REPORT No. 108/10
PETITIONS 744-98 – ORESTES AUBERTO URRIOLA GONZÁLES
614-00 – CECILIA ROSANA NÚÑEZ CHIPANA
1300-04 – CIPRIANO SABINO CAMPOS HINOSTROZA
ADMISSIBLITY
PERU
August 26, 2010

I. SUMMARY

1. This report deals with three petitions filed on behalf of Orestes Auberto Urriola Gonzáles (P 744-98),[1] Cecilia Rosana Núñez Chipana (P 614-00),[2] and Cipriano Sabino Campos Hinostroza (P 1300-04)[3] [hereinafter "the alleged victims"], alleging violation by the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State") of rights established in the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"). The petitions claimed that the alleged victims were arrested and convicted between 1996 and 1999 based on Decree Laws adopted starting in May 1992 relating to the crime of terrorism. These decrees, as well as the criminal proceedings deriving from them, are alleged to be contrary to a series of provisions in the American Convention. It is claimed that the alleged victims were convicted based on evidence fabricated by the National Police of Peru and statements made by witnesses and co-defendants without due process guarantees.

2. The State maintained that the alleged victims were prosecuted in accordance with norms pre-established in domestic legislation and that they were convicted by impartial and competent courts with strict adherence to the guarantees of due process. It asserted that a new legislative framework was adopted in early 2003 on the subject of terrorism that is consistent with the American Convention and the Political Constitution of Peru. It alleged that the facts related in the complaints do not tend to establish violations of the Convention's provisions and asked that the IACHR declare the petitions inadmissible pursuant to Article 47(b) and (c) of that instrument.

3. After examining the positions of the parties in the light of the admissibility requirements provided in Articles 46 and 47 of the Convention, the Commission concluded that it is competent to hear the petitions and that they are admissible based on the alleged violation of the rights established in Articles 5, 7, 9, 8 and 25 of the American Convention in conjunction with Articles 1(1) and 2 thereof. The Commission decided to join the petitions and process them together in the merits stage under case number 12.773. Finally, the Commission decided to notify the parties of this Admissibility Report, publish it, and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. Petition 744-98 was filed on November 11, 1998 and the petitioners submitted additional information on October 30, 2000, January 11, 2001, October 17, 2003, October 6, 2005 and March 28, 2006. On March 17, 2008 that documentation was forwarded to the State with a time limit of two months to respond. The State submitted its response on May 29, 2008 and sent additional briefs on December 4, 2008, June 10, October 8 and November 2, 2009. The petitioners sent additional communications on July 25, 2008, March 16 and August 3, 2009.

[1] Submitted on November 11, 1998 in his own name. On October 30, 2000, the father of the alleged victim, Mr. Pelayo Urriola Canales, was registered as co-petitioner.

[2] Submitted on November 27, 2000 by Bruno Nuñez Chipana. On March 3, 2002, Mr. Marino Alvarado Betancourt was registered as co-petitioner. On April 13, 2010, Mr. Juan Francisco Tulich Morales presented himself as co-petitioner. In their briefs submitted to the IACHR, the State and the petitioners refer to the alleged victim using the names Cecilia Rosana Núñez Chipana, Cecilia Rosana "Nuñez" Chipana, and Cecilia "Rossana Nuñez" Chipana.

[3] Submitted on December 2, 2004 in his own name. On October 12, 2005, the Center for Human Development presented itself as co-petitioner. In their briefs submitted to the IACHR, the State and the petitioners referred to the alleged victim using the names Cipriano Sabino Campos Hinostroza and Cipriano "Gabino" Campos Hinostroza.

5. Petition 614-00 was received on November 27, 2000 and the petitioners submitted additional information on May 26, 2006. This documentation was forwarded to the State on November 19, 2008 with a time limit of two months to respond. The State submitted its response on February 24, 2009 and sent additional briefs on November 2, 2009 and June 7, 2010. The petitioners submitted an additional communication on April 21, 2010.

6. Petition 1300-04 was received on December 2, 2004 and the petitioners submitted additional information on October 12, 2005 and May 17, 2006. This documentation was forwarded to the State on May 21, 2007 with a time limit of two months to respond. The State submitted its response on July 23, 2009 and sent an additional brief on November 2, 2009. The petitioners sent an additional communication on February 23, 2010.

III. POSITIONS OF THE PARTIES

Preliminary considerations

7. In the complaints dealt with in this report, the petitioners and the State described criminal proceedings conducted during the 1990s in the light of decree-laws in the area of terrorism enacted during the administration of former President Alberto Fujimori. These decrees remained in effect until a new legislative framework regarding terrorism was adopted between January and February 2003. Before relating the positions of the parties, the IACHR deems it necessary to refer to the regulatory framework surrounding the facts presented therein.

Antiterrorist legislation in force from May 1992 to January 2003

8. 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 high treason and giving the military justice system jurisdiction 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 exceptional procedures for investigating, examining, and prosecuting individuals accused of terrorism or high treason.

9. 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, kidnappings and other indiscriminate acts of violence against the civilian population in different regions of Peru, attributed to outlawed insurgent groups.

10. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,[4] holding closed hearings, solitary confinement during the first year of prison terms,[5] and summary deadlines for presenting charges and issuing judgments in the case of the crime of high treason.[6] 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[7] and restricted the attorney's participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,[8]

[4] Decree Law No. 25475, Art. 12(d).

[5] Decree Law No. 25475, Art. 20.

[6] Investigations, prosecutions, and sentencing for high treason were governed by Decree Laws Nos. 25708 and 25744.

[7] 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.

[8] Decree Law No. 25475, Art. 13(h).

established concealed identities for judges and prosecutors ("faceless courts"),[9] prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.[10]

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*;[11] and they only indicated minimum prison terms, without setting maximum penalties.[12]

12. On May 12, 1992, the Executive Branch of Government passed Decree-Law 25499, also called the Repentance Law, which regulated the reduction, exemption, remission or mitigation of imprisonment sentences for persons charged or convicted for the crime of terrorism who provided information leading to the capture of chiefs, heads, leaders or principal members of terrorist organizations.[13] By means of Supreme Decree No. 015-93-JUS of May 8, 1993, the Executive Branch adopted the Regulations for the Repentance Law, which provided, among other measures, the secrecy or change of identity for the repentant persons making the statement.[14] The Repentance Law expired on October 31, 1994.[15]

Antiterrorist legislation in force as of January 2003

13. 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.[16] That decision ruled Decree Law 25659 unconstitutional and ordered accusations for the crime of high treason 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.

14. 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 to define the scope of the offense.

15. With regard to statements, arrest warrants, 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.[17]

16. Between January and February 2003, the Executive Branch[18] issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926, and 927,[19] with the aim of bringing the country's laws into line with the

[9] With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

[10] Decree Law No. 25744, Art. 2.

[11] Decree Law No. 25475, Art. 2.

[12] Decree Law No. 25475, Art. 3.

[13] Decree Law No. 25499, Articles 1.II.a and 1.III.

[14] Supreme Decree No. 015-93-JUS, Articles 8.a and 36.

[15] The Repentance Law was repealed by Law 26345 of August 30, 1994.

[16] 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.

[17] 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.

[18] 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.

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, further named National Criminal 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[20] and prohibited the imposition of harsher sentences than those that had been handed down in the voided trials.[21]

A. Position of the petitioners

1. Common allegations

17. The petitions considered in this report claim that the alleged victims were prosecuted and convicted for crimes against public order in the form of terrorism, with criminal investigation, prosecution, and sentencing governed by the "antiterrorist legislation" adopted starting in May 1992. The petitioners indicated that the decrees that made up this legislation are inconsistent with the Political Constitution of 1979 in effect at the time the legislation was issued and with the Political Constitution of 1993, as well as with international human rights treaties ratified by Peru. They asserted that the charges filed by the Public Prosecutor's Office were based on evidence fabricated by the National Police (planted evidence), assertions made by third parties under coercion, and statements made by repentants, with no possibility of interrogating those who provided such information from the initial stages of the criminal proceeding.

18. The petitioners indicated that on October 12, 2009 the Peruvian Congress promulgated Law 29423, which regulated the criminal law enforcement in mattes of terrorism. According to their allegations, Law 29423 eliminated the benefits of reduction of prison sentence, parole, or conditional release for those persons convicted of terrorism. They argued that the law is inconsistent with a series of rights protected in the American Convention.

2. Specific allegations

Orestes Auberto Urriola Gonzáles (P 744-98)

19. As context, the petitioners asserted that between 1974 and 1980 the alleged victim studied at the San Cristóbal de Huamanga National University in the department of Ayacucho, where Abimael Guzmán Reynoso, the founder and leader of the insurgent group Shining Path was a university professor. They indicated that this fact, as well as the large number of Shining Path militants hired at that university, led to the stigmatization of students graduating from that school and the residents of the department of Ayacucho in general. They stated that it was in this context that Mr. Orestes Auberto Urriola was arrested in the early 1980s and accused of belonging to the referenced insurgent group. They alleged that after he was sentenced to five years in prison by the Criminal Chamber of the Superior Court of Justice of Ayacucho, the Supreme Court of Justice ordered the archiving of the case in a ruling dated May 20, 1983.

20. The petitioners alleged that between March 2 and 3, 1982 a Shining Path contingent took over the prison facilities in the city of Ayacucho, forcing all the prisoners to leave, including Mr. Urriola Gonzáles, who was being held at the time as a defendant.

21. They stated that on August 25, 1996 Mr. Urriola Gonzáles was arrested by members of the National Counterterrorism Directorate (DINCOTE) while he was traveling through the district of La Victoria, in the province and department of Lima, and was transferred to the DINCOTE prison. They

[19] Legislative Decree 927 regulated the criminal law enforcement in mattes of terrorism. It was derogated by the Law 29423 of October 14, 2009, which rendered inapplicable the requests for reduction of prison sentence, partial liberty and conditional parole by persons convicted of terrorism.

[20] Legislative Decree No. 922, Art. 12(8).

[21] Legislative Decree No. 922, fifth complementary provision.

alleged that the police did not inform him of the reasons for his arrest nor did they present a court order supporting the detention. They indicated that the members of DINCOTE accused him of being the intermediary in renting a property in the province of Lima, further used to put together car bombs employed in attacks carried out by Shining Path.

22. The petitioners asserted that on August 10, 1998 the National Criminal Chamber for Terrorism Cases (hereinafter "the National Terrorism Chamber") sentenced Mr. Urriola Gonzáles to life in prison for the crime of collaborating with terrorism. They indicated that on December 10, 1999 the Supreme Court of Justice amended the judgment and reduced the sentence to 30 years in prison. They indicated that the sentences were based on i) Mr. Urriola Gonzáles' criminal record, ii) his flight from the Ayacucho prison in March 1982, iii) his leadership in students' associations at the San Cristóbal de Huamanga National University, and iv) his having been found with a voter identification card that did not belong to him. They asserted that the sentences were also based on statements fabricated by members of DINCOTE, obtained through coercion and blackmail or made by people who availed themselves of the benefits of the Repentance Law.

23. The petitioners emphasized that the proceeding against Mr. Urriola Gonzáles was for the crime of affiliation with a terrorist organization while the sentence established his liability for the crime of collaborating with terrorism, provided in Article 4 of Decree-Law No. 25475. They asserted that some of the judges of the National Terrorism Court and the Supreme Court of Justice who handed down the referenced sentence were later removed from their positions based on accusations of bribery and criminal collusion with senior officials in the government of Alberto Fujimori.

24. The petitioners asserted that Mr. Urriola Gonzáles challenged the final ruling of December 10, 1999 by filing a *habeas corpus* suit in which he asserted the lack of grounds in the sentences and improper assessment of the evidence presented in the preliminary investigation and oral proceeding. According to the information submitted, the *habeas corpus* action was declared groundless by a final ruling of the Constitutional Court of December 28, 2004.

25. Finally, the petitioners alleged that the Peruvian State is responsible for the violation of the rights established in Articles 2, 5, 7, 8, 9, and 24 of the Convention.

Cecilia Rosana Núñez Chipana (P 614-00)

26. The petitioners alleged that between July and October 1996, the DINCOTE issued a series of statements accusing Mrs. Cecilia Rosana Núñez Chipana of belonging to Shining Path and of having participated in car bomb attacks attributed to this insurgent group. They indicated that those statements were based on testimony obtained through torture, blackmail, and coercion, and declarations made by people who availed themselves of the benefits of the Repentance Law and by witnesses who retracted from their original versions further in courts. They indicated that in early 1998 the Peruvian judicial authorities issued an arrest order aimed to obtain Mrs. Núñez Chiapana's extradition from Venezuela, where she was living at the time. She was extradited to Peru on July 3 of the same year.

27. According to the petitioners, various items of evidence produced against Mrs. Núñez Chipana during the preliminary investigation phase were drawn up by "faceless" prosecutors. They asserted that after holding various oral proceedings, the National Terrorism Chamber issued a decision on July 31, 1998, sentencing her to 25 years in prison for the crime of terrorism. They indicated that the Supreme Court of Justice affirmed the decision on December 10, 1999 and extended the sentence to 30 years in prison[22]. They indicated that the the alleged victim submitted recusal petitions against judges of the National Terrorism Chamber and the Supreme Court of Justice, but that these petitions were rejected *in limine* pursuant to Article 13(h) of Decree Law No. 25475.

[22] According to the information submitted by the parties, the alleged victims Orestes Auberto Urriola and Cecilia Rosana Núñez were co-defendants in the proceedings in Case No. 73-95, in which a final decision was handed down on December 10, 1999.

28. The petitioners emphasized that the Supreme Court of Justice increased the sentence imposed on Mrs. Núñez Chipana, even though her attorney and not the Public Prosecutor's Office appealed the decision of the National Terrorism Chamber of July 31, 1998, in violation of the *non reformatio in peius* principle. They alleged that on May 25, 2000 the lawyer defending Mrs. Cecilia Nuñez informally learned of the final decision of December 10, 1999 without any official notice. According to the information provided, Mrs. Núñez Chipana has been detained in the Women's Prison of Chorrillos since her conviction was handed down on July 31, 1998. The petitioners indicated that she was held under the system of maximum security provided for prisoners convicted of crimes of terrorism and high treason, and allowed one hour a day outside in the patio and one hour a week for visits through a phone hookup. They added that Mrs. Núñez Chipana was held in a small cell and that there was no response to numerous petitions to modify her conditions of detention.

29. The petitioners indicated that upon the adoption of the new legislative framework in the area of terrorism in early 2003, the representatives of the alleged victim sought to have the criminal proceeding followed between 1996 and 1999 nullified, claiming that various items of evidence had been presented before faceless prosecutors. They asserted that on October 4, 2004 the National Criminal Chamber ruled against nullification of the proceeding, and limited itself to reducing Mrs. Núñez Chipana's sentence to 25 years in prison.

Cipriano Sabino Campos Hinostroza (P 1300-04)

30. The petitioners asserted that based on police statement 14-SECOTE-PNP-CH dated October 20, 1997, Mr. Hinostroza was arrested by DINCOTE agents along with his mother, two brothers, and a sister on October 31 of the same year. They indicated that the police officers who participated in the arrest confiscated property belonging to the mother of the alleged victim, Mrs. María Hinostroza, which they considered to violate the right protected under Article 21 of the Convention.

31. The petitioners asserted that, based on the same police statement 14-SECOTE-PNP-CH, the alleged victim was tried by the Criminal Court of Merced-Chanchamayo (Case No. 243-98-P) for aggravated robbery and other common crimes and was tried again by the National Terrorism Chamber (Case No. 18-98-T) for the crime of terrorism. They indicated that he was sentenced in the second proceeding to 20 years in prison under the decision issued by the National Terrorism Chamber on December 4, 1998. They state that on April 12, 1999 the Supreme Court of Justice ruled against nullification of the referenced sentence.

32. According to the allegations, on June 17, 1999 the Decentralized Chamber of La Merced ordered the archiving of Case No. 243-98-P, which accused Mr. Campos Hinostroza of common crimes, declaring *res judicata* to exist in view of the terrorism conviction handed down in Case No. 18-98-T. The petitioners emphasized that in a whereas paragraph of the decision of June 17, 1999, the Combined Chamber of La Merced pointed out that, although Mr. Campos Hinostroza and other co-defendants could have belonged to the insurgent group Túpac Amaru Revolutionary Movement (MRTA), at the time of their arrest they were engaged in common criminal activity. They indicated that despite those considerations, the National Terrorism Chamber continued exercising jurisdiction over the case and through an erroneous categorization of the facts, convicted the alleged victim of crimes defined in Decree Law No. 25475, for which the penalties and prison terms are harsher than those provided in ordinary criminal law.

33. The petitioners argued that the National Terrorism Chamber's decision of December 4, 1998 was based exclusively on police statement 14-SECOTE-PNP-CH, there being no other evidentiary means that could detract from the presumption of innocence on the part of Mr. Campos Hinostroza. They asserted that in December 2002 Mr. Campos Hinostroza was transferred to the prison of Yanamayo-Puno, located more than 1,800 kilometers from the city of Chanchamayo, department of Junín, where his relatives live. They alleged that that situation amounted to a violation of the right protected under Article 5 of the Convention to the detriment of Mr. Campos Hinostroza and the members of his family.

34. The petitioners indicated that after the decision of the Constitutional Court on January 3, 2003 in Case No. 010-2002-AI/TC (unconstitutionality suit filed by Marcelino Tineo Silva and other

citizens),[23] Mr. Campos Hinostroza filed a *habeas corpus* action on January 10 of the same year seeking nullification of the criminal proceeding in Case No. 18-98-T. According to the information submitted, the *habeas corpus* action was based on an alleged error made by the National Terrorism Chamber in its assessment of the evidence and the legal categorization of the conduct attributed to Mr. Campos Hinostroza. The petitioners indicated that this action was declared groundless in a ruling of the Constitutional Court on June 25, 2004.

35. Finally, the petitioners asserted that the State is responsible for violating the rights established in Articles 5, 8, 9, and 21 of the American Convention.

B. Position of the State

1. Common allegations

36. The State argued that the alleged victims were prosecuted in accordance with rules pre-established in domestic legislation. It asserted that it is not the role of the IACHR to replace domestic bodies in assessing the evidence produced at trial and in determining the criminal liability of the alleged victims, all the more so when those bodies acted in accordance with the guarantees of due process. It indicated that the alleged victims were assisted by attorneys who were freely chosen or appointed by court and that there were no limitations on their ability to file the remedies provided in domestic legislation. It stated that the criminal proceedings were decided by independent and impartial judges who based their decisions on the evidence produced in the various stages of the process.

37. The State indicated that legislative amendments were introduced between January and February 2003 regarding the investigation, prosecution, and criminal sentencing for the crime of terrorism. These amendments involved the nullification of trials conducted in the 1990s that were heard by military or civilian judges whose identity remained secret.[24] The State maintained that this new legislative framework is consistent with the inter-American system of promoting and defending human rights' standards and with the Political Constitution of Peru. According to the information provided by the State, the validity of the proceedings conducted against the alleged victims was not affected with the adoption of the new legislative framework in the area of terrorism adopted in early 2003. The State indicated that on October 4, 2004, the National Criminal Chamber ruled that the criminal proceeding conducted against co-accused Orestes Auberto Urriola and Cecilia Rosana Núñez did not satisfy the grounds for nullification established in Legislative Decree No. 926.

38. Regarding the elimination of penitentiary benefits for those convicted of terrorism, as provided in Law No. 29423 of October 12, 2009, the State asserted that the case law of the Peruvian Constitutional Court has established that said benefits do not produce acquired rights and are subject to restrictions established by law and based on objective and reasonable criteria. It added that Law No. 29423 was enacted in accordance with the Political Constitution of Peru and indicated that restricting the granting of penitentiary benefits does not diminish the resocializing purpose of the prison term.

39. Finally, the State argued that the facts alleged in the three petitions do not tend to establish the violation of rights protected in the American Convention and asked the IACHR to declare the complaints inadmissible pursuant to Articles 47(b) and (c) of the Convention.

2. Specific allegations

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[23] See paragraph 13 *supra*.

[24] Article 2 of Legislative Decree 926 of February 20, 2003 establishes as follows:

> The National Terrorism Chamber shall, gradually over a period of no more than sixty business days, annul *ex officio,* unless expressly waived by the prisoner, the decision and the oral proceeding and, as applicable, shall declare the insufficiency of the prosecution's indictment in criminal proceedings for crimes of terrorism conducted in the ordinary criminal courts before judges or prosecutors whose identity remained secret.

Orestes Auberto Urriola Gonzáles (P 744-98)

40. The State's recounting of the events was similar to that of the petitioners with respect to the proceedings against Mr. Urriola Gonzáles following his second arrest in August 1996 as well as the final instance decision on the *habeas corpus* action issued by the Constitutional Court on June 25, 2004. The State indicated that the judges who heard the charges against the alleged victim were duly identified and applied the law in effect at the time they issued the respective decisions. It pointed out that various witnesses accused the alleged victim of being a member of Shining Path and of having rented a property used to put together car bombs employed in attacks against the civilian population of the province of Lima between May and July of 1992. It stated that when he was arrested in August 1996 there was a warrant against him based on a criminal conviction for terrorism, which had not been fully served due to his flight from the Ayacucho prison in March of 1982.

41. The State emphasized that on the date the petition was submitted to the IACHR in November 1998, the Supreme Court of Justice's ruling on the appeal for nullification filed by the legal representatives of Mr. Orestes Auberto Urriola Gonzáles was still pending and concluded with a final decision on December 10, 1999. On this basis, the State maintained that the petition was submitted before the domestic jurisdiction's remedies had been exhausted and asked that the petition be declared inadmissible pursuant to Article 46(1)(a) of the Convention.

Cecilia Rosana Núñez Chipana (P 614-00)

42. The State's recounting of the events was similar to that of the petitioners with respect to the decisions adopted in the context of the criminal proceedings against Mrs. Núñez Chipana. It emphasized that the evidence produced in various stages of the criminal proceeding indicated that the alleged victim participated in car bomb attacks against the civilian population of the province of Lima between May and July of 1992. It indicated that on October 4, 2004 the National Criminal Chamber reduced the prison term imposed on her from 30 to 25 years, deeming that the Supreme Court of Justice had violated the principle of *non reformatio in peius* guaranteed by constitutional provisions and Peruvian procedural law.

43. The State asserted that in the same ruling of October 4, 2004 the National Criminal Chamber deemed that the proceeding conducted against Mrs. Núñez Chipana and other co-defendants does not satisfy the grounds for nullification provided in Legislative Decree No. 926, in that the prosecution's indictment and the first and second instance decisions were issued by representatives of the Public Prosecutor's Office and judges who were duly identified. It added that although some evidence was produced by prosecutors whose identity remained secret, the National Criminal Chamber concluded that this did not entail nullification of the proceeding, in that the judicial authorities were identified since the filing of indictment by the Public Prosecutors' Office.

44. The State maintained that when the petitioners filed their complaint on November 27, 2000, they failed to observe the deadline provided in Article 46(1)(b) of the Convention. It asserted that even if Mrs. Núñez Chipana's attorney learned of the final decision against her on May 25, 2000, as the petitioners indicated in their briefs, the complaint should have been submitted to the IACHR by November 25 of the same year in order to comply with the filling period under the American Convention.

Cipriano Sabino Campos Hinostroza (P 1300-04)

45. The State's recounting of the facts was similar to that of the petitioners with respect to the court's actions in the judicial proceedings against Mr. Campos Hinostroza as well as the final instance decision on the *habeas corpus* action issued by the Constitutional Court on June 25, 2004.

46. The State refuted the petitioners' allegations, according to which the only item of evidence against Mr. Campos Hinostroza was a statement produced by the National Police. It indicated that the criminal liability of Mr. Campos Hinostroza was established on the basis of various items of

evidence produced both in the preliminary stage and in the oral proceeding, which were assessed conscientiously by the judges who participated in the process.

47. Regarding the alleged violation of Article 7 of the Convention, the State asserted that the imprisonment of Mr. Campos Hinostroza is legally supported by the conviction handed down in a regular proceeding in which due process guarantees were respected.

48. Regarding the alleged violation of the right protected in Article 21 of the Convention, the State indicated that the alleged appropriation of property belonging to the alleged victim's mother by DINCOTE agents represents unilateral claims made by the petitioners without any supporting evidence. It added that the alleged victim did not file an action before the domestic courts to recover the allegedly confiscated belongings and obtain a legal protection of his property rights.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

49. The petitioners are entitled by Article 44 of the Convention to submit petitions. The alleged victims are individuals who were under the jurisdiction of the Peruvian State on the date of the reported events. For its part, Peru ratified the American Convention on July 28, 1978. As a result, the Commission is competent *ratione personae* to examine the petitions.

50. The Commission is competent *ratione loci* to hear the petitions, in that they allege violations of rights protected by the American Convention that took place within the territory of a State party to that convention.

51. In addition, the Commission is competent *ratione temporis* since the obligation to respect and guarantee the rights protected by the American Convention was already in effect for the State on the date when the facts alleged in the petitions took place.

52. Finally, the Commission is competent *ratione materiae*, because the petitions considered in this report allege the violation of rights protected in the American Convention.

B. Exhaustion of domestic remedies

53. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. This purpose of this requirement is to allow domestic authorities to learn about the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve the matter before it is heard by an international body.

54. Regarding petition 744-98, the State maintained that it was filed with this international body while a final ruling was still pending from the Supreme Court of Justice regarding an appeal for nullification filed by the alleged victim, Orestes Auberto Urriola Gonzáles. In this respect, it maintained that the petition does not satisfy the exhaustion of domestic remedies requirement. Regarding this position, the IACHR reiterates its doctrine according to which the analysis of the requirements provided in Articles 46 and 47 of the American Convention is performed in the light of the situation in effect at the time a decision is issued regarding the admissibility or inadmissibility of the petition.[25]

55. In the three petitions dealt with in this report the applicants alleged the violation of various provisions of the American Convention based on the arrests and criminal trials conducted against the

[25] IACHR, Report No. 2/08, Petition 506-05, *José Rodríguez Dañín* (Bolivia), March 6, 2008, para. 56 and Report No. 20/05, Petition 714-00, *Rafael Correa Díaz* (Peru), February 25, 2005, para. 32.

alleged victims as well as the supposed incompatibility of the legislative framework that regulated these trials with the American Convention. Additionally, they asserted that this legislative framework caused the alleged victims to be deprived of their liberty in police or prison facilities under precarious living conditions, and to be subjected to solitary confinement and several restrictions to visitation.

56. The information submitted indicates that criminal proceedings concluded in December 1999 with respect to Orestes Auberto Urriola Gonzáles and Cecilia Rosana Núñez Chipana and in April 1999 with respect to Cipriano Sabino Campos Hinostroza, through final decisions issued by the Supreme Court of Justice. After the ruling of unconstitutionality issued on January 3, 2003 by the Constitutional Court,[26] repealing a series of provisions of the antiterrorist legislation adopted in the 1990s, and in the context of the legislative reform on the subject of terrorism between January and February 2003, the three alleged victims sought nullification of their convictions and their immediate release. In the case of co-defendants Orestes Auberto Urriola Gonzáles and Cecilia Rosana Núñez Chipana, on October 4, 2004 the National Criminal Chamber ruled that the proceedings against them did not satisfy the grounds for nullification established in Legislative Decree No. 926 of February 19, 2003, and reduced the prison term for Cecilia Rosana Núñez Chipana alone. According to the allegations made by the parties, Orestes Auberto Urriola Gonzáles filed a *habeas corpus*, which was denied in a final instance decision of the Constitutional Court issued on December 28, 2004. Regarding the alleged victim Cipriano Sabino Campos Hinostroza, the information submitted indicates that he filed a *habeas corpus* action on January 10, 2003 seeking nullification of the criminal proceeding conducted against him. [27] That action was declared groundless in a final ruling of the Constitutional Court on June 25, 2004.[28]

57. Based on the foregoing considerations, the IACHR concludes that the alleged victims pursued and exhausted the relevant remedies to challenge the charges and criminal proceedings against them, and that the requirement set forth in Article 46(1)(a) of the American Convention has been met with the judicial resolutions that dismissed the request for nullification of these proceedings.

58. Regarding the alleged violation of the right protected in Article 21 of the Convention to the detriment of Mr. Cipriano Sabino Campos Hinostroza, the applicant's submissions is related to an alleged appropriation of belongings from the mother of the alleged victim, Mrs. María Hinostroza Caso, by members of the DINCOTE. Inasmuch as petition 1300-04 was filled on behalf of Mr. Cipriano Sabino Campos Hinostroza and given the lack of information on the filing of judicial remedies by Mrs. María Hinostroza to recover her property, the IACHR concludes that the alleged violation of Article 21 of the Convention do not meet the requirement of Article 46(1)(a) of such instrument.

C. Deadline for submitting the petition

59. Article 46(1)(b) of the Convention establishes that in order for a petition to be declared admissible it must have been submitted within a period of six months of the date when the interested party was informed of the final decision that exhausted the domestic jurisdiction.

60. According to paragraph 56 *supra*, the *habeas corpus* action filed by Orestes Auberto Urriola Gonzáles (P 744-98) and the appeal for nullification filed by Cecilia Rosana Núñez Chipana (P 614-00) were rejected in final instance decisions on December 28, 2004 by the Constitutional Court and on October 4, 2004 by the National Criminal Chamber, respectively. Given that such remedies were decided after the submission of petitions 744-98 and 614-00 to this international body, the IACHR considers the requirement provided in Article 46(1)(b) of the Convention to have been satisfied.

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[26] See paragraph 13 *supra*.

[27] Article 4 of the Peruvian Constitutional Proceedings Code establishes that "[t]he habeas corpus is a suitable remedy when a firm judicial resolution manifestly violates the individual liberty or the effective judicial protection."

[28] In this ruling, the Constitutional Court stated that "although it is true that it is not within our faculties to replace the jurisdiction of the criminal judges, it is also true, in cases where arbitrariness exists, that we are entitled to evaluate whether the sentence imposed on the individual has been supported by an appropriate and reasonable assessment of the evidence presented in the criminal proceeding ...." See initial brief for petition 1300-04, received on December 2, 2004, attachments, ruling of the Constitutional Court of June 25, 2004, Case File No. 2909-2003-HC/TC, grounds number one.

61. Regarding petition 1300-04, according to paragraph 56 *supra*, the final instance decision on the *habeas corpus* action filed by Cipriano Sabino Campos Hinostroza was issued on June 25, 2004 while the complaint was filed with this international body on December 2 of the same year. Therefore, the IACHR cosiders that the petition satisfies the requirement provided in Article 46(1)(b) of the Convention.

D. Duplication of proceedings and international *res judicata*

62. Article 46(1)(c) of the Convention provides that the admission of petitions is subject to the requirement that the subject "is not pending in another international proceeding for settlement" and Article 47(d) of the Convention stipulates that the Commission 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 considered in this report, the parties have not shown the existence of either of these two circumstances nor can they be deduced from the file.

E. Characterization of the alleged facts

63. For purposes of admissibility, the Commission must decide whether the petition presents facts that could establish a violation as stipulated in Article 47(b) of the American Convention and whether the petition is "manifestly groundless" or "obviously out of order" according to paragraph (c) of the same article. The standard for assessing these points is different from that required to decide on the merits of a complaint. The Commission must perform a *prima facie* evaluation to determine whether the complaint provides the basis for the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. This review is a summary analysis that does not involve any prejudgment or an advance opinion on the merits of the case.

64. In view of the evidence submitted by the parties, the IACHR considers that the circumstances under which the arrests of the alleged victims occurred, the alleged involvement of justice officials whose identity remained secret, as well as the supposed incompatibility of the legal framework surrounding the events with the American Convention tend to establish the violation of the rights established in Articles 7, 9, 8, and 25 as they relate to Articles 1.1 and 2 of the same instrument, all to the detriment of Orestes Auberto Urriola Gonzáles, Cecilia Rosana Núñez Chipana, and Cipriano Sabino Campos Hinostroza. The IACHR considers that the solitary confinement during the first year of prison terms, as provided in Article 20 of Decree Law 25475 in effect by the time of the facts, the alleged living conditions and restrictions to visitation tend to establish a breach to Article 5 of the Convention to the detriment of Orestes Auberto Urriola Gonzáles, Cecilia Rosana Núñez Chipana and Cipriano Sabino Campos Hinostroza, as well as the members of their family.

65. Regarding the alleged violation of the right established in Article 24 of the Convention to the detriment of Mr. Orestes Auberto Urriola Gonzáles, the IACHR deems that the petitioners have not submitted sufficient evidence to indicate the potential violation of that provision.

66. Finally, in that the applicants' claims are not obviously groundless or out of order, the Commission concludes that the petitions meet the requirements set by Articles 47(b) and 47(c) of the American Convention.

V. CONCLUSIONS

67. Based on the factual and legal considerations set forth and without prejudging the merits of the matter, the Inter-American Commission concludes that petitions 744-98, 614-00, and 1300-04 satisfy the admissibility requirements established in Articles 46 and 47 of the American Convention and accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare petitions 744-98, 614-00, and 1300-04 admissible with respect to Articles 5, 7, 9, 8 and 25 of the American Convention in connection with the obligations established in Articles 1.1 and 2 thereof.

2. To declare inadmissible the alleged violation of the right established in Article 21 of the Convention, with respect to petition 1300-04, pursuant to Article 46(1)(a) thereof.

3. To declare inadmissible the alleged violation of the right established in Article 24 of the Convention, with respect to petition 744-98, pursuant to Article 47(b) thereof.

4. To inform the State and the petitioners of this decision.

5. To join the petitions considered in this Admissibility Report under registered case no. 12.773 and to initiate processing on the merits of the case.

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

Aproved on August 26, 2010. (Signed): Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerreo, María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission.