established that: “Every trial shall have a maximum duration of three years, counted from the first act of the procedure.... Once the term has lapsed, the judge or court in the matter, on its own initiative or at the request of a party, shall declare the criminal action extinguished.”

[FN14] Juzgado Segundo de Partido en lo Penal de la Capital La Paz, Resolution No. 75/2000, August 28, 2000.

[FN15] Constitutional Court, Constitutional Judgment No. 458/2001-R, Judge writing for the Court: William Ruperto Durán Ribera.

23. The alleged victims also reported that the state authorities persecuted and harassed their family members in order to force the persons on trial to plead guilty of the crimes for which they were being investigated. In addition to the illegal holding of the Ortiz Quispe family in their home and the restrictions on their communication and ability to obtain food, it is alleged that a criminal proceeding with no basis in evidence is being opened against Mauricio García Linera, the brother of one of two of the accused. According to what is reported by the alleged victims, Mr. Mauricio García was unjustly tried and detained for one year on robbery charges. After one year of preliminary criminal proceedings (sumario penal) his innocence was shown, hence it is alleged that this accusation had the sole purpose of securing forced declarations and getting his brothers to incriminate themselves.

24. In addition, it is alleged that the Bolivian authorities have not initiated a criminal action to clarify the allegations of torture made by the alleged victims. In this respect, it is argued that even though all the persons tortured reported the torture and mistreatment to the criminal judge,

he did not order any investigation. Moreover, even though the crime of torture is to be prosecuted at the initiative of the authorities, no judicial authority initiated any investigation into the facts after the official publication of the results of the investigation by the Chamber of Deputies.[FN16]

[FN16] Public as of July 12, 1995.

25. Finally, the alleged victims report the illegal confiscation of property and money. The alleged victims state that at the time of the detention, all were dispossessed of the property and money they had on their persons. In addition, it is alleged that money and objects of value were stolen during the searches and inspections by state agencies of the alleged victims' residences. According to what the alleged victims state, the goods that were seized by the authorities in the searches, and which appear in records of the Public Ministry, bear no direct relationship to the commission of any crime, as they were personal property such as dishes, clothes, wardrobes, furniture, and the like. In addition, they report that despite the years and their repeated petitions to the judge, those goods have not been returned, which in their view constitutes a confiscation or an illegal taking. It is alleged that based on these facts, the District Prosecutorial Office (Fiscalía del Distrito) appealed to the Superior Court of the District of La Paz the prosecution of Prosecutor Nemtala Kairala, a prosecution that never went forward.

26. Based on these facts, the alleged victims request that this petition be admitted and processed for the alleged violations of the rights to physical and psychological integrity (Article 5(1), (2), (3), (4) and (5)), personal liberty (Article 7(2), (3), (4), (5), and (6)), judicial guarantees (Article 8(1), (2)(b), (c), (d), (f), (g), and (3)), protection of honor and dignity (Article 11(1) and (2)), private property (Article 21(2)), and judicial protection (Article 25(1) and (2)), contained in the American Convention, in relation to the obligations set forth at Article 1(1) of the Convention. As for the admissibility requirements, the alleged victims invoked the exceptions to the rule of prior exhaustion of domestic remedies provided for at Article 46(2)(a), (b), and (c) of the American Convention, as well as all the other formal requirements for the admissibility of a petition.

B. The State's position

27. The Bolivian State, in its response, did not controvert the veracity of the facts presented by the alleged victims. The State focused its defense on the argument that, based on the facts of the case, domestic legal remedies have yet to be duly exhausted because the criminal proceeding initiated March 26, 1992, before the First Judge of Criminal Investigation is still open, currently in the plenario phase before the Second Criminal Court.

28. The State denied that the exceptions to the requirements of Article 46 of the American Convention apply to this case. With respect to the exception contained at Article 46(2)(a), it is argued that the Bolivian State does have specific legislation to protect the rights, such as the writ of habeas corpus and the constitutional writ of amparo. The State adduces that both remedies are accessible to the persons accused "so much so that they were used by the complainants, indeed

on August 8, 1992, Mr. Álvaro García Linera sought a re-opening and extension of the time for the preliminary investigative phase, with the alternative of filing a constitutional writ of amparo.”

29. As for the second exception in Article 46(2) of the Convention, the State argues that the complainants had access to the relevant legal remedies, such as the request to extend the time of the preliminary investigative phase. In addition, it is argued that the alleged victims had “the legal mechanisms necessary for revoking their preventive detention and assuming their defense in liberty.”

30. Referring to the third exception to Article 46 of the Convention, the State argues that one must note the complexity of the processing of this case, since it is a preliminary investigation into 28 persons accused of committing approximately 10 crimes, with the case currently going forward in the trial (plenario) phase against 19 of them, for the same number of crimes. As for the procedural activity of the alleged victims, the State argues that during the trial phase “Álvaro García Linera and other co-accused asked that the hearings for taking statements (audiencias de declaraciones confesorias) be suspended, which meant suspending three hearings.” Thus, the State notes that on December 5, 1994, 19 hearings were scheduled for taking statements that could not be carried out at the express request of the co-accused. In addition, during the proceeding the accused Felipe Quispe Huanta was elected to a seat in the national legislature, and therefore came to enjoy parliamentary immunity, which also kept the matter from going forward normally.[FN17] Finally, the State notes that the accused Álvaro García Linera and Felipe Quispe Huanta requested temporary leave to attend international events, which were granted by the judge.[FN18]

[FN17] On October 19, 2002, the Second Criminal Judge (Juez Segundo de Partido en lo Penal) forwarded to the President of the Chamber of Deputies the original record from the criminal proceeding brought by the Public Ministry against Mr. Felipe Quispe Huanca et al. for the crime of terrorism, and other crimes, for the purposes of Article 52 of the Constitution, and Article 27 of the General Rules of Procedure of the Chamber of Deputies. On November 14, 2002, the Presidency of the Chamber of Deputies forwarded the record to the Committee on Constitution, Justice, and Judicial Police, for it to submit a report to the floor. On December 3, 2002, the Chamber of Deputies by unanimous decision rejected the request to lift the legislative privilege of deputy Felipe Quispe Huanca. By virtue of this pronouncement, the Office of the Prosecutor for the District of La Paz, by note of December 18, 2002, clarified to the Second Judge that: This pronouncement by the chamber DOES NOT INCLUDE the other accused; thus the proceeding should continue against them.

In order to determine responsibilities with respect to the continuity of the trial, the Public Ministry has established that the resolution shown—even though the undersigned does not share it – at no time as in the REPORT OF THE COMMITTEE makes mention that the process, in view of the exclusion of Deputy Felipe Quispe H., should be HALTED and/or ARCHIVED.

[FN18] The alleged victims are presently implicated in the proceeding as alleged perpetrators of the above-mentioned crimes (supra, note 2). Neither the order of indictment nor another resolution adopted in the trial makes it possible to know what specific acts are attributed to each of the persons on trial. The order of indictment makes a general attribution against the persons on

trial, instead of breaking down their individual participation. All the persons tried and petitioners before the Commission are provisionally released awaiting the calling of the next hearing in the trial with the exception of Ms. Raquel Gutiérrez Aguilar, who is being tried in absentia and for whom an international arrest warrant is outstanding.

31. The State also declared that the judge who heard the case until January 10, 2000 was denounced by the Public Ministry before the District Delegation of the Council of Justices of the Peace, for alleged breach of duties inherent to the court, and delay of justice in the case. Based on these acts, the judge had presumably committed criminal offenses provided for in Articles 154 and 177 of the Criminal Code. According to the State, these actions show that the state is using its legal mechanisms to sanction the alleged delay; in this case it needs to be determined whether the delay is imputable to the court or the accused, who asked that several hearings be suspended.

32. Accordingly, the State formally requests that the case be found inadmissible, because the petition does not meet the requirement of prior exhaustion of domestic remedies, in keeping with Article 46(1) (a) of the American Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

33. The petitioners are authorized by Article 44 of the American Convention to submit complaints to the IACHR. The petition indicates as the alleged victims Raúl García Linera, Silvy de Alarcón Chumacero, Raquel Gutiérrez Aguilar, Álvaro García Linera, Víctor Ortiz Quispe, Silverio Maidana Macías, Macario Tola Cárdenas, Santiago Yanique Apaza, Juan Carlos Pinto Quintanilla, Felipe Quispe Huanta, Alejandro Choque, and Mario Apaza, with respect to whom Bolivia undertook to respect and ensure the rights enshrined in the American Convention. As concerns the State, the Commission notes that Bolivia is a party to the American Convention and has been such since July 19, 1979, the date it deposited the respective instrument of ratification. Accordingly, the Commission is competent *ratione personae* to examine the petition.

34. The Commission is competent *ratione loci* to take cognizance of the petition as it alleges violations of rights protected in the American Convention said to have occurred in the territory of a state party to that treaty. In addition, the IACHR is competent *ratione temporis* as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date on which the facts described in the petition are alleged to have taken place.

35. With respect to competence *ratione materiae*, the IACHR notes that the alleged victims argued that the State violated the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), the right to privacy (Article 11), the right to protection of the family (Article 17), the right to private property (Article 21), and the right to

judicial protection (Article 25), all in conjunction with the duties of the states to respect and ensure the rights (Article 1(1)), established in the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

36. As regards the exhaustion of domestic remedies, the alleged victims invoked the exceptions to the rule of prior exhaustion, set out at Article 46(2)(a)(b), and (c) of the Convention. As regards subsection (a), it is argued that the alleged victims have not been allowed access to domestic remedies, for the remedies pursued have been rejected, without resolving the merits issues. As for subsection (b), it is argued that the criminal proceeding has taken too long, violating the procedural time frames of the Code of Criminal Procedure of Bolivia, which are binding on the parties and the judge. Finally, with respect to subsection (c), it is argued that even though Bolivia's constitutional provisions establish due process guarantees, the regular legislation applied in this case violates those guarantees. It is reported that the alleged victims continue to be tried based on a procedure established in 1973 by a military dictatorship, clearly in violation of human rights. Even though the Bolivian legislature, aware of this contradiction, promulgated a new procedural law to overcome these structural violations, it does not apply to the instant case.

37. The alleged victims put forth arguments indicating that being held incommunicado following the detentions kept them from bringing writs of habeas corpus. In summary, it was indicated that there was denial of access to justice through the attitude of the judges' position of ignoring the allegations of torture. In addition, there was denial of justice, given that the court not only refrained from investigating those allegations, but also delayed to the extreme its decisions so that the criminal proceeding and preventive detention would have a clearly punitive aim. Finally, it is argued that the harassment of their family members impeded the alleged victims from making use of their rights for fear of reprisals.

38. The State alleged failure to exhaust domestic remedies. With respect to the allegation of unwarranted delay of the criminal case, the State argued, first, that several procedural steps in the trial have been cancelled by the alleged victims, causing the proceeding to be delayed. It was also argued that one of the accused had been elected to the legislature, which had delayed the criminal trial. Moreover, the State alleged that at present it is making use of its legal mechanisms to "sanction the alleged delay" of the case, and, therefore, an action by the international jurisdiction at this time would be premature.

39. The Commission and the Court have repeatedly insisted on their "reinforcing or complementing"[FN19] role within the inter-American system for the protection of human rights[FN20], as reflected in Article 46(1)(a) of the Convention, which allows the states party to decide cases within their own legal framework before it becomes necessary to recur to an international procedure.

[FN19] American Convention on Human Rights, Preamble, para. 2.

[FN20] I/A Court H.R., Velásquez Rodríguez Case (Honduras), Series C, No. 4, Judgment of July 29, 1988, para. 61.

40. The Convention provides for certain exceptions, in cases in which exhausting domestic remedies is impracticable. One such situation, addressed by Article 46(2)(c), is that of unwarranted delay in decisions when domestic remedies have been pursued. The analysis of reasonable time in domestic proceedings continues until a final and firm judgment is handed down; in criminal matters in particular, reasonable time should cover the whole procedure, including any appeals.[FN21]

[FN21] I/A Court H.R., “19 Merchants Case.” Judgment of July 5, 2004. Series C No. 109, para. 189, citing I/A Court H.R., Juan Humberto Sánchez Case. Judgment of June 7, 2003. Series C No. 99, para. 120; I/A Court H.R., Hilaire, Constantine, and Benjamin et al. Case. Judgment of June 21, 2002. Series C No. 94; and I/A Court H.R., Suárez Rosero Case. Judgment of November 12, 1997. Series C No. 35, para. 71.

41. In the instant case, the Commission is of the view that the passage of more than 13 years without a firm judgment in the criminal proceeding by the Public Ministry against Raúl García Linera and others for crimes of terrorism, among others, triggers, in relation to the violations to the detriment of the alleged victims set forth in the complaint, the exception to the rule of prior exhaustion of domestic remedies provided for at Article 46(2)(c) of the American Convention.[FN22] The Commission finds that the arguments offered by the State to justify the prolonged duration of the criminal proceeding do not satisfy the requirements of the Convention for two reasons. The first is that while the State argues certain procedural delays imputable to the persons on trial, these do not make up for the fact that the criminal proceeding has come to a halt many times for reasons directly imputable to the state authorities.[FN23] Even though, the State itself recognizes this situation on reporting that the Public Ministry itself filed a complaint against the judge who heard the case until January 10, 2000, for breach of duties inherent to a court and delay of justice in the case, from that complaint no substantial advances have come about in the case.

[FN22] Along the same lines see: IACHR, Report N° 3/04, Petition 12.128 (Admissibility), Horacio Verbitsky et al. v. Argentina, February 24, 2004, para. 44.

[FN23] Accordingly, in the report signed by the Committee on the Constitution, Justice, and Judicial Police, of the Chamber of Deputies on November 19, 2002, within the process of the request for lifting the legislative privilege of Deputy Felipe Quispe Guanaca, the following can be read in the “Conclusions” section:

Based on a general review of the main parts of the court file, it has been possible to see evidence of procedural flaws as a result of the processing of the voluminous record and of hundreds of proceedings in their instrucción and plenario phases; while some are formal, it is no less true that the analysis of the actions ordered by the judicial authorities of the proceeding evidences a manifestly restrictive, dilatory, and inquisitorial attitude towards the persons on trial, ranging

from unjustified delay or suspension of hearings, failure of the prosecutor to appear, bad notice, excessive referrals of the record for prosecutorial inspection due to technical trivialities, failure to observe procedural deadlines, and even the violation of gratuitousness to which the judicial authority should have zealously adhered to on its own initiative, throughout the process in benefit of the accused.

42. In addition, the Commission finds that the allegations of torture have not been investigated, even though they were first made by the alleged victims more than 13 years ago, and, for the second time, by the Chamber of Deputies through a public report, which ended with a draft call (“Proyecto de Requerimiento”) for a formal investigation of police and prosecutorial officials, who are fully identified, for alleged acts of torture.[FN24]

[FN24] See Comisión de Derechos Humanos de la Cámara de Diputados, Denuncia de torturas a ciudadanos sindicados de alzamiento armado, Centro de Documentación e Información (CEDOIN), La Paz, Bolivia, 1995, pp. 249-251.

43. The Commission wishes to clarify, as it has done on prior occasions, that the application of the exceptions provided for at Article 46 of the Convention to determine the admissibility of a petition does not imply prejudging the merits of the complaint. The Commission’s analysis of the petition in the admissibility phase is preliminary.

2. Time for submitting a petition to the Commission

44. With respect to the requirement set forth at Article 46(1)(b) of the American Convention, according to which the petition must be submitted within six months of the victim being notified of the final decision that has exhausted domestic remedies, the Commission notes that this requirement does not apply in this case, since the alleged victims argue the exceptions to the requirement of exhaustion of domestic remedies provided for at Article 46(2) of the Convention. Accordingly, in the instant case, by mandate of Article 46(2) of the Convention, the exception to that requirement concerning the time for submitting the petition applies.

45. In the case of such exceptions, Article 32(2) of the Commission’s Rules of Procedure establishes that petition shall be presented “within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.” In the instant case, the Commission observes that as of May 2001, when it initially learned of the facts, the alleged victims had taken procedural steps in good faith to resolve the situation domestically, yet those efforts were for naught due to procedural delays imputable to the state authorities.[FN25] In that regard, mindful that more than 13 years have transpired since the date of the facts, and that there is no final and firm decision in the judicial proceeding, the Commission is of the view that the petition has been submitted within a reasonable time.

[FN25] These include the successive changes of prosecutor by the Public Ministry, described in the hearing of August 13, 2002. In addition, the failure to give actual notice to the persons called to give testimony has contributed to the delay. See, for example, official note 0272/2002 signed by the National Director of Police Personnel, General Oscar Torres Calvo, of April 23, 2002, which reads: “considering that the subpoena did not arrive on time, which is why that official was not given timely notice, I respectfully ask that a new date and time be set for the hearing.”

3. Duplication of procedures and res judicata

46. The record in this case contains no information that might lead one to determine that this matter is pending before another procedure for international settlement or that it has previously been decided by the Inter-American Commission. Accordingly, the IACHR concludes that the exceptions provided for at Article 46(1)(d) and Article 47(d) of the American Convention do not apply.

4. Characterization of the facts alleged

47. Article 47(b) of the Convention establishes that the Commission will declare inadmissible any petition or communication submitted that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.” The Commission considers that the facts alleged by the petitioners described in section III of this report could characterize prima facie violations of Articles 5, 7, 8, 11, 17, 21, and 25 of the American Convention, in relation to the obligations established in Article 1(1) of the same instrument.

48. Accordingly, the IACHR concludes that on this point the case is admissible, in keeping with Article 47(b).

V. CONCLUSIONS

49. The Commission concludes that the case is admissible and that it is competent to examine the claim submitted by the alleged victims for the alleged violations of Articles 5, 7, 8, 11, 17, 21, and 25, in conjunction with Article 1(1) of the Convention, in keeping with the requirements established at Articles 46 and 47 of the American Convention.

50. Based on the arguments of fact and law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the instant case admissible, in relation to Articles 5, 7, 8, 11, 17, 21, and 25 of the American Convention, in conjunction with Article 1(1) of the same treaty.
2. To notify the State and the petitioners of this decision.
3. To initiate the processing on the merits.

4. To publish this decision and include it in its Annual Report to be submitted to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 12, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández, José Zalaquett, Fredy Gutiérrez, and Florentín Meléndez.