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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 28/08; Petition 1241-05
Title/Style of Cause: Jhonny Omar Lopez Quesada v. Peru
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Paulo Sergio Pinheiro, Victor E. Abramovich.
Dated: 19 May 2008
Citation: Lopez Quesada v. Peru, Petition 1241-05, Inter-Am. C.H.R., Report No. 28/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANT: the Human Rights Commission
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I. SUMMARY

1. On October 17, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or the “IACHR”) received a petition lodged by the Human Rights Commission (COMISEDH) (hereinafter “the petitioner”), in its capacity as the representative of Jhonny Omar López Quesada (hereinafter “the presumed victim”), alleging the responsibility of the Republic of Peru (hereinafter “the State,” “the Peruvian State,” or “Peru”) for the presumed violation of his right to humane treatment as a result of acts of torture by state agents while in detention, and for the subsequent failure to investigate, prosecute, and punish the responsible parties.

2. The petitioner alleges that the State is responsible for violation of the rights protected under Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), considered in conjunction with the State’s general obligation to respect and guarantee those rights, established in Article 1.1 of that international instrument. Petitioner further contends that the petition is admissible, since the requirement of prior exhaustion of domestic remedies has been met, and is the petition was lodged within the period stipulated in Article 46.1.b.

3. The State, for its part, alleges that the petition is inadmissible pursuant to Article 47.c, because it is obviously out of order, in view of the fact that the Judiciary, as an autonomous and independent organ, issued judgment within its field of competence, thereby formally concluding the criminal proceedings, and that the Executive Branch cannot alter that decision or interfere in its execution, as the Constitution expressly prohibits it from doing so.

4. After examining the available information, the Commission determined that the case is admissible in reference to the alleged violation of Articles 5, 8, and 25 of the American Convention, considered in relation to Article 1.1 of that international instrument. It further determined that it is competent, during the merits stage, to consider presumed violations of Articles 1, 6 and 8 of the Convention to Prevent and Punish Torture, in accordance with the requirements stipulated in Articles 46 and 47, and decided to notify the parties and publish the report in its Annual Report.

II. PROCEDURES BEFORE THE COMMISSION

5. The Commission registered the petition dated October 11, 2005, and received on October 17, 2005, as number 1241-05. On April 5, 2006, it proceeded to forward to the State a copy of its relevant parts, granting it two months to present information on the allegations made, in accordance with Article 30.3 of the IACHR's Rules of Procedure.

6. On May 4, 2007, the State presented to the IACHR Report Number 53-2007-JUS/CNDH-SE/CESAPI, prepared by the National Human Rights Council, as its observations on the referenced petition. On May 7, 2007, the Commission transmitted the relevant parts of the response provided by the State to the petitioner, and requested it to present any observations deemed relevant with one month.

7. In a communication received by the IACHR Executive Secretariat on June 21, 2007, the petitioner presented observations on the State's response, which the Commission transmitted to the State in a communication dated August 6, 2007, granting it one month to submit observations. Subsequently, the State submitted two requests to extend that period, which were granted by the Commission in communications dated September 12 and October 23, 2007. The State presented its observations with a communication dated November 26, 2007.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

8. The petition recounts that on March 7, 2001, at approximately midnight, in cell block 5 of the Cambio Puente Penitentiary in Chimbote, inmate Jhonny Omar López Quesada and others were celebrating the release from prison of one of them. The petitioner alleges that in those circumstances they were surprised by the Assistant Director of the Penitentiary, Leobardo Álvarez Valle, who, along with six INPE agents armed with tear gas and rubber clubs, led the inmates to the prison yard.

9. The petitioner states that once they arrived in the prison yard, following the orders of Security Chief Justo Talaverano Garibay, the inmates were forced to perform physical exercises as punishment. Then, they were divided into two groups of three persons each, and taken to "meditation cells"[FN1] (known as punishment cells). This led inmate Jhonny Omar López Quesada to protest, whereupon he was beaten severely on different parts of his body. The petitioner explains that six INPE agents, pursuant to the orders of Security Chief, Julio Talaverano Garibay, and in the presence of the Assistant Director of the Penitentiary, Teobaldo

Álvarez Valle, dealt Jhonny Lopez Quesada hard blows to various parts of his body, to the point that they even fractured his right arm, as is evidenced by the forensic medical report and certificate. Petitioner adds that they also sprayed him in the eyes with an irritant and put ground hot chili pepper on his face. The other inmates were also beaten by the INPE agents.

[FN1] The petitioner's allegations indicate that the "meditation cells" are punishment cells or places in which detainees are confined or held incommunicado.

10. The petitioner states that these acts involved the disproportionate and excessive use of force (rubber clubs) by the prison guards or agents of the Cambio Puente Penitentiary, against the inmates.

11. The petitioner goes on to report that on March 13, 2001, representatives of the Office of Public Defenders entered the Cambio Puente prison facility and managed to interview the six inmates in question and to take photographs of the marks left by the wounds inflicted by the INPE agents. On that same day, the Prosecutor in charge of the Cuarta Fiscalía Provincial Penal [Fourth Provincial Criminal Prosecutor's Office] for Santa – Chimbote also visited the prison, took statements from the alleged victims, and ordered the pertinent forensic medical examinations.

12. The petitioner notes that these acts led to charges against INPE agent Justo Talaverano Garibay for abuse of authority, whereupon preliminary investigative proceedings were opened against him by the Fourth Criminal Court of Chimbote. Petitioner further notes that subsequently, the attorneys of the alleged victim requested amendment of the proceedings to additionally include charges of crime against humanity in its modality of torture.

13. The petitioner reports that when the judge responsible for the case received the request to amend the charges, she sent it separately to the Ministerio Público, which prepared a formal criminal accusation of the crime of torture, and opened a preliminary investigation in another criminal court, thereby initiating new proceedings. As a result, there were two criminal proceedings, one for the crime of abuse of authority and another for the crime of torture, both related to the same acts and involving the same injured and accused parties.

14. In this regard, the petitioner points out that in the proceeding initiated for the crime of torture, on November 19, 2004, the Second Criminal Tribunal [Segunda Sala Penal] of the Santa – Chimbote Judicial District convicted Justo Talaverano Garibay for the crime against humanity in its modality of torture, and sentenced him to four years of imprisonment (suspended for a three-year probationary period), and payment of one thousand new soles by way of civil reparations in favor of the injured party. The judgment was based on the determination that the accused, together with INPE personnel, beat the alleged victim.

15. In view of this situation, the petitioner reports that on December 1, 2004, Justo Talaverano Garibay filed a recurso de nulidad [appeal based on procedural violations of the lower court] to appeal the judgment convicting him for crime against humanity in its modality of

torture. Petitioner reports that on January 21, 2005, the First Transitory Criminal Tribunal [Primera Sala Penal Transitoria] of the Supreme Court of Justice of the Republic issued Supreme Writ of Execution No. 4185 – 2004 overturning the judgment of conviction for the crime of torture, establishing ex officio prohibition against double jeopardy [exception de cosa juzgada] in favor of Justo Talaverano Garibay, and thereby terminating criminal action against him. The petitioner adds that the judgment stated that:

"(...) the prohibition against double jeopardy is in order “whenever the act denounced was the subject of a final national or foreign judgment in the criminal proceeding against the same person;” that this being the case, it is noted that the present action was accompanied by the case file registered as number 1791 – 2001 against the same parties and involving the same facts, for the crime against the public administration – abuse of authority, which concluded with the decision handed down on March 8, 2004, terminating the legal action on the basis of the statute of limitations, as verified on page 183 and determined as accepted by a decision on page 188, dated March 25, 2004; Fourth:. That, this being the case, it is clearly noted that the prohibition against double jeopardy was in effect ex officio (...) [FN2]

[FN2] Writ of Execution of the Supreme Court – First Transitory Criminal Tribunal, by Supreme Writ of Execution No. 4185 - 2004, January 21, 2005.

16. In fact, the petitioner points out that the decision of the First Transitory Tribunal of the Supreme Court of Justice of the Republic nullified the decision on the grounds that it considered the existence of res judicata on the basis of the judgment of March 8, 2004, in which the judge ex officio terminated the criminal action against Justo Talaverano Garibay for the crime of abuse of authority by virtue of the statute of limitations.

17. In this regard, in its legal arguments, the petitioner states that although the same facts related to the participation of the same state agents are discussed in the criminal proceedings on abuse of authority and torture, they refer to different crimes. In fact, petitioner indicates that there is a clear differentiation regarding the victim of the crime and the violated rights, since in the crime of abuse of authority, the victim is the State, while in the crime of torture, the victim is the person. He further argues that different rights are violated in the two instances, by virtue of the fact that in cases of torture, the right to humane treatment of the person is violated, in addition to the fact that it is a crime against humanity and ultimately not subject to the statute of limitations, whereas the crime of abuse of authority is subsumed in the crime of torture because one of the subjective elements of the crime of torture is abuse of power.

18. Moreover, the petitioner indicates that in the present case, the Supreme Court used an argument that does not refer to the substance of the alleged violation of human rights. In other words, in its written arguments, despite the fact that they assert that torture was committed, the guilty party is acquitted on the basis of a procedural argument, without taking into account the gravity of the physical injuries suffered by Jhonny López, or the criminal participation and circumstances in which said acts were committed.

19. As regards the factual and legal arguments developed earlier, the petitioner contends that the State is liable for violation of the rights established in Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights, considered in conjunction with the general obligation of respect and guarantee established in Article 1.1 of that international instrument.

20. Finally, as for the admissibility requirements of the petition, the petitioner alleges that in the present case, the remedies of the domestic legal system were exhausted with the issuance of the Supreme Writ of Execution on December 7, 2004, in which the judgment of November 19, 2004 convicting Justo Talaverano Garibay was overturned.

B. Position of the State

21. In its allegations regarding this petition, the State notes that on March 5, 2002, the provincial prosecutor of the Fourth Provincial Prosecutor's Office [Cuarta Fiscalía Provincial] of Santa charged Justo Talaverano Garibay with a crime against the public administration - abuse of authority, and sentenced him to two years in prison.

22. The State goes on to report that the victim, Jhonny Omar López Quesada, requested that the previous charge be amended to include additionally the crime of torture. In this regard, it indicates that in communication No. 285 dated April 11, 2002, the Prosecutor's Office issued an opinion in response to this request, to the effect that it was not in order to amplify the request, since the period for the preliminary investigative proceeding had lapsed. Thus, the charge pertaining to the crime against humanity – torture – was brought by the Ministerio Público and said criminal proceedings were opened in another court.

23. The State further indicates that on August 22, 2002, the Fourth Criminal Court of Santa issued a judgment acquitting Justo Talaverano Garibay of the prosecutor's charges for the crime of abuse of authority, based on the fact that insufficient conclusive evidence was presented to ensure a guilty verdict, in view of the legal presumption of innocence. On January 9, 2003, the Superior Court of Justice of Santa vacated that judgment and proceeded to issue a new judgment on the grounds that it had been demonstrated that the injuries suffered by the injured parties were inflicted under the direction and in the presence of the accused. Moreover, it considered that the accused admitted such circumstances, thereby making him liable for commission of the illicit criminal act. Based on the foregoing, on May 6, 2003, the Third Criminal Court of Santa issued a judgment of conviction against Justo Talaverano Garibay for the crime against the public administration - abuse of authority, to the detriment of Jhonny Omar López Quesada, among others, convicting him to a two-year prison term, suspended for one year, subject to rules of conduct.

24. Peru then reports that this judgment was appealed by the convicted party. The State indicates that by auto de prescripción [order based on the statute of limitations] dated March 8, 2004, the Superior Court of Justice of Santa issued a judgment based on the statute of limitations, and thereby ruled ex officio the termination of the criminal action in favor of Justo Talaverano Garibay for the crime against the public administration – abuse of authority. The Court explained that criminal action is subject to a statute of limitations in all cases where the time

lapsed exceeds by one-half the ordinary period equivalent to the maximum sentence established for the crime, and it held the view that in the present case, this period had already lapsed some time ago. The State further argues that the referenced decision was declared as acquiesced as of March 25, 2004, since no objections to it were filed, hence it produced the effect of *res judicata*. In fact, the State contends that the finding pertaining to the statute of limitations in the criminal proceeding against Justo Talaverano Garibay for the crime against the public administration – abuse of power, which was not appealed or challenged in any way, produced the full effect of *res judicata*.

25. With regard to the appeal filed by the injured party, the State responds that on December 30, 2004, that appeal was settled in a decision annulling the conviction of May 6, 2003 and providing for a new judgment to be issued.

26. However, the State indicates that on November 19, 2004, the Second Criminal Tribunal of the Superior Court of Justice of Santa convicted Justo Talaverano Garibay as the perpetrator of a crime against humanity in the modality of torture, to the detriment of Jhonny López Quesada, and sentenced him to four years in prison, with a suspension for a three-year probationary period subject to the rules of conduct defined in the judgment. The State further notes that on December 1, 2004, the convicted party filed an appeal to vacate the judgment in question [*recurso de nulidad*]. On January 21, 2005, the First Transitory Criminal Tribunal of the Supreme Court of Justice of the Republic ruled *ex officio* that the conviction was null and void due to application of the prohibition of double jeopardy, in favor of the convicted party.

27. The State further argues that application of the procedural principle of *res judicata* in the criminal proceedings for torture, in which a guilty verdict was issued, occurred as a result of the determination of the statute of limitations in the criminal action processed as case file N° 1791-2001- against Justo Talaverano Garibay, for the crime against the public administration – abuse of authority.

28. The Peruvian State contends that in the present case, the judicial action does not *per se* constitute arbitrary action by the State, or a violation of the rights to a fair trial and to judicial protection, since both criminal proceedings were carried out in accordance with the rules of due process. This is true because the injured party had an opportunity to file all the motions and complaints as permitted by the pertinent law.

29. In these circumstances, the Peruvian State maintains that when a petition involves an alleged violation of human rights by virtue of a judicial decision issued by the highest court, review of the case by the Commission would not be permitted under the Convention, since the judgment was issued by an organ of the domestic legal system in accordance with the so-called formula of the “fourth instance.” This argument is based on the fact that the international protection granted by the supervisory organs of the Convention is subsidiary in nature, as stated in the preamble of that instrument.

30. Consequently, the Peruvian State concludes that this petition is inadmissible in accordance with Article 47(c), as it is obviously out of order, in view of the fact that the Judiciary, as an autonomous and independent organ, issued judgment within its jurisdiction;

hence, the two criminal proceedings are formally concluded, and the Executive Branch is not authorized to modify that decision or interfere in its execution, according to an explicit prohibition in the Constitution.

31. Finally, the State indicates that through a Presidential Resolution of the National Penitentiary Institute dated November 18, 2007, a disciplinary administrative process was lodged against Justo Talaverano Garibay for the facts object of this petition, in observation of national and international obligations.

IV. ANALYSIS ON JURISDICTION AND ADMISSIBILITY

A. Jurisdiction *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

32. The petitioner is authorized by Article 44 of the American Convention to lodge petitions with the Commission. The petition indicates that Jhonny Omar López Quesada is the presumed victim in respect of whom the Peruvian State has a commitment to respect and guarantee the rights established in the American Convention. Peru has been a state party to the American Convention since July 28, 1978, when it deposited its instrument of ratification. Therefore, the Commission has personal jurisdiction to examine the petition.

33. Likewise, the Commission is competent *ratione loci* to consider the petition, since it alleges violations of the rights protected by the American Convention that took place within the jurisdiction of the State.

34. Moreover, the Commission is competent to consider this petition, based on the principle of *iura novit curia*, with regard to alleged violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, ratified by the State of Peru on March 28, 1991.

35. The Commission has jurisdiction *ratione temporis* to study the complaint, since the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State on the date that the acts alleged in the petition occurred.

36. Finally, the Commission has subject matter jurisdiction to take up this case, since the petition reports possible violations of human rights protected by the American Convention.

B. Requirements for admissibility

1. Exhaustion of domestic remedies

37. Article 46.1 of the American Convention states that in order for a petition lodged with the Inter-American Commission pursuant to Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.

38. In the case in point, the petitioner alleges that the remedies of the domestic legal system were exhausted with the issuance of the Supreme Writ of Execution on December 21, 2005,

which nullified the judgment of November 19, 2004 that convicted the single state agent involved in the acts that was later investigated and judged. With regard to exhaustion of domestic remedies, the State contends that no appeal was filed to oppose or challenge the decision regarding the statute of limitations of the criminal proceedings against Justo Talaverano Garibay for the crime against the public administration – abuse of authority, by virtue of which it produced the full effect of *res judicata*.

39. On this point, the Commission considers it relevant to note in the first place that the petition refers to the alleged failure to investigate, prosecute, and punish the state agents involved in the acts of torture of which Mr. López Quesada allegedly was a victim while he was in detention.

40. In this regard, the Commission observes that in the present case, a criminal proceeding took place in a domestic court, and it was initiated *ex officio* by the Ministerio Público, as reported by the parties, after which the alleged victim requested that the charges for the crime of abuse of authority include the crime of torture. In fact, at the request of the Ministerio Público, a criminal proceeding was opened in the Fourth Criminal Court of Chimote for the crime against humanity in its modality of torture, against one of the state agents involved in the reported acts.

41. The Commission further observes that the criminal proceeding opened with respect to the crime against humanity in its modality of torture resulted in a conviction on November 19, 2001, against the state agent accused in said proceeding. That judgment was subsequently revoked by the First Transitory Criminal Tribunal of the Supreme Court of Justice of the Republic, in a Writ of Execution issued on January 21, 2005, which overturned the conviction for the crime of torture, by establishing *ex officio* the prohibition of double jeopardy in favor of Justo Talaverano Garibay, thereby terminating the criminal proceeding.

42. In this regard, the Commission deems it relevant to set forth a series of considerations. In the first place, as regards the decision by the Supreme Court on the *recurso de nulidad*, it is evident from analyzing the relevant section of the Peruvian Code of Criminal Procedure that the Supreme Court of Justice of Peru is the organ responsible for resolving such an appeal, and that there is no remedy for challenging such a judgment. In these circumstances, the proceeding for the crime of torture in this case would have been terminated by the aforesaid judgment of January 21, 2005.

43. Secondly, as regards the State's allegations to the effect that the alleged victim did not file an appeal to challenge the decision pertaining to the statute of limitations of the criminal proceeding against Justo Talaverano Garibay for the crime against the public administration - abuse of authority, it is relevant to point out that the requirement of exhaustion of domestic remedies established in Article 46 of the American Convention refers to available, adequate, and effective remedies under domestic law to resolve the alleged human rights violation. According to what the Inter-American Court has reiterated on various occasions, if the remedy in a given case is not adequate to protect the legal situation violated and is not capable of producing the result for which it was conceived, it is obvious that it does not have to be exhausted.[FN3] In the case in point, as established earlier, the petition refers to the failure to investigate and punish acts

of torture, and states that the ordinary remedies designed to correct the situation in question were exhausted.

[FN3] See, for instance, Inter-American Court of Human Rights, “Exceptions to exhaustion of domestic remedies ((Art. 46.1, 46.2.1 and 46.2.b of the American Convention on Human Rights”)), Advisory Opinion OC-11/90 of August 10, 1990, para. 36.

44. By virtue of the foregoing, the Commission considers that the remedies under domestic law were exhausted with the aforesaid judgment of January 21, 2005, issued by the First Transitory Criminal Tribunal of the Supreme Court of Justice, which overturned the conviction of the state agent charged with the crime of torture. Therefore, this petition meets the requirement established in Article 46(1)(a) of the American Convention.

2. Deadline for presentation of the petition

45. Pursuant to Article 46.1 of the Convention, in order to declare a petition admissible, it must be lodged within a period of six months counting from the date on which the interested party was notified of the final judgment issued by the domestic courts.

46. From the documents presented by the petitioner as supporting documents, the Commission notes that the judgment of the First Transitory Criminal Tribunal of the Supreme Court of Justice was issued on January 21, 2005, and the brief submitted by the petitioner states that the petitioner and the alleged victim learned of the Supreme Writ of Execution of the Supreme Court of the Republic on April 18, 2005, by reading it in the so-called “Reading Room” of the Supreme Court, in which, by signing up a day earlier, they were shown the Supreme Writ of Execution.

47. The Commission observes that the petition against the Peruvian State was lodged with the IACHR on October 17, 2005. Consequently, it concludes that the requirement of the Convention stipulating that the petition be lodged within a period of six months has been met.

b. Duplication of procedures and res judicata

48. The case files do not show that the subject matter of the petition is pending before another international settlement procedure or that it was previously decided by the Inter-American Commission. Consequently, the requirements established in Articles 46(1)(c) and 47(d) of the Convention are considered to have been met.

3. Characterization of the alleged facts

49. As stated by the Commission in other cases, in this stage of the proceedings, it is not appropriate to establish whether or not there is a violation of the American Convention. For the purposes of admissibility, the IACHR must simply decide whether the allegations refer to acts that tend to establish a violation of the American Convention, as stipulated in its Article 47(b),

and whether the petition is “manifestly groundless” or “obviously out of order,” pursuant to paragraph (c) of that Article. The standard for assessing these facts is different from the one required to decide on the merits of the complaint. At this stage, the IACHR must conduct a prima facie evaluation that does not imply prior judgment or a supposition of an opinion on the merits. Its own Rules of Procedure reflect this distinction between the evaluation to be conducted for the purpose of finding a petition admissible, and the one required to determine effectively the State’s responsibility, by establishing clearly differentiated stages for consideration of admissibility and merits.

50. In the case in point, the petitioner alleges violation by the State of the right to humane treatment, by virtue of the acts of torture that occurred during the detention of Jhonny Omar López Quesada, allegedly perpetrated by State agents, and the violation of the rights to a fair trial and judicial protection, in view of the absence of investigation, prosecution, and punishment of the responsible state agents, in accordance with the provisions of Articles 5, 8, and 25 of the American Convention, respectively, considered in conjunction with the obligation to respect these rights, contained in Article 1.1 of that instrument.

51. The State, on the other hand, alleges that this petition is inadmissible pursuant to Article 47(c), on the grounds that it is obviously out of order, in view of the fact that the Judiciary, as an autonomous and independent organ, issued judgment within its jurisdiction, and thereby formally concluded the process of both criminal proceedings, and the Executive Branch cannot modify that decision or interfere in its execution by express prohibition stipulated in the Constitution. On this point, the State alleges that by virtue of the so-called “fourth instance formula,” the IACHR cannot review judgments of domestic courts that act within their sphere of competence and according to due process.

52. On this point, the Commission deems it relevant to reiterate that the subject of the petition is the alleged failure to investigate, prosecute, and punish the state agents involved in acts of torture of which Mr. López Quesada allegedly was a victim while in detention.

53. In these circumstances, according to the facts set forth, the Commission considers that the petitioner formulated allegations that are not “manifestly groundless” or “obviously out of order,” and that, if petitioner’s allegations are proven, they could characterize violations of Articles 5, 8, and 25 of the Convention, respectively, considered in relation to Article 1.1 of that international instrument.

54. Moreover, the Commission finds that petitioner’s allegations related to torture, if proven, could amount to violations of various rights guaranteed by the American Convention and the Inter-American Convention to Prevent and Punish Torture. The IACHR is of the opinion that the facts reported deserve a detailed and complete analysis in the merits stage. Even though the petitioner did not invoke Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, by virtue of the *iura novit curiae* principle, the Commission will proceed to consider presumed violations of those Articles.

55. Since these aspects of the complaint are not manifestly groundless or obviously out of order, the Commission considers that the requirements established in Article 47(b) of the

American Convention have been met with regard to the allegations referring to Articles 5, 8, and 25 of the American Convention, all of which are considered in relation to the general obligation of respect and guarantee established in Article 1.1 of that international instrument, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

V. CONCLUSIONS

56. The Commission concludes that the case is admissible and that it is competent to examine the complaint presented by the petitioner regarding the alleged violation of Articles 5, 8, and 25 of the American Convention, all of which are considered in relation to the obligations arising from Article 1(1) of that instrument. In addition, the Commission finds that it is competent to analyze, in the merits stage, alleged violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, in accordance with the requirements established in Articles 46 and 47 of the American Convention.

57. By virtue of the aforesaid factual and legal arguments, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible in relation to Articles 5, 8, and 25 of the American Convention, in accordance with Article 1.1 of that international instrument, to the detriment of the alleged victim.
2. To declare this case admissible in relation to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.
3. To notify the Peruvian State and the petitioner of this decision.
4. To continue with the analysis of the merits of the case.
5. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 19th day of May, 2008.
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Paulo Sérgio Pinheiro, and Víctor E. Abramovich, members of the Commission.