Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 56/08; Petition 11.602
Session:	Hundred Thirty-Second Regular Session (17 – 25 July 2008)
Title/Style of Cause:	Workers Dismissed from Petroleos de Peru (PETROPERU) v. Peru
Doc. Type:	Decision
Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Dated:	24 July 2008
Citation:	Workers Dismissed from PETROPERU v. Peru, Petition 11.602, Inter-Am. C.H.R., Report No. 56/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)

I. SUMMARY

1. On February 19, 1996, the Inter-American Commission on Human Rights (hereafter the "the Commission" or "IACHR") received a petition submitted by the Consolidated Petroleum Workers Union of Peru for the Northwest-Talara Area [Sindicato Único de Trabajadores de Petróleos del Perú Zona Noroeste-Talara] on behalf of 85 workers (hereafter "the alleged victims" or "the petitioners") against the Republic of Peru (hereafter "Peru," "the Peruvian State," or the "State").[FN1] The petition alleges that the 85 alleged victims were fired as part of a collective dismissal carried out based on legal norms contrary to the Constitution and that the alleged victims were prevented from exercising their right to defense with regard to the dismissal decision.

[FN1] On May 27, 1999, the 85 alleged victims in the case sent a communication via their legal representative, Carolina Loayza Tamayo, requesting that they be considered petitioners in order to "be able to communicate directly with the Commission so that they could directly defend their rights enshrined in the Convention before this international body." On March 1, 2006, Ms. Loayza Tamayo, along with the alleged victims, informed the Commission that she would no longer be representing eight of the alleged victims (Edwin Quevedo Saavedra, Abraham Montero R., Oscar Valiente Paico, Jaime Noriega G., Carlos Zapata Olaya, María Medina Crisanto, José Saavedra M, Antonio Esparza Huamán, and Delia Arévalo de Benítez), who would thenceforth represent themselves directly before the Commission. On October 12, 2007, the IACHR received a communication from attorney Loayza Tamayo in which she indicated that she would now only be representing 29 of the original alleged victims.

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2. The petitioners allege that the State infringed to their detriment on the rights protected by Articles 8, 9, 24 and 25 of the American Convention on Human Rights (hereafter "the Convention" or "the American Convention"), in accordance with the general obligation to respect and guarantee rights set forth in Article 1.1 of the said instrument. With regard to compliance with admissibility requirements, the petitioners allege that they exhausted the court system with an amparo motion and that they lodged their petition within the deadline set forth in the American Convention. They also state that they have complied with the other requirements for admissibility and competence. In addition, the petitioners point out that the State recognized its responsibility for the violations alleged in their petition by issuing Law No. 27803, which was adopted to review the collective dismissals carried out by state companies undergoing processes to promote private investment. The petitioners point out that, this recognition notwithstanding, the benefits provided for by said law does not meet the criteria established for comprehensive reparation in international jurisprudence.

3. The State alleges that the case is inadmissible pursuant to Article 47.b and 47.c of the American Convention because the events described in the petition are not human rights violations. The State argues that all due process rules and guarantees were observed in the domestic legal processes carried out; these same guarantees were observed in the privatization of public companies and in the personnel reduction and streamlining program at PETROPERU S.A. In addition, the State alleges that after Peru's constitutional democratic government was reinstalled, it adopted domestic measures to make reparations to approximately 28,000 workers dismissed irregularly from 1990 to 2000. The State points out that several of the petitioners in this case have accepted said benefits and that the others could accede to them. Therefore, the State alleges that its domestic legislation includes a mechanism appropriate for resolving the complaint made in the petition.

4. Without prejudice to the merits of the complaint, the IACHR concludes in this report that the case is admissible with regard to the alleged violations of the right to a fair trial (Article 8), freedom from ex post facto laws (Article 9), and the right to judicial protection (Article 25), recognized in the American Convention, as per the general obligation to respect and guarantee rights enshrined in Article 1.1 and the duty to adopt measures enshrined in Article 2 of said instrument, given that the complaint meets the requirements set forth in Article 46 of the American Convention with regard to Delia Arévalo Guerra, Maria Elba Marchán Avila, Cesar Antón Olaya, Víctor Manuel Garay Espinoza, Luciano Sandoval Villaseca, Julio Serraqué Azáldegui, Javier A. Espinoza Vargas, Juvenal Paz Arévalo, Cruz Alberto More Bayona, Leonarda Montero Silupú, Helber R. Romero Rivera, María Sancarranco Barrientos, María Esther Medina Crisanto, Neptalí Aguirre Maldonado, Manuel Antonio Calle Atoche, Carlos Alberto Zapata Olaya, Carlos Alberto Galán Castillo, Guadalupe Risco Martínez, Gerber Acedo Martínez, Lilia Flores Herrera, Norberto Vilela Jiménez, Agustín Acedo Martínez, Nyrliam García Viera de Castillo, Oholger Wiston Benites Zárate, Wilson Seminario Agurto, Ricardo Vílchez Valverde, Carlos E. Oliva Borja, Maria Anita Zavala Sosa, Luís Mogollón Granda, Jorge Martinez Amaya, Juan Benítez Gómez, Antonio Esparza Huamán, Maritza Amaya Coveñas, Manuel Jesús Paiva Pacherres, Irma Morales López, Wilmer Gil Rosales, Julio Chiroque Silva, Rosa Castillo Marcelo, Agustina Mendoza Morales, José Juan Obando Reto, Luís Arturo Vallejo Agurto, Ana María Rojas Flores, Fredesvinda Sócola Clavijo, Elmer Arrazabal Gallo, Raúl

Clavijo Domínguez, Leither Quevedo, Eduardo Emiliano Chavarri Vélez, Pedro Chumpitaz Sócola, Luís Oswaldo Duque Morán, Segundo Barrientos Olivos, Pedro Talledo Carrasco, Juan Echandía Ochoa, Manuel Mechado Sernaque, Eduardo Panta Valladares, Federico Antón Antón, José Torres Namuche, Luís Abad Saldarriaga, Gregorio Albuquerque Carrillo, William Jacinto Aleman Benitez, Sebastián Amaya Fiestas, Jorge Cabanillas Dedios, Santos Calderón Ávila, Luís Carrasco Lozada, Alberto Chira Guerrero, Mario Duque Mogollón, Jaime Garcés Sandoval, Pedro Carlos Garcés Solís, Gonzalo Ginocchio Guerrero, Pedro Infante Antón, José William Jacinto Zavala, Pedro López Antón, Abraham Montero Ramírez, Emilio Augusto Morales Silva, Miguel Hugo Morán García, Gregorio Jaime Noriega González, Ricardo Quevedo Herrera, Edwin Quevedo Saavedra, José Félix Saavedra Medina, Catalino Sandoval Ancajima, Dionisio Sandoval Flores, Joaquín Santillán Zavala, Luís Tavara Ramírez, Jorge Carlos Tinedo Puell, Oscar Valiente Paico, and Felito Vitonera Saldarriaga. Therefore, the Inter-American Commission undertakes to notify the parties of the decision and to continue to analyze the merits of the alleged violations of the rights to a fair trial and to judicial protection, recognized in the American Convention, in accordance with the general obligation to respect and guarantee rights enshrined in Article 1 and the duty to adopt measures enshrined in Article 2 of said instrument.

II. PROCESSING BEFORE THE COMMISSION

5. The Commission received the complaint lodged by the Consolidated Petroleum Workers Union of Peru on February 19, 1996. The IACHR sent the petition to the State via a communication dated April 1, 1996. On July 26, 1996, the State submitted a note requesting further information about the petitioners' claim. On August 21, 1996, the IACHR sent the State's request to the petitioners. Via notes sent on September 28, November 13, and December 20, the petitioners specified their allegation and identified the alleged victims in the case. The State submitted its comments on the information provided by the petitioners via communications received in the Executive Secretariat on October 31 and December 30, 1996.

6. The parties continued to exchange comments on issues of admissibility via the IACHR during 1997 and 1998. On May 27, 1999, the 85 alleged victims informed the IACHR of their wish to be considered petitioners in the case and stated that they would be jointly represented by Carolina Loaiza Tamayo. In this same communication, the petitioners also requested that the IACHR avail itself to the parties to start the process for a possible friendly settlement. On September 21, 1999, the IACHR sent the State the information received, requesting a response within no more than 30 days. On October 27 and November 15, 1999, the State submitted additional information, which was subsequently sent to the petitioners. The petitioners submitted their comments via a note on January 28, 2000. On July 19, 2000, the State submitted a new report with comments.

7. On January 19, 2001, the petitioners requested that the IACHR invite the parties to an audience to discuss a possible friendly settlement. On February 6, 2001, the IACHR informed the petitioners that because of the high number of requests, it could not grant the audience during its following period of sessions. On August 18, 2002, the petitioners requested that the IACHR render a decision on the admissibility of the case and avail itself to the parties in order to seek a friendly settlement. On October 14, 2002, the IACHR held a working meeting with the parties to discuss their positions with regard to a possible friendly settlement agreement.

8. On March 4, 2003 and April 23, 2003, the petitioners submitted additional comments, which were then transferred. On June 5, 2003, the State submitted its position with regard to the petitioners' comments. On December 2, 2003, the State requested a delay until the "special program for accessing benefits" published lists of dismissed workers before continuing discussion on a friendly settlement. On February 20, 2004, the petitioners submitted a proposal for an agreement on a friendly settlement for discussion. On October 26, 2004, a meeting was held among the parties at the Commission's headquarters in order to discuss a possible friendly settlement agreement. On February 1, 2005, the State sent information regarding actions carried out within the framework of the possible friendly settlement agreement. On March 18, 2005, the IACHR sent the parties a communication, detailing the commitments undertaken by the parties during the working meeting.

9. On May 19, June 15, and August 15, 2005, the petitioners sent communications to the Commission, complaining about the State's lack of celerity in the friendly settlement process. On September 8, 2005, the State submitted a report answering the comments made by the petitioners. On October 19, 2005, a working meeting was held at the Commission's headquarters. On November 4, 2005, the IACHR sent the parties a communication in which it once again recorded the commitments undertaken by the parties during the working meeting.

10. On February 10, 2006, the petitioners informed the Commission of the death of one of the alleged victims. On January 12, 2006, the petitioners' representative informed the Commission that eight of the alleged victims disagreed with the way in which they were being represented before the IACHR, and therefore, they rejected their international representation. She indicated that these people would represent their interests directly with the IACHR.[FN2]

[FN2] The petitioners representing themselves directly are: Edwin Quevedo Saavedra, Abraham Montero R., Oscar Valiente Paico, Jaime Noriega G., Carlos Zapata Olaya, María Medina Crisanto, José Saavedra M, Antonio Esparza Huamán, and Delia Arévalo de Benítez.

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11. On February 8, 2006, the State submitted a detailed proposal regarding the aspects involved in seeking a friendly settlement agreement. On February 27, 2006, the petitioners drafted their comments on the State's proposal. On March 1, 2006, the IACHR received a communication from the eight petitioners, who were representing themselves directly, in which they presented their position with regard to their expectations for the friendly settlement process and possible reparations.

12. On March 8, 2006, the IACHR held a new working meeting with the parties at its headquarters. On March 24, 2006, the petitioners submitted a proposal with a view toward a partial friendly settlement agreement with a group of 19 alleged victims. On April 5, 2006, the IACHR requested that the State submit its position with regard to the possibility of reaching a preliminary agreement with the 19 alleged victims. On June 26, 2005, the State submitted a report in which it ratified the terms of the initial proposal. On July 25, 2006, the petitioners communicated to the IACHR their intention of concluding the friendly settlement process.

13. On August 29, 2006, the IACHR informed the parties that it had concluded the friendly settlement procedure. On January 12, 2007, the petitioners requested that the Commission apply the exception pursuant to Article 37.3 of the IACHR Regulations. On April 23, 2007, the petitioners submitted additional information. On June 15, 2007, the State submitted its comments in this regard. On June 5, 2007, the petitioners requested that the IACHR hold an audience to discuss issues related to the case. On July 17, 2007, the IACHR informed the petitioners that it would not be possible to hold the requested audience.

14. On August 13, 2007, the petitioners sent the additional information, which was transferred to the State on September 4, 2007. On October 12, 2007, Ms. Loayza Tamayo submitted to the IACHR a list of the people she would be continuing to represent in the international process.[FN3] On October 5, 2007, the IACHR received comments from the State, which were sent to the petitioners on October 29, 2007.

[FN3] Luís Abad Saldarriaga, William Jacinto Aleman Benites, Maritza Amaya Coveñas, Sebastián Amaya Fiestas, Cesar Antón Olaya, Elmer Arrazabal Gallo, Juan Benítez Gómez, Oholger Wiston Benites Zárate, Jorge Cabanillas Dedios, Manuel Antonio Calle Atoche, Rosa Castillo Marcelo, Raquel Coveñas Viuda de Quevedo [common law spouse of Mr. Leither Quevedo Saavedra], Eduardo Emiliano Chavarri Vélez, Julio Chiroque Silva, Pedro Carlos Garcés Solís, Luzmila García de Cáceres, Pedro Infante Antonio, Pedro López Antón, Maria Elba Marchán Avila, Luís Mogollón Granda, Emilio Augusto Morales Silva, Cruz Alberto More Bayona, José Juan Obando Reto, Manuel Jesús Paiva Pacherres, Ricardo Quevedo Herrera, Helber R. Romero Rivera, Wilson Seminario Agurto, Asunción Mechato Serraqué, and Julio Serraqué Azáldegui.

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15. With communications dated November 18, 2007, December 4, 2007 and January 3, 2008, the petitioners sent additional information. The pertinent parts of the information was transferred to the State with notes dated January 7 and 9, 2008.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

16. The petition states that the 85 alleged victims were former employees at the Northwest-Talara Area of Petróleos de Perú (PETROPERÚ) and that they were dismissed as part of a special program to promote private investment, which was based on a legal norm no longer in force at the time it was applied. The petitioners stated the irregular dismissal procedure infringed on their right to due process and prevented them ab initio from bringing an administrative challenge against this measure. The petitioners state that as a result of their dismissal, they received no incentives or compensation, and did not obtain any type of benefit. The petitioners allege that in seeking domestic remedies, they did not receive any type of judicial protection due to the lack of independence and impartiality of the administrative and judicial authorities.

17. With regard to the legal framework applied to them, the petitioners allege that on November 23, 1992, the Executive Branch issued Decree Law No. 26120, which amended the Law on Promotion of Private Investment in State Companies.[FN4] They state that Article 7 of this decree authorized, following agreement with the Privatization Commission and via Executive Decree, adoption of all measures geared toward economic, financial, legal, and administrative restructuring –including personnel reduction--- of public enterprises. According to the petitioners, this law infringed on the rights to defense and equality of workers because dismissals made based on this decree excluded application of rules regarding collective dismissals set forth in the Law on Labor Training and Promotion, which are designed to provide guarantees that defend workers in cases of collective dismissals.[FN5]

[FN4] Legislative Decree No. 674.
[FN5] Legislative Decree No. 728

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18. The petitioners state that on July 18, 1995, a new law was enacted,[FN6] by means of which a new procedure was established for regulating collective dismissals. The petitioners maintain that with said amendment the rules of Decree Law No. 26120 were tacitly struck down, because the text of Law 26513 called for the repeal of "other provisions in opposition to this law." Therefore, in the petitioners' opinion, the collective dismissals to be carried out thenceforth must be governed by rules agreed to in the new law and not by those set forth in Decree Law No. 26120.

[FN6] Law No 26513, via which the Law on Labor Training and Promotion was amended.

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19. According to the petitioners, even though Decree Law 26210 had already been repealed, on January 3, 1996, the Executive Branch issued Executive Decree 072-95-PCM via which it authorized the company Petróleos del Perú (PETROPERU) to carry out a plan to reduce the workforce under the auspices of Decree Law No. 26120. The petitioners allege that this event caused, to the detriment of the workers, application of a law that had already been repealed, thereby violating the principle of legality recognized in the American Convention.

20. The petitioners maintain that the procedure established by Decree Law No. 26120 violated their right to legal due process and to minimum guarantees because it established a procedure that did not allow for the possibility of challenging the decision of the administrative authority that ordered the dismissal. The law stated that the administrative authority would simply approve the decision for the collective dismissal of workers without communicating it to the other party, contradicting the provision of Article 82 of the Law on Labor Training and Promotion. According to the petitioners, these events violated the principle of equality before the law because it did not allow this groups of workers inter alia the right to defense and to challenge the decision of an administrative authority.

21. The petitioners state that in January 1996, they began receiving notarized letters from the company in which they were invited to take part in a voluntary retirement program. They say that these letters indicated that if the proposal involving their resignation was not accepted, the stipulations of Decree Law No. 26120, Article 7(a) would be applied, in the sense that the company would submit to the Labor Administrative Authority the request for reduction of personal, including the list of workers covered in that request, i.e. those who had not accepted voluntary retirement. This group would only have the right to receive the social benefits dictated by law and would not receive additional benefits.

22. The petitioners allege that on January 30, 1996, the Consolidated Petroleum Workers Union of Peru submitted a communication to the head of the Regional Labor Office of Talara, informing him of the alleged irregularity in the reduction of personnel carried out based on a law that had already been repealed. In addition, the petitioners allege that the Union requested that the Labor Authority inform them if the company had submitted a file requesting permission to carry out the firings and, if so, that it send them a copy of it. The petitioners allege that they received no response. They indicate that on February 8, 1996, the Union again communicated with the Labor Authority to complain that the workers had received dismissal letters, which indicated that on January 29, 1996, the Company had requested permission from the Talara Regional Work Area, and, as a result, since the 5-day period had passed, the dismissals were carried out. The petitioners complained that since no file had been opened by the Labor Authority, and later notified the Union of the same, they had infringed on the workers' right to defense and due process.

23. They also point out that on February 6, 1996, the Union requested that the decisions ordering the dismissals before the Labor Conflict Prevention and Settlement Office not be applied, arguing violations of the guarantees to due process in the administrative proceeding, especially with regard to the lack of notification of the personnel reduction process to be implemented and infringement of the right to defense given the impossibility of any type of challenge or review of the decision to dismiss the workers in question. The petitioners maintain that the Labor Authority did not reply to this request either.

24. The petitioners point out that Decree Law 26120 established a "special procedure" for personnel reduction that did not observe minimum guarantees for the victims because it did not allow them to know about the procedure used to carry out the dismissals since they were not notified, and because it implied infringement on their right to defense and the power to challenge the dismissal decision because neither did the law provide the possibility of any type of review of the dismissal decision. The application of this law deprived them ab initio of an administrative challenge of their dismissals. The petitioners allege that the fact that there is a special procedure does not exonerate the State from observing due process and minimum guarantees for all people under its jurisdiction.

25. The petitioners also point out that several additional irregularities were committed in the process. The petitioners maintain that they were coerced into submitting resignation letters, and that the workers dismissed included workers who had been victims of industrial accidents and workers in the pre and post natal phases. However, since they were unable to access information

on the reduction process and could not contest the dismissal decisions, they could not request review of said irregularities.

26. With regard to the requirement of prior exhaustion of domestic remedies, the petitioners point out that "many actions were initiated, and many motions were filed to safeguard the victims' rights." First, they state that the Consolidated Petroleum Workers Union of Peru in Talara filed an action for amparo against the collective dismissal before the Civil Judge of Talara. At the same time, the adoption of precautionary protection measures was requested. On March 18, 1996, the judge declared the petition without merit on the argument that the amparo was not the appropriate means for challenging an Executive Decree that is general in nature. They point out that faced with this situation; the petitioners challenged the decision before the Second Civil Division of the Supreme Court of Piura, which upheld the lower court's decision. The petitioners point out that they could not appeal this decision to the Constitutional Court because it had been dismantled by Congress during the time that the events took place.

27. Second, the petitioners state that they exhausted a popular action in which they sought to have Executive Decree 72-95-PCM, which authorized the company to begin the restructuring process, made inapplicable. The petitioners point out that it had been declared inadmissible by the Third Civil Division of the Supreme Court, alleging that the norm under question was general in nature. Third, the petitioners allege that they filed for an administrative dispute proceeding requesting that the decisions of the Labor Conflict Prevention and Settlement Office and those of the Piura Regional Office be declared null. On February 26, 1996, the Second Division of the Piura Superior Court declared the motion inadmissible because their demand for relief was "juristically impossible."

28. Last, the petitioners allege that they have filed 82 actions before the Talara Labor Court to nullify the dismissals. They state that on December 27, 1997, the lower Court declared the motions filed without merit under the argument that the dismissals followed the procedure set forth in Decree Law No. 26120. On May 7, 1997, the Sullana Decentralized Mixed Division upheld the joint decision, arguing that "reinstatement of employment has been reduced in the neoliberal and free market system to three specific cases: discrimination, unionism, and maternity […] and these reasons have been neither invoked nor proven by the author."

29. In processing the matter with the IACHR, the petitioners have alleged that the State has recognized "in several ways and through different authorities" their responsibility for the events of this case. However, the petitioners argue that this recognition of responsibility has not translated into effective reparation of the rights violated. Thus, the petitioners indicate that in the Final Report of the Special Commission on Collective Dismissals, created under Law No. 27452, presided over by the Ministry of Labor on January 2, 2002, it was stated that:

The procedure […] established in Article 47 of DL 26120, as well as all decree laws covering the same procedure have infringed on the right to due process by not allowing for the exercise of the rights of appeal and defense on the part of the workers. In addition, other constitutional rights have been infringed upon, such as the right to information, and to non-discrimination [….][FN7]

[FN7] Special Commission on Collective Dismissals, Final Report submitted to the Congress of the Republic on December 31, 2001, Chapter VI. Number 3.

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30. According to the petitioners, this recognition of responsibility was reiterated in Law No. 27803 of July 29, 2002, promulgated to resolve the irregularities caused by collective dismissals in public administration. They also indicate that later on August 14, 2004, the Ministry of Labor reiterated its recognition of responsibility in official letter no. 349-2004-MTPED/DVMT, which established that the workers had had their constitutional rights infringed upon in the collective dismissal process, as per their allegations.

31. The petitioners point out that as a result of these recognitions, 34 of the alleged victims in this case were included on the Third List of Irregularly Dismissed Workers, pursuant to the provisions of Law No. 27803. In addition, they indicate that on October 20, 2004, the Human Rights Office of the Ministry of Foreign Relations and the Technical Advisor of the High Office of the Ministry of Labor signed a joint opinion addressed to the Chair of the Board of Directors of PETROPERÚ, which affirmed that:

[…] the rules in question that the PETROPERU company applied infringed on the constitutional rights mentioned in the previous point, as well as on the precepts established in the American Convention on Human Rights, in particular Art. 8 (on fair trial) and Art. 24 (on equality before the law).

32. The petitioners state that in spite of the cited manifestations recognizing responsibility in the domestic sphere and the different proposals worked on by the parties during the process to obtain a possible friendly settlement agreement before the Inter-American Commission, none of the alleged victims have obtained satisfactory reparation measures from the State, which has placed not only the alleged victims, but also their families, in a completely defenseless situation. According to the most recent information alleged by the petitioners, five of the alleged victims have died waiting for reparations.[FN8]

[FN8] Jaime Garcés Sandoval, Leyther Quevedo Saavedra, Ana Rojas Flores, Norberto Vilela Jiménez, and Fredesvinda Sócola Clavijo.

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33. The petitioners indicate that of the 80 surviving petitioners, 34 of them were included on the Third List of Irregularly Dismissed Workers published on October 2, 2005. Of these, three of the petitioners opted for the benefit of early retirement,[FN9] two for reincorporation,[FN10] and 29 did not select any benefit.[FN11] Moreover, the petitioners say that the State's intention in providing reparations to some of the petitioners during processing of the case before the American Commission would not in any way affect the competence of that body from continuing to hear the matter. On the contrary, the petitioners believe that these acts are recognition of the violations against them. The petitioners argue the State's opportunity to grant reparations to the alleged victims with its own means would have been when the alleged victims filed and exhausted domestic remedies before presentation to the international instance.

[FN9] Juan Echandía Ochoa, Manuel Mechado Sernaque, and Eduardo Panta Valladares.
[FN10] Federico Antón Antón and José Torres Namuche.
[FN11] Luís Abad Saldarriaga, Gregorio Albuquerque Carrillo, William Jacinto Aleman Benitez, Sebastián Amaya Fiestas, Jorge Cabanillas Dedios, Santos Calderón Ávila, Luís Carrasco Lozada, Alberto Chira Guerrero, Mario Duque Mogollón, Jaime Garcés Sandoval, Pedro Carlos Garcés Solís, Gonzalo Ginocchio Guerrero, Pedro Infante Antón, José William Jacinto Zavala, Pedro López Antón, Abraham Montero Ramírez, Emilio Augusto Morales Silva, Miguel Hugo Morán García, Gregorio Jaime Noriega González, Ricardo Quevedo Herrera, Edwin Quevedo Saavedra, José Félix Saavedra Medina, Catalino Sandoval Ancajima, Dionisio Sandoval Flores, Joaquín Santillán Zavala, Luís Tavara Ramírez, Jorge Carlos Tinedo Puell, Oscar Valiente Paico, and Felito Vitonera Saldarriaga.

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34. Finally, during processing of the case, the petitioners have challenged the State's argument that the workers accepted social benefits and that this therefore proved "perfect termination of the labor relationship." In this regard, the petitioners point out the company unilaterally, after delivering the dismissal letters to the workers entered judicial policies with the Labor Jurisdiction for appropriate social benefits for the workers. The petitioners allege that, if some of the workers "acceded to a provisional assignment of social benefits" by withdrawing these sums that does not constitute perfect termination of the labor relationship. They allege that the State has admitted this situation because in its proposal for a friendly settlement, it employed reparation criteria based on domestic indemnities paid in cases of arbitrary dismissals, with which it is recognizing its liability, the insufficiency of the social benefits, and that appropriate reparation encompasses amounts and items different from those included in the these social benefits.

35. Based on the arguments of fact and law expressed, the petitioners request that the Commission declare this complaint admissible based on the alleged violations of the rights set forth in Articles 8, 9, 24, and 25 of the Convention, in accordance with the general obligation to respect and guarantee rights pursuant to Article 1.1 and the duty to adopt domestic legal provisions as per Article 2 of the American Convention.

B. The State's Position

36. The State alleges that in February 1996, the administration of PETROPERU S.A. of Northwest Operations, headquartered in the city of Talara, initiated before the appropriate administrative authorities a personnel reduction process known as "voluntary resignation with incentives," which included a group of workers from PETROPERU S.A. The State indicates that, in accordance with the procedure set forth in Decree Law No. 26120, the workers included in the voluntary resignation with benefits process (no fewer than 12 monthly remunerations without prejudice to inclusion of their social benefits) were part of a collective dismissal implicitly approved by administrative authorities five days after the company submitted the request. Thus, the State affirms that nearly 90% of the workers involved in the reduction process opted for voluntary resignation with incentives.

37. According to the State, PETROPERU S.A. implemented the reduction program in full observance of the legislation that was applicable and in force at the time. The State maintains that by following a previously established process, it could not be stated that an arbitrary dismissal had occurred or that actions had been taken contrary to legal and constitutional rules in this area.

38. With regard to exhaustion of domestic remedies as they relate to the purpose of the petition, the State indicated in its original submission that the union workers at the company filed an action for amparo without exhausting administrative options or appealing the decision implicitly granted by the lack of administrative response. The State indicates that the union also requested a precautionary measure to render ineffective the letters to personnel inviting them to take part in the retirement program. The State points out that this request for the precautionary measure in question was declared admissible in a lower court, but was eventually overturned in a higher court. Later on March 18, 1996, the Talara Civil Court rendered judgment on the main file, declaring the exceptions employed by the company to have merit and the complaint to be inadmissible. Lastly, the State says that on July 3, 1996, the Second Civil Division of Piura upheld the decision.

39. The State indicates that the union initiated an administrative dispute proceeding via which it sought to address the same issues that were declared without merit in the action for amparo. In this regard, the State, points out the Superior Court of Piura rejected the complaint because the necessary formal admissibility requirements were not observed for the complaint.[FN12]

[FN12] The State alleges that the Court found that the complaint had not been signed by the alleged injured workers, that it had not been proven that the workers were members of the union, and that the decision subject to the administrative dispute process had not been specified in detail.

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40. The State maintains that at all times there was a judicial process with preestablished rules of which the complaining party made use, and their claim was rejected in several instances. The State adds there was no indication to lead to the presumption of a lack of independence or autonomy on the part of the judicial authority, particularly since the judgments rendered on the claims made by the petitioners were duly supported.

41. In addition, the State alleges that the workers included in the petition in the majority had accepted the incentives offered by the company for the voluntary resignation of the workers. In effect, according to the State, the majority of the petitioners collected their social benefits through judicial procedure and many of them collected a good percentage of a reduced settlement in judicial processes, which in accordance with Peruvian law constituted a perfect end to the labor relationship.[FN13]

[FN13] To support its arguments, the State annexed to the file for the IACHR, copies of judicial policies obtained by the company via labor court channels on behalf of the dismissed workers.

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42. In its most recent communications, the State also indicates that at present a series of actions have been adopted to make reparations to all the former employees dismissed in an irregular manner between 1990 and 2000, approximately twenty-eight thousand (28,000) former employees. In keeping with this objective, it states that on July 28, 2002, Law No. 27803 was published by means of which recommendations made by the commissions created by virtue of Laws 25452 and 27585 were implemented. The State explains that this law established a special benefits program that workers dismissed under irregular conditions could access and alternatively would have available to them the following benefits: i) labor reincorporation or relocation; ii) early retirement; iii) financial compensation; and iv) labor training and reconversion.

43. Based on this law, the State alleges that the petitioners have had the opportunity to make use of the measures established by the State with a view toward making reparations to all former employees dismissed in an irregular manner. With regard to these benefits, the State indicates that 34 of the petitioners or alleged victims in this complaint have made use of these measures. It specifically states that two petitioners chose the benefit of labor reincorporation, three petitioners opted for early retirement, and 29 petitioners have not yet selected a specific benefit.

44. The State maintains that, as the IACHR has reiterated on different occasions, that international protection provided by the Convention's supervisory bodies is subsidiary, auxiliary, and complementary. In light of the subsidiary nature of the Inter-American Human Rights System, the State maintains that a decision issued by the bodies of the inter-American system or a possible agreement on a friendly settlement between the parties cannot include those petitioners who are processing or who have received certain benefits established under Law 27803. This is based on the previously cited norm that was issued precisely as a domestic measure for settling complaints from former employees.

IV. ANALYSIS OF ADMISSIBILITY

A. Ratione materiae, ratione personae, ratione loci, and ratione temporis Competence

45. As per Article 44 of the American Convention, the petitioners have the power to submit petitions before the Commission. The petition names 85 individuals as alleged victims, for whom the Peruvian State committed to respect and guarantee the rights in the American Convention.[FN14] Peru has been a State Party to the American Convention since July 28, 1978, the date on which it deposited its ratification instrument. Therefore, the Commission has ratione personae competence to examine the petition.

[FN14] The petitioners identified as alleged victims are: 1) Asunción Mechato Serraqué, 2) Delia Arévalo Guerra, 3) Maria Elba Marchán Avila, 4) Cesar Antón Olaya, 5) Víctor Manuel Garay Espinoza, 6) Dionisio Sandoval Flores, 7) Jorge Cabanillas Dedios, 8) Pedro Infante Antón, 9)

Luís Abad Saldarriaga, 10) Catalino Sandoval Ancajima, 11) Luciano Sandoval Villaseca, 12) Gonzalo Ginocchio Guerrero, 13) Julio Serraqué Azáldegui, 14) Federico Antón Antón, 15) Alberto Chira Guerrero, 16) Javier A. Espinoza Vargas, 17) Luís Tavara Ramírez, 18) Abraham Montero Ramírez, 19) Santos Calderón Ávila, 20) Juvenal Paz Arévalo, 21) Cruz Alberto More Bayona, 22) Leonarda Montero Silupú, 23) Helber R. Romero Rivera, 24) María Sancarranco Barrientos, 25) María Esther Medina Crisanto, 26) Neptalí Aguirre Maldonado, 27) Manuel Antonio Calle Atoche, 28) Carlos Alberto Zapata Olaya, 29) Carlos Alberto Galán Castilli, 30) Guadalupe Risco Martínez, 31) Gerber Acedo Martínez, 32) Luís Carrasco Lozada, 33) Lilia Flores Herrera, 34) Norberto Vilela Jiménez, 35) Agustín Acedo Martínez, 36) Nyrliam García Viera de Castillo, 37) Oholger Wiston Benites Zárate, 38) Mario Duque Mogollón, 39) Pedro López Antón, 40) Jorge Carlos Tinedo Puell, 41) Wilson Sminario Agurto, 42) Joaquín Santillán Zavala, 43) Ricardo Vílchez Valverde, 44) Carlos E. Oliva Borja, 45) Maria Anita Zavala Sosa, 46) Luís Mogollón Granda, 47) Jorge Martinez Amaya, 48) Juan Benítez Gómez, 49) Felito Vitonera Saldarriaga, 50) Antonio Esparza Huamán, 51) Gregorio Jaime Noriega González, 52) Maritza Amaya Coveñas, 53) Manuel Jesús Paiva Pacherres, 54) William Alemán Benítez, 55) Pedro Carlos Garcés Solís, 56) Irma Morales López, 57) Sebastián Amaya Fiestas, 58) Wilmer Gil Rosales, 59) Eduardo Panta Valladares, 60) Emilio Augusto Morales Silva, 61) Julio Chiroque Silva, 62) Rosa Castillo Marcelo, 63) José Torres Namucha, 64) Agustina Mendoza Morales, 65) José Juan Obando Reto, 66) Edwin Quevedo Saavedra, 67) Ricardo Quevedo Herrera, 68) Jaime Garcés Sandoval, 69) Gregorio Albuquerque Carrillo, 70) Luís Arturo Vallejo Agurto, 71) Ana María Rojas Flores, 72) Oscar Valiente Paico, 73) Fredesvinda Sócola Clavijo, 74) Juan A. Echandía Ochoa, 75) Elmer Arrazabal Gallo, 76) Miguel Hugo Morán García, 77) Raúl Clavijo Domínguez, 78) José William Jacinto Zavala, 79) José Félix Saavedra Medina, 80) Leither Quevedo, 81) Eduardo Emiliano Chavarri Vélez, 82) Pedro Chumpitaz Sócola, 83) Luís Oswaldo Duque Morán, 84) Segundo Barrientos Olivos, 85) Pedro Talledo Carrasco.

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46. The Commission also has ratione loci competence to hear the petition because it alleges violations of rights protected in the American Convention that would have taken place within the State's jurisdiction. The Commission has ratione temporis to study the complaint because the obligation to respect and guarantee rights protected under the American Convention was already in force for the State on the date when the events alleged in the petition occurred. Finally, the Commission has ratione materiae competence because the petition complains of the possible violation of human rights protected under the American Convention.

B. Exhaustion of Domestic Remedies

47. Article 46.1 a) of the American Convention provides that for a complaint to be admissible before the Inter-American Commission in accordance with Article 44 of the Convention an attempt must have been made to exhaust domestic remedies pursuant to the generally recognized principles of international law. The requirement of previous exhaustion applies if the national system effectively has available domestic remedies that are appropriate and efficient for remedying the alleged violation.

48. With regard to compliance with the requirement of previous exhaustion of domestic law remedies provided for in Article 46.1.a of the American Convention, the petitioners indicate that

"the situation of mistrust with regard to the administration of justice in Peru, led the Consolidated Petroleum Workers Union of Peru for PETROPERU S.A. to seek redress from many agencies." The petitioners point out that with a Judicial Branch largely conditioned by the Executive Branch, they brought multiple motions domestically to give the State the opportunity to resolve the violations via its own means. However, they state that the remedies they were obliged to exhaust were those suitable, appropriate, and effective and these did not exist in Peru at the time the events occurred, as per their allegations.

49. The State points out that the petitioners had access to judicial remedies before independent courts. In the State's opinion, the judicial decisions denying the claims of the petitioners were not the result of a Judicial Branch that lacked independence and impartiality, but rather due to lack of compliance with procedural requirements as set forth in legislation and to the insufficiency of the petitioners' arguments.

50. The Commission observes that with regard to the actions that the petitioners say they have undertaken, that there is an action for amparo requesting non-application of Executive Decree 72-25-PCM, via which the Board of Directors of Petróleos de Perú was authorized to make use of Decree 26120, by finding that it violated their constitutional rights to work and to due process.[FN15] The petitioners alleged in their motion that since they had not been duly notified of the personnel reduction process, in spite of repeated petitions to the Labor Authority, their constitutional rights to guarantees of due process and defense had been infringed, because they did not know the reasons or the procedures on which the dismissals were based.[FN16]

[FN15] The petitioners based their request on Article 3 of Law 23506 which states: "Article 3.— Admissibility of the action with regard to unconstitutional rules. The guarantee actions are applicable even if the violation or threat is based on a rule that is incompatible with the Constitution. In this instance, failure to apply the norm shall be determined in the same proceeding."

[FN16] The petitioners pointed out that they were not notified of the order admitting the file submitted by the company to the Regional Labor Authority and that "since there is no admission order, we were not notified of the procedure that was initiated, so that we could exercise our right to defense in accordance with Article 139 (3) and (4) of the Constitution, which establishes that no one can be subjected to procedures other than those previously established, as well as the publicity of the processes."

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51. According to the evidence alleged by the parties, the IACHR finds that on March 18, 1996, the Specialized Civil Court of Talara declared the complaint "INADMISSIBLE" on the argument that even if Article 3 of Law 23506 states that guarantee actions apply in the case of a violation or threat based on a norm that is incompatible with the Constitution, Article 200 of the Constitution states that the "action for amparo" is not filed against legal norms, nor against judicial decisions issued in a regular proceeding." Thus, the judge believed that it was "evident that the Executive Decree being questioned involves a general declaration, therefore the amparo is not the relevant appropriate means."

52. On July 3, 1996, the Second Civil Division of Piura rendered the lower court judgment "UPHELD on its own merits […] and because it is pursuant to the Law; the Action for Amparo is not the appropriate means for declaring the Constitutionality of Exec. Decr. 72-95-PCM (29 of -95) and rendering this legal provision inapplicable; even less so because said norm results from a regular proceeding."

53. Second, the parties sent a copy to the Commission of an administrative dispute proceeding initiated by the petitioners before the Second Division of the Superior Court of Piura against the decisions rendered in the personnel reduction process, pursuant to the provisions of Article 148 of the Peruvian Constitution.[FN17]

[FN17] Article 148 sets forth that "administrative decisions that are final are susceptible to challenge via the administrative dispute process."

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54. On February 26, 1996, the Second Division declared the complaint based on the provisions of Article 427(6) of the Civil Procedure Code inadmissible. Said article provides that the complaint must be declared inadmissible if the "demand for relief was juristically or physically impossible." The Division used as reasons for inadmissibility of the motion the fact that the complaint had not been signed by the allegedly injured workers, that it had not been proven that the injured workers were members of the union, and that the decision from the administrative dispute proceeding had not been specified in detail.

55. Lastly, the Commission notes that during March 1996, 82 motions were filed to nullify the dismissals before the Talara Labor Court in which the workers requested reinstatement to their posts arguing that they had been dismissed as an administrative action under the purview of a repealed law. They also alleged that the dismissals were null because they violated the workers' due process, because they had not been given the procedural remedies or options that the company had mentioned in its collective dismissal request initiated before the Labor Conflict Prevention and Settlement Office and the Labor and Social Promotion Regional Office of Piura.

56. On May 8, 1997, the Sullana Decentralized Mixed Court declared the motion to nullify "without merit" in its role as a court of second instance. The Mixed Court believed that it could not accede to the complainants' claim, so long as the "reinstatement of employment has been reduced in the neoliberal and free market system to three specific cases: discrimination, unionism, and maternity […] and these reasons have been neither invoked nor proven by the author."

57. In this regard, the petitioners maintain that on May 28, 1997, the date on which notification was given of the judgment of the Sullana Decentralized Mixed Court, "three members of the Constitutional Court had been dismissed, in a clear violation of the rights enshrined in the American Convention." Thus, the petitioners allege that "with an incomplete court, whose composition did not guarantee independent and impartial decisions, they decided not to continue their case in national courts because they could not be guaranteed justice in Peru." They also state that the Executive Decree could not be the object of an actionable

complaint of unconstitutionality before the Constitutional Court because it lacked the force of law.

58. With a view toward determining the appropriate procedural means within the Commission's internal laws, it is necessary to determine first the purpose of the petition submitted for it to hear. The petition is based on the alleged violation of the guarantees to due process and judicial protection of the alleged victims in the personnel reduction process that culminated with their dismissals from the posts they were performing at a state company. As per this point, the Commission deems it relevant to verify whether the matter before it was submitted to domestic courts through one of the remedies that could have been appropriate and effective for resolving this type of situation domestically.[FN18] On this point, the Commission finds that the petitioners made use of the action for amparo as a valid means of litigating violations of guarantees and rights set forth in the Constitution. In this regard, the IACHR deems it important to highlight that in Peruvian law said action is viewed as an action for constitutional guarantees[FN19] designed "to return things to their status prior to the violation or threat of violation of a constitutional right."[FN20] In addition, the Commission highlights that the Law regulating the amparo procedure provides for its admissibility even in those cases in which "the violation or threat is based on a norm that is incompatible with the Constitution."[FN21]

[FN18] IACHR, Report No. 70/04 (Admissibility), petition 667/01, Jesús Manuel Naranjo Cárdenas et al., October 15, 2004, Para. 52; IACHR, Report No. 57/03 (Admissibility), petition 2.337, Marcela Andrea Valdés Díaz, Chile, October 10, 2003, Para. 40.
[FN19] Peruvian Constitution of 1993, Title V: Constitutional Guarantees, Art. 200.
[FN20] Law No. 23506 (Art.1).
[FN21] Law. No. 23506 (Art. 3).

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59. In this vein, the Commission understands that the amparo does not include the submission of claims related to questioning or proving the existence of a warranted reason for the dismissals; rather this remedy, as per domestic Peruvian law, can be an ideal remedy when, as in the present case, it is employed in order to verify the existence within the dismissal action of a component that is manifestly incompatible with constitutional rights as determining elements of the same. Therefore, the right to be protected is not the job stability of the worker nor verification of specific labor situations that could be illegal or illicit, but rather whether enjoyment and exercise of their constitutional rights has been affected.

60. In addition, in analyzing the specific circumstances of the case, the Commission notes that the case developed within a context that included establishment of a legal framework that authorized the collective dismissal of thousands of workers through situations that were exceptions to regular labor law with regard to firing and collective dismissals. The Commission also takes into account that the Inter-American Court in its jurisprudence with a similar case which occurred close to the time period of the events of the present case in Peru, stated that with regard to the context of legal impediments and practices to ensure real access to justice, "they [the alleged victims] did not have certainty about the proceedings they could or should resort to in order to claim the rights they considered had been violated."[FN22] In the case under study,

the Commission notes that neither the domestic courts to which the petitioners turned at one point, nor the representatives of the State in their various allegations in processing before the IACHR, stated or indicated what would have been the suitable remedy to be exhausted in domestic law. The Commission must remember that in accordance with the burden of proof applicable in this area, the State alleging failure to exhaust must indicate the domestic remedies that had to be exhausted and supply proof of their effectiveness.[FN23]

[FN22] I/A Court H.R., Case of Dismissed Congressional Employees. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C, No. 158, para. 146.
[FN23] IACHR, Report No. 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (Persons living with HIV/AIDS) Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections. Judgment of February 1, 2000, Series C No. 66, para. 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and I/A Court H.R., Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

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61. As a result, taking into account the different actions attempted, which included submission of a constitutional motion for amparo that in this case constituted an appropriate remedy for the State to hear the petitioners' claims regarding the alleged infringement of the right to defense and administrative due process, and to adopt measures that reversed the infringed legal situation; the circumstances during the time when the events took place;[FN24] and the general uncertainty about the remedies as indicated by the Inter-American Court, the Commission believes, without prejudice to the merits of the case, that the requirement set forth in Article 46.1 of the Convention has been met.

[FN24] The Inter-American Court has determined in its jurisprudence that on the date of the events (March 1997 to November 2000) the Constitutional Court "was dismantled and disqualified from exercising its jurisdiction appropriately, particularly with regard to controlling constitutionality […] and the consequent examination of whether the State's conduct was in harmony with the Constitution." Inter-American Court of Human Rights, Case of the Constitutional Court. Judgment of January 31, 2001, Series C No. 71, para. 112.

C. Submission Deadline

62. Pursuant to the provisions of Article 46.1 of the Convention, in order for a petition to be admitted, it must be submitted within the stipulated deadline, i.e. six months from the date when the alleged injured party whose rights have been violated has been notified of the final decision issued at the national level. The rule of six months guarantees legal certainty and stability once a decision has been adopted.

63. In this case, the Commission observes that the petition was submitted to the Commission on February 19, 1996, i.e. simultaneously with the occurrence of the dismissals; and therefore before decision on the motions filed by the petitioners and which shall be considered supra. In this regard, the Commission concludes that the present petition meets the requirement set forth in Article 46.1.b of the Convention.

D. Duplication of Procedures

64. The file does not show that the subject of the petition is pending in any other international proceeding or that it has been previously decided by the Inter-American Commission. Therefore, the requirements set forth in Articles 46.1.c and 47.d are deemed met.

E. Characterization of the Alleged Facts

65. As the Commission has indicated in other cases, at this stage in the proceeding, it is not appropriate to verify whether or not the American Convention has been violated. For the purposes of admissibility, the IACHR must simply decide if the allegations describe facts that could be characterized as a violation of the American Convention, as stipulated in article 47.b, and if the petition is "manifestly groundless" or "obviously out of order," as per line (c) of that same article. The standard for making these determinations is different than the one required to decide on the merits of the complaint. During this phase, the IACHR must make a prima facie evaluation that does not imply a prior proceeding or advancing an opinion on the merits. Its own Regulations reflect this distinction between the evaluation that must be made in order to declare the petition admissible and the one required to determine if the State's responsibility can be verified, by establishing clearly differentiated stages for the study of admissibility and of merits.

66. The petitioners state that the petition presents facts that prima facie characterize violations of their rights. They state that the legislation on which the dismissals were based infringed on their right to due process. They also point out that the legislation itself, in addition to other actions undertaken by the Executive Branch to influence the Judicial Branch, created a climate of legal vulnerability and insecurity that prevented them from obtaining a judicial remedy even though they had made use of judicial bodies. Also, the petitioners state that the efforts made by the State to give reparations for some of the consequences of the violations cannot affect or influence in any way the competence of the IACHR to continue processing the case.

67. The State argues that the situation about which the petitioners originally complained had substantially changed because several of the petitioners had voluntarily accepted certain benefits granted by the State as means of providing reparations for the prejudicial results of the dismissals. As a result, the State argues that the matter being studied by the IACHR has become abstract.

68. The Commission considers it relevant to review this argument here, based on information available to the parties and the decisions of the Commission and the Inter-American Court on this subject.

69. First, the Commission reviews the doctrine of the Inter-American Court in the Gómez Paquiyauri Brothers v. Peru case in which the Court stated:

that the international responsibility of the State arises immediately when the internationally illegal act attributed to it is committed, although it can only be demanded once the State has had the opportunity to correct it by its own means. Possible subsequent reparation under domestic legal venue does not inhibit the Commission or the Court from hearing the case that has already begun under the American Convention.[FN25]

[FN25] I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2005, Series C, No. 110, para. 75.

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70. In effect, the violations of the American Convention alleged by the petitioners had been committed beginning in December 1995; while the petition was submitted to be heard by the IACHR before issue of the norms that the State cites as giving rise to the compensation granted to the petitioners. Consequently, the Commission can hear the matter in order to determine whether an international illegality attributable to the State was committed and if so, in that case, its international responsibility is enforceable as to whether it had the opportunity to repair the damage and what measures it took and at what time in this regard.

71. In accordance with Article 48.b of the Convention, the IACHR must verify "whether the grounds for the petition or communication still exist" before analyzing the situation in depth. Thus, the legal question to be analyzed is whether acceptance by the petitioners in this case of the measures offered by the State altered the complaint originally submitted to the Commission, to such a degree that the grounds leading to the petition no longer exist in the present.

72. In this regard, the Commission observes that the original complaint submitted by the petitioners referred to the State's alleged international responsibility for violating the rights to due process, the principle of legality, and judicial protection with the illegal dismissal of the 85 alleged victims. Likewise, the facts after 2001 refer to a series of measures adopted by the State designed to repair the damage to the former workers who were irregularly dismissed, among which is the group of 34 petitioners in the present case. The State alleges that as a result of applying these measures and the voluntary acceptance of the petitioners in the case, they have consented to the measures adopted by the State to provide a domestic solution to complaints resulting from the collective dismissal. The petitioners allege that even if several of them registered in the National Registry of Former Public Sector Workers Irregularly Dismissed, and even if five had accepted the benefits that the cited legislation had granted, the benefits received were less than their claims for reparation and therefore the matter is still not considered resolved.

73. The petitioners specifically maintain that even if to date three petitioners have accepted the benefit of early retirement and two others have accepted the benefit of reincorporation, none of them have received in integrum reparation for the violations of which they have been victims. First, the petitioners allege that the primary object of the petition has not been rectified, i.e. reinstatement to the post they were performing under the same work and salary conditions with

no discontinuity and therefore recognition of seniority. Second, the petitioners allege that none of these five people have received from the State any financial compensation for the damages of which they have been victims as a result of the events that allegedly violated their rights.

74. The Commission, having established that the program of benefits established for the fired workers do not prevent its hearing the matter, in this case shall follow the doctrine established by the Inter-American Court in the Case of the Dismissed Congressional Employees v. Peru. In said judgment the Court found that "determination of the effects of some of the alleged victims having returned to work in the institution from which they had allegedly been dismissed, and also the validity of their claims for reinstatement, correspond to considerations that belong to the stages on merits and, possibly, reparations."[FN26] In this sense, the Commission shall reserve analysis of the measures alleged by the State for the corresponding merits phase. The Commission, during its respective merits phase shall study, in accordance with the evidentiary material brought by the parties, the consequences and effects that could have been caused or determined from the alleged collection of social benefits by some of the petitioners.

[FN26] I/A Court H.R., Case of the Dismissed Congressional Employees (Aguado Alfaro et al). Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C No. 158, para. 70.

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75. As a result, the Commission considers that the facts alleged by the petitioners regarding dismissal from the posts they performed at the company Petróleos del Perú, PETROPERU S.A through application of an administrative process that infringed on due process and especially since they were not allowed to exercise their right to defense via an administrative challenge of their dismissals, as well as the lack of effective judicial remedy, could characterize prima facie a violation of Articles 8 and 25 of the American Convention, all with regard to the obligations arising from Articles 1.1 and 2 of the American Convention.

76. The Commission also finds that the petitioners did not substantiate autonomous facts that could constitute violations of the right to equal protection set forth in Article 24 of the Convention. Likewise, the IACHR considers that the petitioners did not submit sufficient elements of evidence to prove prima facie infringement upon the principle of freedom from ex post facto laws set forth in Article 9 of the Convention. Thus, the Commission declares these rights inadmissible.

77. In conclusion, the Commission finds that it has not been disproved that the facts under complaint could characterize prima facie violations of rights protected by the Convention. Consequently, it concludes that the facts under complaint, if true, could characterize violations of rights protected by Articles 8 and 25 of the American Convention, both in relation to the general obligations to respect and guarantee rights and the duty to adopt domestic measures, as established in Articles 1.1 and 2 of the same instrument, to which end the petition is admissible with regard to said facts.

V. CONCLUSIONS

78. The Commission concludes that the case is admissible and that it is competent to examine the complaint submitted by the petitioners regarding the alleged violations of Articles 8 and 25 in accordance with Articles 1.1 and 2 of the Convention, according to the requirements set forth in Articles 46 and 47 of the American Convention.

79. Based on the arguments of fact and law previously expressed and without prejudice to the merits of the matter,

THE INTER-AMERICAN HUMAN RIGHTS COMMISSION,

DECIDES:

1. To declare the case being examined admissible, with regard to Articles 8 and 25 of the American Convention pursuant to Articles 1.1 and 2 of the same instrument.
2. To notify the State and petitioner of its decision.
3. To begin processing the merits of the issue.
4. To publish this decision and include it in the 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., on the 24th day of July, 2008. (Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez and Víctor E. Abramovich, members of the Commission.