

**REPORT No. 9/10**  
PETITIONS 703-98 – LUIS ENRIQUE LÓPEZ MEDRANO  
1070-98 – EDWIN ELÍAS GENOVÉS CANCHARI  
1097-98 – EDGARD MONTAÑO ZAPANA  
12.162 – NANCY GILVONIO CONDE  
ADMISSIBILITY  
PERU  
March 16, 2010

**I. SUMMARY**

1. This report deals with petitions lodged on behalf of Luis Enrique López Medrano (P 703-98),<sup>1</sup> Edwin Elías Genovés Canchari (P 1070-98),<sup>2</sup> Edgard Montaña Zapana (P 1097-98),<sup>3</sup> and Nancy Gilvonio Conde (P 12.162)<sup>4</sup> (“the alleged victims”), which allege the violation, by the Republic of Peru (“Peru,” “the State” or “the Peruvian State”), of rights enshrined in the American Convention on Human Rights (“the American Convention,” “the Convention,” or “the ACHR”). The petitions claim that between 1993 and 1995, the alleged victims were arrested, prosecuted, and convicted under decree laws applicable to the crimes of terrorism and treason against the fatherland. They maintain that those decrees, and the criminal proceedings based on them, were in breach of a series of provisions contained in the American Convention. They also claim that the alleged victims were tortured, kept in isolation for long periods, and held in subhuman conditions. The petitioners reported that beginning in 2003, the alleged victims were retried in new criminal proceedings under laws enacted between January and February of that year, which they claimed were also incompatible with the Convention.

2. The State maintained that the facts set out initially in the petitions have altered substantially following the adoption of the new legislative framework governing terrorism in early 2003. It stated that this new framework and the criminal trials conducted under it are in line with the rights and guarantees set forth in the American Convention and the Constitution of Peru. Finally, it claimed that the facts described in the petitions do not tend to establish violations of any of the Convention’s provisions and asked the IACHR to rule them inadmissible in accordance with Article 47(b) and (c) thereof.

3. After examining the parties’ positions in light of the admissibility requirements set out in Articles 46 and 47 of the American Convention, the Commission concluded that it is competent to hear the four petitions and that they are admissible as regards the alleged violation of the rights enshrined in Articles 5, 7, 9, 11, 8, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, and of the rights contained in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission also decided that Petition 12.162, presented on behalf of Nancy Gilvonio Conde, is also admissible as regards the alleged violation of Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women. Furthermore, the IACHR decided to join the four petitions and to process them together in the merits stage under the number 12.747. Finally, the Commission decided to notify the parties of this Report on Admissibility, to make it public, and to include it in its Annual Report.

**II. PROCESSING BY THE COMMISSION**

4. Petition 703-98 was received on November 13, 1998, and on April 7, 2006, the petitioners submitted an additional communication. The relevant parts of those documents were

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<sup>1</sup> Filed on November 13, 1998, by Isabel Medrano Villarroel and Luis Enrique López Medrano.

<sup>2</sup> Filed on November 12, 1998, by Alejandra Canchari Chuchón.

<sup>3</sup> Filed on November 11, 1998, by Leoncio Montaña Fernández and Josefa Zapana de Montaña. In their communications, both the petitioners and the State referred to this alleged victim indistinctly as “Edgar” and “Edgard” Montaña Zapana.

<sup>4</sup> Filed on March 29, 1999, on her own behalf and by Fausta Cartolini and Teodocio Darío Gilvonio Conde.

forwarded to the State on March 17, 2008, with a two-month deadline for returning its response. The State replied on June 5, 2008, and, on June 13 of that year, submitted the corresponding annexes. The petitioners submitted additional information on August 4 and 12, and October 6, 2008; April 9 and August 10, 2009. Similarly, the State filed additional submissions on November 17, 2008, and on June 12 and November 19, 2009.

5. Petition 1070-98 was received on November 12, 1998, and the petitioner presented additional information in submissions dated June 17, 1998; April 26, May 24, and July 9, 1999; March 1, 2000; and April 3, 2006. The relevant parts of those documents were conveyed to the State on October 17, 2008, with a two-month deadline for returning its response. The State sent its reply on November 11, 2008, and on November 2, 2009 and March 3, 2010, lodged additional filings. The petitioner presented an additional communication on January 20, 2010.

6. Petition 1097-98 was received on November 11, 1998, and the petitioners submitted additional information on February 23, May 4, June 11, and October 26, 2001, and on February 8, 2003. The relevant parts of those documents were conveyed to the State on December 1, 2003, with a two-month deadline for returning its response. On March 2, 2004, the State submitted its reply, and it lodged additional communications on September 8, 2004, August 31, 2005, September 26, 2006, February 28, 2007, and January 11, 2008. Similarly, the petitioners filed additional submissions on April 27, June 21, and November 15, 2004; February 1, September 14, and December 13, 2005; November 17, 2006; May 31, 2007; and March 12, 2008.

7. The IACHR received Petition 12.162 on March 29, 1999, and conveyed it to the State on June 7 of that year, granting it a 90-day deadline to submit its response in accordance with the Rules of Procedure in force at that time. The State submitted its response on September 9, 1999, and an additional communication on July 20, 2000. The petitioners submitted additional information on June 19, September 9, and December 8, 1999; January 18, April 7, and August 29, 2000; May 29, 2001; and May 29, 2007.

### **III. POSITIONS OF THE PARTIES**

#### ***Preliminary considerations***

8. In the petitions dealt with by this report, the State and the petitioners described a first series of criminal trials, conducted during the 1990s, and a second set held in and after 2003, following the voiding of the earlier trials. The former trials were held under decree laws applicable to terrorism, enacted during the administration of President Alberto Fujimori. In January 2003, the Peruvian State adopted a new legislative framework that caused the voiding of a number of trials conducted for the crimes of terrorism and treason against the fatherland, including the proceedings brought the four alleged victims. Before setting out the positions of the parties, the IACHR deems it to be appropriate addressing the two legal frameworks within which the incidents described by the parties took place.

### ***Antiterrorist legislation in force from May 1992 to January 2003***

9. Decree Law No. 25475, dealing with different forms of the crime of terrorism, was enacted in May 1992. In August of that year, Decree Law No. 25659 was enacted, criminalizing the offense of treason against the fatherland and giving the military justice system competence over the prosecution of that crime. Those decrees, along with decrees Nos. 25708, 25744, 25880, and other complementary provisions, equipped the Peruvian legal system with new exceptional procedures for investigating, examining, and prosecuting individuals accused of terrorism or treason against the fatherland.

10. The decrees that made up what was known as the “antiterrorist legislation” had the stated purpose of reining in the escalation of targeted killings against officers of the judiciary, elected officials, and members of the security forces, as well as of disappearances, bombings, and other indiscriminate acts of violence against the civilian population in different regions of Peru, attributed to outlawed insurgent groups. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,<sup>5</sup> holding closed hearings, solitary confinement during the first year of prison terms,<sup>6</sup> and summary deadlines for presenting charges and issuing judgments in the case of the crime of treason against the fatherland.<sup>7</sup> In addition, these decrees denied suspects the assistance of a legal representative prior to their first statement to an agent of the Public Prosecution Service<sup>8</sup> and restricted the attorney’s participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,<sup>9</sup> established concealed identities for judges and prosecutors (“faceless courts”),<sup>10</sup> prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.<sup>11</sup>

11. As for their provisions of material law, these decrees allowed for the possibility of applying more than one criminal offense to actions of a similar or identical nature; they did not differentiate between different levels of *mens rea*;<sup>12</sup> and they only indicated minimum prison terms, without setting maximum penalties.<sup>13</sup>

### ***Antiterrorist legislation in force as of January 2003***

12. On January 3, 2003, a series of provisions contained in the terrorism decree-laws enacted during the Fujimori administration were ruled unconstitutional by the Constitutional Court.<sup>14</sup> That decision ruled Decree Law 25659 unconstitutional and ordered accusations for the crime of treason against the fatherland as defined therein to be tried as terrorism, as provided for in Decree Law 25475. In addition, it annulled the provisions that prevented the recusal of judges and the subpoena of officers involved in the police arrest report as witnesses and the provisions that allowed civilians to be tried by military courts. At the same time, absolute incommunicado detention and solitary confinement during the first year of prison terms were also ruled unconstitutional.

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<sup>5</sup> Decree Law No. 25475, Art. 12(d).

<sup>6</sup> Decree Law No. 25475, Art. 20.

<sup>7</sup> Investigations, prosecutions, and sentencing for treason against the fatherland were governed by Decree Laws Nos. 25708 and 25744.

<sup>8</sup> The right to the assistance of freely chosen defense counsel from the very onset of criminal proceedings was later established by Article 2 of Law No. 26447.

<sup>9</sup> Decree Law No. 25475, Art. 20.

<sup>10</sup> With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

<sup>11</sup> Decree Law No. 25744, Art. 2.

<sup>12</sup> Decree Law No. 25475, Art. 2.

<sup>13</sup> Decree Law No. 25475, Art. 3.

<sup>14</sup> Resolution of the Constitutional Court of January 3, 2003, File No. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens.

13. With reference to the crime of terrorism, the Constitutional Court upheld the legality of Article 2 of Decree Law No. 25475, but ruled that it would apply solely to willful acts; it also established interpretative guidelines for the subsumption of a punishable action in the definitions of the offense.

14. With regard to statements, arrest warrants, and technical and expert opinions given before faceless judges, the Constitutional Court ruled that they were not automatically tainted and that the regular civilian judges hearing the new charges would have to verify their worth as evidence, conscientiously and in conjunction with other substantiating elements as set down in regular criminal procedural law.<sup>15</sup>

15. Between January and February 2003, the executive branch<sup>16</sup> of the Peruvian government issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926, and 927, with the aim of bringing the country's laws into line with the Constitutional Court's judgment of January 3, 2003. In general terms, those decrees ordered the voiding of all judgments and trials conducted before the military courts or faceless judicial officers, together with the referral of all such proceedings to the National Terrorism Chamber, which was created within the Supreme Court of Justice and charged with distributing the new trials to the Specialized Criminal Courts. The new antiterrorist legislation also provided for partially open hearings during oral proceedings<sup>17</sup> and prohibited the imposition of harsher sentences than those that had been handed down in the voided trials.<sup>18</sup>

16. With reference to steps taken during criminal investigations and examination proceedings before faceless civilian or military judicial officers, Article 8 of Legislative Decree No. 922 upheld the validity of examination proceeding commencement deeds, police statements given in the presence of a representative of the Public Prosecution Service, technical reports, search records, statements given to the National Police, and statements made by repentants. Finally, Article 3 of that Legislative Decree ruled that the voiding of military proceedings would not trigger automatic release from prison, which could take place only if the Public Prosecution Service declined to press charges or if the judiciary refused to commence examination proceedings.

## **A. Petitioners**

### **1. Common claims**

17. The petitions dealt with in this report claim that the alleged victims were arrested between 1993 and 1995 by members of National Anti-Terrorism Directorate of the Peruvian National Police (DINCOTE as in its Spanish acronym) or by other security forces, while not in *flagrante delicto* and without warrants for their arrest. They report that the alleged victims were prosecuted and convicted of the crime of treason against the fatherland, with the examination stage, trial, and sentencing governed by the "antiterrorist legislation" that came into force in and after May 1992.

18. The petitioners hold that the decrees making up that legislation are incompatible with the Constitution of 1979, in force at the time of their enactment, and the Constitution of 1993, as well as with the international human rights treaties ratified by Peru. They also stated that by having been enacted under a *de facto* regime, the 1992 decree laws were irretrievably defective.

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<sup>15</sup> Resolution of the Constitutional Court of January 3, 2003, File No. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens, grounds paragraph No. 159.

<sup>16</sup> On January 8, 2003, the Congress of the Republic of Peru enacted Law 27913, whereby it delegated the power to legislate on terrorism-related matters to the executive branch.

<sup>17</sup> Legislative Decree No. 922, Art. 12(8).

<sup>18</sup> Legislative Decree No. 922, fifth complementary provision.

19. The petitions claim that the alleged victims were tried before the military justice system by judicial officials whose identities were kept secret. According to the allegations, they were forced to sign blank pages or confessions after being tortured, and they were unable to refute evidence brought against them or to meet in private with defense counsel. It is also claimed that the charges brought by the Public Prosecution Service were based on fabricated or planted evidence and accusations made by repentants or under coercion, and that the accused were denied the opportunity of cross-examining the people who provided that information.

20. With reference to their personal liberty, the petitions claim that the alleged victims were detained without being informed of the charges against them, and that they were not brought before a competent authority to exercise judicial oversight over their arrests.

21. Regarding their detention conditions, the alleged victims were reportedly kept in isolation for periods of more than 23 hours a day; they were given no socio-pedagogical activities to foster their rehabilitation; they were subjected to continuous transfers, to locations far away from their families; they were housed in prisons with extremely low temperatures and allegedly precarious detention conditions, such as Challapalca-Tacna and Yanamayo-Puno, located at more than 4,000 meters above sea level; and their right to receive visits was restricted.

22. The four petitions claim that the trials before the military courts were voided by the National Terrorism Chamber in and after February 2003, under the judgment of the Constitutional Court of January 3 of that year and Legislative Decrees Nos. 921 to 927.<sup>19</sup> The alleged victims were convicted for the crime of terrorism as provided for in Decree Law No. 25475, and the sentence imposed was upheld on appeal in each and every instance.

23. In general terms, the petitioners claimed that the new antiterrorist legislation was enacted after the commission of the offenses with which the alleged victims were charged, and they hold that the use of those laws in their cases violates the principle of freedom from *ex post facto* criminal laws. They claimed that evidence produced before the faceless military courts was upheld in the new trials before the regular justice system. They claim that the creation of the National Terrorism Chamber and its actions in these cases, following the alleged incidents, were in breach of the right to be heard by one's natural judge. They further contend that the bringing of a second trial for allegations already ruled on during the 1990s was in breach of the principle of double jeopardy.

24. The petitioners claimed that following the voiding of their military convictions, the alleged victims were held in custody for several days or months, in the absence of final convictions and of procedural grounds that would have justified their preventive custody. They held that this undermined their right to the presumption of innocence and to personal liberty. They claimed that although the offense of treason against the fatherland, for which the alleged victims were originally convicted, was struck off the Peruvian statute book, the offense of terrorism as provided for in Article 2 of Decree Law 25475 remained ambiguous and imprecise, in spite of the parameters for interpretation set by the Constitutional Court in its judgment of January 3, 2003.<sup>20</sup>

## 2. Specific allegations

*Luis Enrique López Medrano (P 703-98)*

25. According to the petition, Mr. López Medrano was arrested, without a warrant, while on his way to work on March 22, 1995. Four unidentified persons bound him and took him to homes belonging to his relatives, and forced him to sign confiscation orders, in the absence of an attorney or

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<sup>19</sup> The petitions claim that the military trials of Messrs. Edwin Elías Genovés Canchari and Edgard Montaña Zapana were voided prior to 2003, with the proceedings of the new examination phase before the civilian courts referred to the National Terrorism Chamber at the start of that year.

<sup>20</sup> See paragraph 13, *supra*.

prosecutor. The petitioners claimed that these individuals then took him to a DINCOTE facility, where he was forced to stand, with a hood on his head, for more than 24 hours. They contended that over the 34 days that he was held at the DINCOTE, Mr. López Medrano was tortured with electric shocks and forced to incriminate himself under threats that his siblings would also be taken into custody.

26. They claimed that Mr. López Medrano was presented to the media in prison garb and publicly labeled a terrorist. They reported that on April 26, 1995, he was transferred to the Army Special Forces Directorate (DIFE), where he was at the disposal of the military authorities for 15 days. They claim that the attorney chosen by his family was harassed by Army personnel and that his court-appointed lawyers failed to conduct a proper defense. The alleged victim was charged with belonging to the Sendero Luminoso insurgent group and, on April 26, 1995, was sentenced to a 30-year prison term. This conviction, the petitioners report, was upheld by all instances of the military justice system.

27. The petitioners claimed that on May 11, 1995, Mr. López Medrano was admitted to the Miguel Castro Castro Prison, where he was kept in isolation for one year, in rooms without ventilation or natural light, and denied visiting rights. They stated that on September 17, 1997, in the absence of any sanction or disciplinary proceedings, he was transferred to the Yanamayo Penitentiary, unable to gather his personal effects and without his family being notified. They claimed that after arriving at that facility, the alleged victim was forced to hear songs played at deafening volumes for periods in excess of 10 hours a day, as a result of which he suffered from headaches, bleeding, an irregular heartbeat, and other health problems. They reported that on October 18, 2000, dozens of police officers burst into the area of the Yanamayo Penitentiary where the alleged victim was being held, beat the inmates, soaked their mattresses, and adulterated their food with unidentified substances.

28. They claim that on September 21, 2001, Mr. López Medrano and another 33 inmates were transferred to the Challapalca Prison, in Tacna, located more than five thousand meters above sea level and with temperatures of minus 25°C, characterized by tiny cells with no natural light, ventilation, or drinking water. They report that on October 30, 2002, the alleged victim wrote to the Public Prosecution Service to report his situation and seek a transfer, but no reply was received.

29. The petitioners stated that in March 2003, the National Terrorism Chamber ordered the voiding of his 1995 criminal trial before the military courts. They reported that in giving his statement to the civilian judges, the alleged victim reported the torture he had suffered at the DINCOTE's facilities and during his incarceration at the Castro Castro, Yanamayo, and Challapalca prisons. They stated that on January 16, 2006, the National Terrorism Chamber sentenced him to 23 years in prison for disturbing public order through terrorism. They noted that this conviction was based on statements given to faceless military prosecutors.

*Edwin Elías Genovés Canchari (P 1070-98)*

30. The petitioner reported that Edwin Elías Genovés Canchari, at the time an economics student, was arrested on January 20, 1993, upon leaving a funeral home and without being in *flagrante delicto*. She claimed the alleged victim was taken to the cell block on the Las Palmas air base in Surco, Lima department, where he was tortured for approximately two months and pressured to confess to the murder of two junior officers of the National Police. She stated that faceless judges of the Air Force Judicial District sentenced him to life imprisonment for the crime of treason against the fatherland. According to the petition, this conviction was upheld by the military courts at all instances.

31. The petitioner reported that in this military trial, a member of the Air Force was appointed to serve as his defense counsel and that this person, on several occasions, struck the alleged victim during the oral proceedings, urging him to file for repentant status.

32. She stated that on August 22, 2002, the Appeals Chamber of the Supreme Court of Lima voided the military conviction and ordered that a new trial be held. She reported that on October 2, 2002, the Sixth Criminal Court of the Callao Supreme Court of Justice issued an investigation commencement deed with a warrant for the arrest of the alleged victim, and those proceedings were transferred to the

National Terrorism Chamber in February 2003. On November 29, 2005, the petitioner stated, the alleged victim was sentenced to 21 years in prison.

33. The petitioner noted that in the new trial before the regular courts, one of the members of the military who participated in Mr. Edwin Elías Genovés's detention in 1993 gave a statement in which he admitted that the arrest on January 20, 1993, was carried out "as a routine matter." She maintained that this statement provided crucial evidence of Mr. Genovés's innocence but that it was not taken into consideration by the court. She added that Mr. Genovés's conviction for the crime of terrorism was based on his own statements and those of third parties, as well as on other formalities conducted illegitimately before the Military Prosecution Service in 1993.

34. The petitioner reported that on January 13, 2009, Mr. Edwin Elías Genovés was conditionally released from prison under the parole regime established by Legislative Decree No. 927; however, the granting of parole in terrorism cases was challenged by the Attorney General's office. She stated that by means of Law No. 29423 of October 14, 2009, the Peruvian Congress amended Legislative Decree No. 927 and repealed the eligibility for parole of individuals convicted of terrorism. She maintained that should the appeal lodged by the Attorney General be upheld by the judiciary, and should the alleged victim be again taken into custody, there would be no chance of his applying for parole again.

*Edgard Montaña Zapana (P 1097-98)*

35. According to the petition, on June 13, 1993, Edgard Montaña Zapana, at the time a medical student, was arrested by DINCOTE personnel who searched his home in Arequipa and seized books and other personal documents, without a court order and without the presence of an attorney or prosecutor. The alleged victim was reportedly beaten in front of his family and taken to a DINCOTE facility, where, according to the petition, he was kept incommunicado for 25 days. The petition indicates he was transferred to the Salaverry Barracks in Arequipa in July 1993, where he was threatened with a firing squad.

36. The petitioners stated that on July 15, 1993, Mr. Montaña Zapana was sentenced to a 30-year prison term by military judges. After appeals and a motion for annulment were filed, the Supreme Military Tribunal upheld the conviction but amended the sentence to life imprisonment. They claimed that the military courts' decisions were based, *inter alia*, on statements made under torture by the alleged victim and by others. They enclosed sworn statements of February 14 and 17, 2001, in which two individuals claimed to have been coerced into incriminating the alleged victim while they were being tortured by DINCOTE officers between June and July 1993.

37. They claimed that Mr. Montaña Zapana was held at the Yanamayo Penitentiary, where for several months he was kept isolated in a narrow cell, with questionable facilities, for periods in excess of 23 hours a day.

38. The petitioners reported that on September 10, 2002, a civilian judge voided the proceedings before the military courts and ordered the trial reopened by the regular justice system. They stated that Mr. Edgard Montaña was convicted on final appeal in the new, civilian proceedings to 25 years in prison for the crime of terrorism, under the terms of Decree Law 25475.

*Nancy Gilvonio Conde (P 12.162)*

39. According to the petition, on November 30, 1995, Ms. Gilvonio Conde was arrested in the city of Lima, blindfolded, and violently transported to a DINCOTE facility where she was forced to incriminate herself. She was accused of belonging to the Tupac Amaru Revolutionary Movement (MRTA) and sentenced to life imprisonment on January 11, 1996, by a special military court in the Army's Second Judicial District. That sentence was upheld on final appeal by the Supreme Special Military Tribunal on March 12, 1996, in its ruling dismissing the remedy for annulment that was brought against the conviction.

40. The petitioners reported that on January 17, 1996, Ms. Gilvonio Conde was admitted to the Yanamayo High Security Penitentiary, where she was held for more than three years. The documents submitted contain a complaint sent to the Director General of the Public Prosecution Service reporting that on August 5, 1999, agents of the National Police's Special Operations Directorate allegedly burst into a female area of the Yanamayo Penitentiary and subjected a number of the inmates to asphyxiation, beatings, and sexual abuse. With reference to Ms. Nancy Gilvonio Conde, the complaint notes that "she was beaten around the head, knocked to the floor, [...] stripped naked and kicked, and they also tried to insert a stick into her vagina."<sup>21</sup>

41. The petitioners claimed that on August 13, 1999, upon being informed of an imminent transfer by the warden of Yanamayo, the alleged victim slashed one of her wrists, out of fear of being taken to an unknown destination. They stated that prison officers pushed her to the floor, bound her and placed a hood on her head, and injected her with a substance that left her unconscious. They noted that, still semi-conscious and able to walk with difficulty, Nancy Gilvonio Conde was transferred to Socabaya Prison in Arequipa that same day, without being allowed to gather together her personal effects. They claimed that on September 30, 1999, the alleged victim was again transferred, to Miguel Castro Castro Prison, where she was kept incommunicado for 13 months and subjected to constant interrogations. They note that the alleged victim was held at that prison from September 1999 to October 2000, even though it was a male facility at the time.

42. The petitioners reported that once her military conviction was voided, Ms. Nancy Gilvonio Conde was tried for the crime of belonging to a terrorist organization as provided for in Article 5 of Decree Law 25475. According to their claims, the accusation was based, *inter alia*, on the police statement produced at the time of her arrest in November 1995 and on her personal and family ties with individuals convicted of the crime of terrorism.

43. The petitioners stated that on January 18, 2006, Ms. Nancy Gilvonio Conde was sentenced to 16 years in prison, against which she filed a remedy for annulment. On August 21, 2006, the Supreme Court of Justice upheld her conviction on final appeal. They claimed that the authorities of the civilian justice system based their decisions on invalid evidence and on insufficient elements for establishing the alleged victim's membership in the MRTA or her participation in crimes attributed to that organization.

## **B. State**

### **1. Common claims**

44. With regard to the petitions addressed by this report, the State claimed that in January 2003, it unilaterally began to amend its legislation for the prosecution and punishment of the crime of terrorism, which led to the voiding of all the trials conducted in the 1990s by faceless civilian and military judges. It reported that the new trials were organized under the terms of Legislative Decrees Nos. 921 to 927, which, it claims, are in line with the standards the inter-American human rights system.

45. The State reported that on August 9, 2006, the Constitutional Court dismissed an unconstitutionality suit filed by more than 5,000 citizens questioning the validity of those legislative decrees. Based on its own interpretation of judgments handed down by the Inter-American Court of Human Rights, the State maintained that the San José court has not questioned the validity of the antiterrorist legislation currently in force.

46. It held that the creation of a National Chamber and Specialized Criminal Courts for terrorism cases was intended merely to facilitate and streamline the prosecution of those charged with

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<sup>21</sup> Petitioners' submission received on January 18, 2000, annexes, request for investigation addressed to the General Director of the Public Prosecution Service, lodged on September 15, 1999, by the Association for Human Rights (APRODEH) and the International Federation for Human Rights.

those crimes. Peru stated that the judges who serve on those panels were already employed as career judges, and so there was no basis for the alleged victims' claims that they were tried by special courts or in breach of the natural judge guarantee.

47. The State maintained that in their new trials before the civilian courts, the alleged victims had the services of privately contracted or court-appointed defense attorneys, and that at all stages in the proceedings, they were able to present the evidence and file the remedies they deemed appropriate. It held that although evidence used in the military proceedings was used in the new trials before the civilian courts, the judges assessed it conscientiously and in conjunction with other evidence, as required by Legislative Decree No. 922.

48. The State emphasized that the sentences already served by the alleged victims following their initial arrests were taken into consideration in calculating the new penalties imposed by the regular courts. Regarding the denial of parole for the alleged victims following the voiding of their military trials, Peru stated that in its judgment of August 9, 2006, the Constitutional Court of Peru ruled that:

This restriction is intended to protect constitutional assets and principles that might be affected by the resurgence of subversive practices and/or to prevent the hindrance of the legitimate exercise of the State's power to punish individuals who have been found guilty of the crime of terrorism, including those whose prosecution was conducted before an incompetent judge and without the guarantees that inform the right of due process.

49. The State disputed some of the allegations made by the petitioners regarding the purported torture, detention conditions, and violations of physical integrity suffered by the alleged victims, but it made no specific claims regarding the admissibility requirements set out in Article 46(1) of the American Convention.<sup>22</sup>

50. The State described the legal proceedings in the new trials before the regular courts and enclosed copies of parts of the corresponding case files. It underscored the fact that the alleged victims were represented by attorneys and had the opportunity of exercising their right of defense. Peru concluded that the petitions describe facts that do not tend to establish violations of the American Convention and asked the IACHR to rule them inadmissible in accordance with Articles 47.b and 47.c thereof.

## **2. Specific allegations**

### *Luis Enrique López Medrano (P 703-98)*

51. The State claimed that on March 24, 2003, the National Terrorism Chamber voided the criminal trial before the military courts and ordered the proceedings referred to the Fourth Specialized Provincial Prosecutor for Terrorism Offenses. It reported that on April 7, 2003, the Third Specialized Criminal Court for Terrorism issued an investigation commencement deed for the alleged crime of disturbing public order through terrorism and ordered Mr. López Medrano placed in preventive custody.

52. Peru said that on May 16, 2006, the National Criminal Chamber sentenced him to a 23-year prison term, which was upheld by a supreme writ of execution of December 14, 2006, in which the First Temporary Criminal Chamber of the Supreme Court of Justice dismissed a remedy for annulment. According to the State, the regular courts ruled that the alleged victim's criminal responsibility had been established, in accordance with the guarantees of due process provided for in domestic law.

53. The State claimed that, "regarding the acts of torture described in the complaint, it should be noted that those accusations were also made during the criminal trial and, consequently, a legal

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<sup>22</sup> Regarding some of the acts of violence alleged in the petitions of Nancy Gilvonio Conde (P 12.162) and Luis Enrique López Medrano (P 703-98), the State noted that its domestic authorities had disproved those claims.

medical examination was performed [that] concludes that he shows no signs of recent traumatic injury, refuting the claim that he was tortured.”

*Edwin Elías Genovés Canchari (P 1070-98)*

54. The State claimed that following the voiding of the military trial, on November 29, 2005, the National Criminal Chamber sentenced the alleged victim to 21 years in prison for the crime of disturbing public order through terrorism, punishable under Articles 2, 3, and 5 of Decree Law No. 25475. It noted that the judicial authorities found Mr. Genovés Canchari guilty of a firearm attack on January 23, 1993, in which two National Police officers were killed.

55. The State said that through a deed of execution dated August 16, 2006, the Supreme Court of Justice dismissed a remedy for annulment filed by the alleged victim and upheld his conviction. Peru maintained that the agencies of the regular judiciary that heard the charges against Mr. Edwin Elías Genovés acted with independence and impartiality, and, in addition, respected the guarantees of due process provided for in the antiterrorist legislation currently in force.

*Edgard Montaña Zapana (P 1097-98)*

56. In its initial reply in March 2004, the State claimed that the alleged victim was at that time facing a criminal trial before the Third Specialized Criminal Chamber of the Superior Court of Arequipa and maintained that the petition did not meet the requirement set by Article 46(1)(a) of the American Convention. In later communications, it reported that after his military prosecution was voided, Mr. Edgard Montaña Zapana was sentenced to a 25-year prison term for the crime of terrorism, by means of a decision handed down on February 6, 2004, by the Third Criminal Chamber of the Arequipa Superior Court. According to its submissions, that judgment was upheld on final appeal by the Supreme Court of Justice on November 16, 2004.

57. The State maintained that the documents seized from Mr. Edgard Montaña Zapana's home at the time of his arrest on June 13, 1993, in conjunction with other evidence, “were a solid basis for confirming a series of indications that revealed that the petitioner was a member of the Sendero Luminoso terrorist group.”

*Nancy Gilvonio Conde (P 12.162)*

58. In its initial reply, the State reported that on March 12, 1996, the Supreme Special Military Tribunal had convicted the alleged victim on final appeal. Since the petition was lodged with the IACHR on March 29, 1999, the State claimed that it did not meet the six-month filing period set by Article 46(1)(b) of the American Convention.

59. Regarding the alleged abuse use of force in the alleged victim's transfer to Socabaya Prison on August 13, 1999, the State contended that it occurred for reasons of domestic security and pointed out that Ms. Nancy Gilvonio Conde received immediate treatment for the wound to her wrist.

60. The State submitted no information on other alleged acts of violence described by the petitioners and it did not address the proceedings before the civilian courts following the voiding of the alleged victim's 1996 military trial.

**IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

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

61. The petitioners are entitled, under Article 44 of the Convention, to file complaints. The alleged victims were under the jurisdiction of the Peruvian State on the date of the alleged incidents. In

addition, Peru ratified the American Convention on July 28, 1978. Consequently, the Commission has competence *ratione personae* to examine the petitions.

62. The Commission has competence *ratione loci* to hear the petitions, in that they describe violations of rights protected by the American Convention that allegedly took place within the territory of a state party thereto.

63. In addition, the Commission has competence *ratione temporis*, since the general obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred.

64. Finally, the Commission has competence *ratione materiae*, because as explained in paragraphs 75 to 79 below, the petitions addressed by this report allege facts that could tend to establish violations of rights protected by the American Convention and by the Inter-American Convention to Prevent and Punish Torture, ratified by the Peruvian State on February 27, 1990; and, with reference to the petition filed on behalf of Nancy Gilvonio Conde (P 12.162), by the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, ratified by Peru on April 2, 1996.

## **B. Exhaustion of domestic remedies**

65. Article 46(1)(a) of the American Convention states that for a complaint lodged with the Inter-American Commission in compliance with Article 44 of the Convention to be admissible, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. That requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to enable them to resolve it before it is brought before an international venue.

66. The petitions addressed by this report describe, on the one hand, a series of acts of aggression, torture, and mistreatment, allegedly committed by state agents and, in some cases, before judicial authorities. The available information indicates that the alleged acts of violence and purportedly subhuman detention conditions were reported to the Public Prosecution Service and the Office of the People's Defender by the alleged victims, their families, and civil society organizations. In addition, the judicial authorities of the civilian justice system who tried the new cases brought in and after 2003 heard allegations about evidence allegedly obtained through coercion and torture. The information presented until this stage of the proceedings indicates that the competent authorities have not initiated criminal investigations regarding the alleged violations of personal integrity. Such circumstances would indicate that an effective remedy was not made available to the alleged victims so far.

67. The Commission's established precedents indicate that whenever a publicly actionable offense is committed, the State has the obligation of bringing and pursuing criminal proceedings and that, in such cases, that is the best way to clear up incidents, prosecute the guilty, and impose the applicable criminal punishments, in addition to enabling other forms of applicable redress. The petitioners' allegations of torture and other violations of humane treatment point to criminal actions under domestic law that must be investigated and prosecuted on an *ex officio* basis by the judicial authorities, and consequently that procedure is the ideal remedy for the petitions addressed in this report.<sup>23</sup>

68. Although the Peruvian State noted in general terms that some of the petitioners' allegations of violence had been refuted by the domestic authorities, it has submitted no information on any investigations carried out into them and neither has it argued the failure to exhaust domestic remedies in respect of them, and so it has tacitly waived the right to present such a defense.

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<sup>23</sup> IACHR, Report No. 99/09, Petition 12.335, Colombia, Gustavo Giraldo Villamizar Durán, October 29, 2009, para. 33.

69. In addition to alleged violations of humane treatment, the petitions addressed by this report indicate breaches of other provisions of the American Convention arising from the arrests of the alleged victims and from the criminal prosecutions brought against them. The State maintains that the alleged violations of Convention-protected rights by the trials before the military courts were resolved through the new proceedings before the regular courts that took place in and after 2003. The information submitted indicates that after the voiding of the military trials, the four alleged victims were convicted under rulings handed down on final appeal by the Supreme Court of Justice between November 2004 and December 2006. Both State and petitioners have indicated that the domestic remedies in respect of those criminal trials have been exhausted.

70. Based on the foregoing considerations, the IACHR concludes that the four petitions satisfy the requirement set by Article 46(1)(a) of the American Convention.

### **C. Filing period**

71. Article 46(1)(b) of the Convention states that for a petition to be admissible, it must be lodged within a period of six months following the date on which the complainant was notified of the final judgment at the national level.

72. As established in paragraph 69 above, the second set of criminal trials brought against the four alleged victims concluded between November 2004 and December 2006, after the petitions had been lodged with the Commission. Thus, compliance with the requirement contained in Article 46(1)(b) of the American Convention is intrinsically linked with the exhaustion of domestic remedies and it has consequently been satisfied.

73. With regard to the allegations involving conditions of detention, torture and other supposed violations of the right to a humane treatment, as established in paragraph 66 above, such facts were reported to the Peruvian authorities in different occasions, after the first trial before military tribunals and during the proceedings held by ordinary courts. Given that the State has not alleged and that the case files do not contain evidences that criminal proceedings have been initiated in order to investigate these facts, the IACHR considers that the four petitions were filled within a reasonable period of time.

### **D. Duplication of international proceedings and *res judicata***

74. Article 46(1)(c) of the Convention states that the admission of a petition is subject to its subject matter being “not pending in another international proceeding for settlement,” and Article 47.d of the Convention provides that IACHR shall not admit a petition that is substantially the same as one previously studied by the Commission or by another international organization. In the petitions addressed by this report, the parties have not argued the existence of either of those two circumstances, nor are they indicated by the record.

### **E. Characterization of the alleged facts**

75. At the admissibility stage, the Commission must decide whether the stated facts could tend to establish a rights violation, as stipulated in Article 47.b of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” as stated in Article 47.c. The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a *prima facie* assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. Said examination is a summary analysis that does not imply prejudging the merits or offering an advance opinion on them.

76. In light of the elements of fact presented by the parties, the IACHR finds that the circumstances in which the arrests of the alleged victims were carried out, the alleged torture they suffered and the conditions of their detention at the DINCOTE facilities and prisons, the alleged searching of their homes and families without warrants, and their alleged public presentation in prison garb could

tend to establish violations of the rights enshrined in Articles 5, 7, and 11 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, as well as of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all with respect to Luis Enrique López Medrano, Edwin Elías Genovés Canchari, Edgard Montaña Zapana and Nancy Gilvonio Conde. In addition, the IACHR finds that the effects of the facts described in this paragraph, together with the purported holding of the alleged victims incommunicado for long periods of time and the restrictions placed on their right to receive visits, could tend to establish a violation of the right protected in Article 5.1 of the Convention with respect to the alleged victims and also with respect to their families.

77. The IACHR also finds that the allegations about the criminal trials conducted by the military and civilian justice systems, together with the alleged incompatibility between the American Convention and the regulatory framework governing those prosecutions, could tend to establish a violation of the rights enshrined in Articles 9, 8, and 25 thereof, in conjunction with Articles 1(1) and 2, all with respect to Luis Enrique López Medrano, Edwin Elías Genovés Canchari, Edgard Montaña Zapana and Nancy Gilvonio Conde. At the merits stage the Commission will analyze the Peruvian State's claims that the terrorism legislation enacted in and after January 2003 and the criminal prosecutions conducted under those laws served to remedy the alleged breaches of the aforesaid provisions of the Convention.

78. With reference to the alleged acts of violence against Ms. Nancy Gilvonio Conde, which, according to her petition, included sexual abuse, the IACHR finds they could tend to establish a violation of Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.

79. Finally, in that these aspects of the claims are not obviously groundless or out of order, the Commission concludes that the petition satisfies the requirements set by Articles 47(b) and 47(c) of the American Convention.

## **V. CONCLUSIONS**

80. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case, the Inter-American Commission concludes that Petitions 703-98, 1070-98, 1097-98 and 12.162 satisfy the admissibility requirements contained in Articles 46 and 47 of the American Convention and, consequently,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To rule Petitions 703-98, 1070-98, 1097-98 and 12.162 admissible as regards Articles 5, 7, 9, 11, 8, and 25 of the American Convention, in conjunction with the obligations established by Articles 1(1) and 2 thereof, and as regards Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.
2. Additionally, to rule Petition 12.162 admissible as regards Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.
3. To give notice of this decision to the State and to the petitioners.
4. To join the four petitions addressed in this Report on Admissibility in the record of case 12.747 and to begin the processing of the merits of the case.
5. To publish this decision and to include it in its Annual Report, to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 15 day of the month of March, 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second

Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, Commissioners).