REPORT No. 155/10
PETITIONS 755-04 – JAIME HUMBERTO DÍAZ ALVA
802-04 – RUBÉN GALVÁN BORJA
869-04 – EDUARDO ELIUD ESPINOZA NARCIZO
996-04 – VLADIMIR CARLOS VILLANUEVA
ADMISSIBILITY
PERU
November 1, 2010

I. SUMMARY

1. This report deals with petitions lodged on behalf of Jaime Humberto Díaz Alva (P 755-04)[1], Rubén Galván Borja (P 802-04)[2], Eduardo Eliud Espinoza Narcizo (P 869-04)[3] and Vladimir Carlos Villanueva (P 996-04)[4] ("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" or "the Convention"). The petitions claimed that between 1993 and 1996, the alleged victims were arrested, prosecuted, and convicted under decree laws applicable to the crimes of terrorism and high treason. They maintained 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 claimed that the alleged victims were tortured, kept in isolation for long periods, and held in subhuman conditions. The petitioners affirmed that after being convicted by military courts the alleged victims were retried before ordinary courts under legislative decrees enacted after January of 2003, which they claimed were also incompatible with the American Convention.

2. The State maintained that the statements of facts regarding the trials against the alleged victims in the 1990's 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) 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, 13, 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. Furthermore, the IACHR decided to join the four petitions and to process them together in the merits stage under the number 12.784. 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.

[1] Filed on August 16, 2004, on his own behalf.

[2] Filed on September 2, 2004, on his own behalf.

[3] Filed on September 13, 2004, on his own behalf. In their submissions to the IACHR the parties referred to the alleged victim with the names Eduardo Eliud Espinoza Narcizo and Eduardo Eliud Espinoza "Narciso".

[4] Filed on September 2, 2004, on his own behalf and by Juan Carlos Martínez and Irene Villanueva Loarte.

II. PROCESSING BY THE COMMISSION

4. Petition 755-04 was received on August 16, 2004 and on March 20, 2006, the petitioner presented additional information. On August 19, 2008, the relevant parts of these documents were transmitted to the State, which was given two months to respond. On October 27, 2008, the State presented its response, and on November 11, 2008, June 2 and November 2, 2009 and February 2, July 16 and October 19, 2010, it submitted additional briefs. The petitioner sent additional communications on April 1, September, November 9, 2009, on January 13, June 10, September 20 and October 1st, 2010. These communications were forwarded to the opposing party.

5. Petition 802-04 was received on September 2, 2004 and on February 23, 2006, the petitioner submitted additional information. On August 20, 2008, the relevant parts of these documents were transmitted to the State, which was granted two months to submit a response. On September 26, 2009, the State presented its response, and on October 13 of that year, it submitted the annexes. The State made additional submissions on November 2, 2009 and on September 3, 2010. The petitioner in turn sent an additional brief on February 3, 2010. These submissions were forwarded to the opposing party.

6. Petition 869-04 was received on September 13, 2004 and on April 3, 2006, the petitioner sent additional information. On August 2, 2008, the relevant parts of these documents were forwarded to the State, which was granted two months to submit its response. On December 4, 2008, the State sent its response, and on December 11 of that year, it submitted annexes to it. The State made additional submissions on April 27, November 2, and December 14, 2009 and on June 15 and September 10, 2010. The petitioner in turn sent additional briefs on March 9, August 14 and November 30, 2009, January 25 and July 8, 2010. These submissions were forwarded to the opposing party.

7. Petition 996-04 was received on September 2, 2004 and on October 5 and 20, 2004, January 26, June 27 and August 11, 2005, March 28 and October 12, 2006 and March 7, 2007, the petitioners submitted additional information. The relevant parts of these documents were transferred to the State on December 10, 2008 and it was given two months to submit a response. On March 20, 2009, the State submitted its response, and on August 25 and December 18, 2009, it submitted additional information. The petitioners in turn sent another brief on September 16, 2009. These submissions were forwarded to the opposing party.

III. POSITIONS OF THE PARTIES

Preliminary considerations

8. In the complaints considered in this report, the State and the petitioners described an initial series of criminal proceedings that took place throughout the decade of the 1990s, and a second series that began in 2003. The first proceedings were based on decree-laws on terrorism that were enacted during the administration of former President Alberto Fujimori. In January 2003, the Peruvian State adopted a new legislative framework that voided a series of trials for the crimes of terrorism and high treason. Before summarizing the position of the parties, the IACHR deems it necessary to refer to the two legal frameworks within which the facts presented by the parties are inscribed.

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 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.

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

11. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,[5] holding closed hearings, solitary confinement during the first year of prison terms,[6] and summary deadlines for presenting charges and issuing judgments in the case of the crime of high treason.[7] 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[8] and restricted the attorney's participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,[9] established concealed identities for judges and prosecutors ("faceless courts"),[10] prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.[11]

12. 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*;[12] and they only indicated minimum prison terms, without setting maximum penalties.[13]

13. 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.[14] 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.[15] The Repentance Law expired on October 31, 1994.[16]

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

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

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

[8] 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.

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

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

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

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

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

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

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

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

Antiterrorist legislation in force as of January 2003

14. 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.[17] 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.

15. 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.

16. 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.[18]

17. Between January and February 2003, the Executive Branch[19] issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926, and 927,[20] 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, 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[21] and prohibited the imposition of harsher sentences than those that had been handed down in the voided trials.[22]

18. 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 persons who applied to the benefits of Repentance Law ("*arrepentidos*"). Finally, Article 3 of that Legislative Decree ruled that the voiding of proceedings held by faceless judges 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

[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.

[18] 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.

[19] 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.

[20] 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.

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

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

1. Common claims

19. 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), while not in *flagranti delicto* and without warrants for their arrest. They maintained that the alleged victims were prosecuted and convicted of the crime of high treason, with the examination stage, trial, and sentencing governed by the "antiterrorist legislation" that came into force after May 1992.

20. 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.

21. The petitions claimed 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 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 "*arrepentidos*" or other persons under coercion, and that the accused were denied the opportunity of cross-examining the individuals who provided that information.

22. 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.

23. 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 with several restrictions to visitation. It is claimed that in some cases they were housed in prisons with extremely low temperatures and precarious detention conditions, such as Yanamayo, located in the Department of Puno at more than 4,000 meters above sea level. It is also alleged that they were deprived of reading materials, magazines and newspaper afforded by their relatives while serving their sentences.

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

25. 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 asserted that evidence produced before the faceless military courts was upheld in the new trials before the regular justice system. They claimed that the creation of the National Terrorism Chamber, further named National Criminal Chamber, and its actions in these cases, following the alleged incidents, were in breach of the right to be judged by a court pre-established by law. They contended that the bringing of a second trial for allegations already ruled on during the 1990s was in breach of the principle of double jeopardy.

26. 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 high treason, for which the alleged victims were originally convicted, was stuck off the Peruvian Criminal Law, the offense of terrorism as provided for in Article 2 of Decree Law 25475, as well as the

offenses of collaboration and affiliation to terrorist groups, ruled under Articles 4 and 5 of the same decree law, remain ambiguous and imprecise, in spite of the parameters for interpretation set by the Constitutional Court in its judgment of January 3, 2003.[23]

27. The petitioners indicated that through Law 29423 of October 2009, the Peruvian Congress abolished Legislative Decree 927 which regulated the criminal law enforcement in mattes of terrorism. They stated that with the abolition of the said legislative decree, the benefits of reduction of prison sentence through study and work, partial liberty and conditional parole became inapplicable to persons convicted of terrorism. According to the petitioners, the retroactive application of Law 29423 against them involves a breach of the rights protected in the American Convention.

2. Specific Allegations

Jaime Humberto Díaz Alva (P 755-04)

28. He alleged that on April 3, 1993, he was detained by members of DINCOTE while he was entering his place of work at the Educational Center of San Martín de Porres. He reported that he was taken to the facilities of the referenced police directorate, where he was held incommunicado for various days and subjected to torture and duress to force him to inculpate himself as a member of the Shining Path (*Sendero Luminoso*). The petitioner indicated that at the time of his arrest, he was carrying a small case containing some belongings, which was taken away by the police.

29. According to the allegations, DINCOTE agents applied electrical current to the genitals of Mr. Díaz Alva, immersed him in tanks of sewage, and struck him on different parts of his body. He stated that he was transferred to a beach and buried in sand up to his neck, while the police shot their firearms close to his head, in a simulation of his execution.

30. According to the information submitted, on December 3, 1993, the Special Military Judge of the Peruvian Air Force in charge of the preliminary proceedings convicted the alleged victim to 30 years in prison for high treason. By decision issued on February 10, 1994, the Special Military Tribunal of the Air Force upheld the conviction, and on August 18, 1994, the Special Military Supreme Court upheld the validity of the decisions of the two lower courts. The petitioner indicated that he was sent to Miguel Castro Castro Penitentiary with a series of restrictions on his right to receive visits.

31. According to the information submitted, the criminal proceeding in military court was voided in early 2003, whereupon a new trial was opened in the National Criminal Chamber. Petitioner reported that on January 13, 2005, that Chamber issued a judgment of conviction to 22 years in prison with additional punishment for the crime against public order – terrorism. On July 20, 2005, the First Transitory Criminal Chamber of the Supreme Court of Justice upheld the conviction, marking the end of the criminal proceedings.

32. The petitioner alleged that during the trial in the ordinary courts, his court-appointed attorneys were replaced five times, and so were unable to provide an adequate defense. He pointed out that the prosecutor's indictment in the National Criminal Chamber was virtually an exact copy of the statement of charges formulated by DINCOTE in 1993. He maintained that two witnesses proposed during the trial stage were rejected by the National Criminal Chamber, and that his evidence presented in response to the charges was not duly considered. Finally, he pointed out that his attorneys were not given access to the entire judicial case file, and that the National Criminal Chamber denied a petition to record the hearing, without giving any grounds for that decision.

33. In conclusion, the petitioner asserted that the Peruvian State is responsible for violation of the rights established in Articles 1.1, 2, 5, 7, 8, 9, and 24 of the American Convention.

[23] See paragraph 15, *supra*.

Rubén Galván Borja (P 802-04)

34. He alleged that on October 18, 1996, he was detained by members of the National Police of Peru while he was delivering handicrafts in the district of Miraflores, Department of Lima. He indicated that his captors took him to his own home, where they engaged in a search and seizure operation, taking various items, a check, and money. He reported that he was held in total isolation in DINCOTE for 30 days and that during the first seven days, he was subjected to constant beating, sleep and food deprivation, and threats against his children and wife. He indicated that they applied electric current to sensitive parts of his body and hung him by his arms, which caused a fracture of the clavicle. He also reported that he was taken to a beach, blindfolded with his hands tied, while members of DINCOTE forced him to run and shot their firearms at short range, simulating his execution.

35. The petitioner maintained that on November 13, 1996, his brother, Desiderio Galván Borja, brought a *habeas corpus* action, and that when she appeared at the DINCOTE facilities, the judge responsible for the case was informed that Mr. Galván Borja was not being detained there. He reported that DINCOTE members applied creams and injections, to make the torture marks disappear. He argued that when she went back 3 or 4 days after his first appearance, the judge responsible for the *habeas corpus* hearing interviewed him and noticed the torture marks that were still on his body. Despite this, however, the *habeas corpus* action was declared inadmissible. The petitioner alleged that after 30 days of detention in DINCOTE, he was transferred to Miguel Castro Castro Prison, where he was stripped naked and beaten by various police agents upon his arrival, in a practice allegedly known as "baptism."

36. The petitioner reported that he was convicted to life imprisonment for the crime of high treason, in a judgment issued by the Special Military Court of the Peruvian Air Force on April 16, 1997, which was upheld by the Special Military Tribunal of the Air Force and by the Special Military Supreme Tribunal on April 24 and August 28, 1997, respectively. He stated that after that proceeding was voided, he was submitted to a new trial for the crime of terrorism in an ordinary court. He reported that on October 11, 2004, the National Criminal Chamber issued a judgment of conviction to 20 years in prison along with other additional punishments, and that on September 22, 2005, the Supreme Court of Justice rejected the appeal to annul that judgment.

37. The petitioner argued that the convictions issued in both the military and the ordinary courts were based on the police statements taken by DINCOTE in 1996, even though the versions contained therein had not been corroborated by any other evidence. He maintained that during the oral proceeding in the National Criminal Chamber, access to the chamber was restricted to the families of the accused, and the media was not allowed to photograph or film the proceeding in any way. He alleged that in these circumstances, the criminal proceeding in civilian court violated the provisions of Article 8.5 of the Convention.

38. The petitioner reported that the statements made against him in the preliminary proceeding were not confirmed during the trial. He pointed out that when the appeal to void the judgment of the National Criminal Chamber was filed on October 11, 2004, the Supreme Court of Justice did not notify his defense counsel so that he could attend the hearing, which he contended was a violation of his right to defense.

39. Finally, the petitioner declared that the Peruvian State is responsible for violation of the rights established in Articles 1.1, 2, 5, 7, 8, 9, and 24 of the American Convention.

Eduardo Eliud Espinoza Narcizo (P 869-04)

40. He alleged that he was detained on August 15, 1993 by members of the National Police of Peru, who had broken into his residence without a judicial order, struck him several times, threatened him and shot him in the right hip. He said that a hood was put over his head, he was handcuffed, and subjected to drowning on a beach. He indicated that on the evening of August 15, 1993, he was transferred to DINCOTE's jail in Lima, where he remained for 30 days. He reported that while he was at the police headquarters, he was struck on sensitive parts of his body, and was subjected to hanging,

forced nudity, and threats that they would detain his wife and his sister, both of whom were pregnant at that time, all of this so that he would confess and incriminate others.

41. The petitioner reported that he gave a statement to the police without the presence of counsel or a prosecutor, and that he signed the document in question without reading it, under pressure and threats by DINCOTE agents. He indicated that a forensic physician examined him and verified that he had shackle marks on his wrists, loss of equilibrium, respiratory difficulties, and inflamed testicles. However, he added that said physician did not include any reference to acts of aggression or torture on the part of members of the National Police.

42. It was further contended that in September 1993, the alleged victim was transferred to the Alfonso Ugarte Army Post, where he was kept in metal cages in an unsanitary environment and received sparse rations of foul-smelling food. It was also reported that he contracted mites, fleas, and eczema, and that the soldiers guarding the prisoners would insult them with intimidating chants and prohibit them from lying down. Mr. Espinoza Narcizo was held incommunicado until he was transferred to a temporary detention center in Lima ("Carceleta") on October 20, 1993.

43. The petitioner claimed that he was tried for the crime of high treason in a military court, and convicted to life imprisonment by the Army's Special War Council on February 25, 1994, a judgment later upheld by the Military Supreme Tribunal of Justice. He indicated that on December 22, 1993, he was admitted to the Miguel Castro Castro Maximum Security Penitentiary, and that at dawn on September 12, 1994, he was transferred to Yanamayo-Puno Maximum Security Penitentiary. He reported that at both prisons, he was subjected to subhuman detention conditions, and that he was not adequately treated for the bronchitis he was suffering from. He indicated that at the first prison, he was forced to sing the national anthem in front of the Peruvian flag, or else he would be beaten and sent to a punishment cell. He reported that on May 21, 2001, he was transferred to the Ica Penitentiary for Convicts, in the department of the same name, and then returned to Miguel Castro Castro Penitentiary on November 22, 2002.

44. The petitioner indicated that after the military court proceedings were voided, he was convicted to 25 years in prison for the crimes listed in Articles 2 and 3.c of Decree Law No. 25475. According to information presented, this conviction was handed down by the National Criminal Chamber on October 1, 2005, and upheld by the Supreme Court of Justice in a final judgment on May 11, 2007. The petitioner pointed out that those decisions were based on his police statement, and on testimony and documents fabricated by DINCOTE, in circumstances of torture and coercion with the acquiescence of military prosecutors. He pointed out that of the witnesses who allegedly gave statements against him to DINCOTE, none confirmed their declarations in court. He contended that he was not tried within a reasonable period of time and that the National Criminal Chamber and the Supreme Court of Justice wrongly evaluated the evidence presented.

45. Finally, the petitioner claimed that the Peruvian State is responsible for violation of the rights established in Articles 1.1, 2, 5, 7, 8, 9, and 24 of the American Convention.

Vladimir Carlos Villanueva (P 996-04)

46. The petitioners reported that Vladimir Carlos Villanueva was detained for the first time on May 7, 1990, while he was heading for the *Universidad Nacional Mayor de San Marcos*, where he was studying Law and Political Science. Members of the Peruvian National Police had intercepted him on a public road, and upon determining that he was a student at that university, they took him to the facilities of DINCOTE. He was reportedly taken to a beach, where he was handcuffed and wrapped in a heavy cloth, and where shots were then fired at a short distance from his ears, simulating his execution. The petitioners maintained that Mr. Villanueva "was unfairly sentenced to 4 years of conditional imprisonment (probation), from which he was released on January 4, 1992." However, they did not report the crime he was convicted for or the date of the relevant judicial decisions.

47. The petitioners asserted that the alleged victim was detained a second time on March 21, 1995, at a home located in Chorrillos, Province of Lima. Four DINCOTE agents forced him to stand against a wall while they branded him a terrorist and hit him in the head, stomach, lumbar region, and legs. They reported that Vladimir Carlos Villanueva was not informed of the reasons for his detention, and was taken blindfolded and handcuffed to the DINCOTE facilities in Lima. They reported that in the early days of his detention at the police headquarters, the alleged victim was forced to stand for 15 hours a day, and was struck on the head and the feet whenever he tried to lie down or lost his balance from fatigue.

48. The petitioners stated that on March 23, 1995, the domicile of the alleged victim was searched without a court order and that on March 28 of that year, he was presented to the media in prison garb, insulted and accused of belonging to the Shining Path. They alleged that on April 6, 1995, Vladimir Carlos Villanueva gave a statement to the police without having been allowed to confer in private with his attorney, or to confront or cross-examine the prosecution's witnesses. They said that after having been held incommunicado for 34 days in DINCOTE, he was taken to Las Palmas en Surco Army Post, where he was confined in unsanitary conditions and given putrid food.

49. They reported that on April 24, 1995, a faceless military prosecutor filed criminal charges of high treason against Vladimir Villanueva. On May 11, 1995, he was sentenced to life imprisonment by the Special Military Court, a decision that was upheld by the Army's Special War Council and by the Special Military Supreme Tribunal on June 16 and August 7, 1995, respectively.

50. The petitioners indicated that while participating in the reading of the lower court judgment, Mr. Villanueva and others on trial were beaten by various soldiers. According to allegations, the military judge that read out the conviction, a prosecutor, and a state attorney [*procurador*] of the Army participated in the beating, which caused bleeding to the head and cheek of Mr. Villanueva. The petitioners reported that after these acts, the prisoners were taken to the Miguel Castro Castro Maximum Security Penitentiary. They further indicated that the members of the judicial police responsible for the transfer cruelly tormented the convicts, and required all of them, men and women, to strip naked and to subject themselves to a denigrating body search.

51. The petitioners indicated that on January 17, 1996, Mr. Villanueva was transferred to the Yanamayo-Puno Maximum Security Penitentiary, where he remained in confinement until he was transferred to Cachiche Penitentiary in Ica Department on May 11, 2001. They reported that during his first months of imprisonment in Miguel Castro Castro Penitentiary, he was held in a punishment cell, without access to the prison yard, and he was forced to sleep on a cement bed.

52. The petitioners indicated that after the military proceedings were voided, the alleged victim was tried for terrorism, and criminal investigative proceedings were opened with an arrest warrant on April 7, 2003. They stated that Mr. Villanueva filed appeals and *habeas corpus* actions against said prison sentence, all of which were found to be without merit. They pointed out that a series of illicit pieces of evidence fabricated by DINCOTE were incorporated into the case file of the ordinary court proceeding, such as a confession that was later retracted in court, on the grounds that the statement given to police was the result of coercion. They maintained that other persons who signed police statements incriminating the victim indicated in court that they did not know him. The petitioners reported that despite this, said court concluded that the change in the versions of the statements during judicial proceedings was not credible. They further contended that on May 16, 2006, the alleged victim was convicted to 15 years imprisonment in a decision issued by the National Criminal Chamber and upheld on December 14 of that year by the Supreme Court of Justice.

53. In conclusion, the petitioners alleged that the Peruvian State is responsible for violation of the rights established in Articles 1.1, 2, 5, 7, 8, 9, 24, and 25 of the Convention.

B. State

1. Common claims

54. The State alleged 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 throughout the 1990s by faceless civilian and military judges. It reported that the new trials were conducted 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.

55. 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.

56. It held that the creation of a National Chamber and Specialized Criminal Courts for terrorism cases was intended to facilitate and streamline the prosecution of individuals charged with those crimes. Peru stated that the judges who serve on those panels were already employed as career magistrates, and so there was no basis for the alleged victims' claims that they were tried by *ad hoc* courts or in breach of the right to be judged by a court pre-established by law.

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

58. 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 courts of the ordinary jurisdiction. 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 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.

59. As to the alleged acts of torture, inhumane conditions of detention and other supposed violations of personal integrity to the prejudice of the alleged victims, the State made no specific claims regarding the admissibility requirements set out in Article 46(1) of the American Convention.

60. 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 stressed that the IACHR is not entitled to review the merits decisions held by the domestic judicial entities within their jurisdiction and respectful of a fair trial.

61. With regard to the allegations surrounding the repeal of Legislative Decree 927 concerning the criminal enforcement for the offense of terrorism, the State confirmed the information submitted by the petitioners that Law 29423 denied prison benefits to individuals convicted of the crime of terrorism. The State indicated that the judgments of the Constitutional Court of Peru establish that the rules on criminal execution are of a procedural nature and are thus governed by the *tempus regit actum* principle. It considered that Law 29423 was enacted in accordance with the Political Constitution Peru and that prison benefits are not to be treated as subjective rights but as being under the discretion of the judicial authorities, within the framework of criminal policy as established in the Constitution and the legislation in force at the time a decision is made on a request lodged by a convicted person.

62. Finally, it 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

Jaime Humberto Díaz Alva (P 755-04)

63. The State asserted that after voiding the proceedings against Jaime Humberto Díaz Alva in the military courts, on February 25, 2003, the Public Ministry filed a new criminal complaint, accusing him of belonging to the insurgent Shining Path group. It indicated that on January 13, 2005, the National Criminal Chamber found him responsible for the crime against public order—terrorism, sentencing him to 22 years in prison. It further indicated that on July 20, 2005, the Transitory Criminal Chamber of the Supreme Court of Justice did not annul the conviction on appeal.

64. The State maintained that the criminal proceeding in the ordinary courts respected Mr. Diaz Alva's right to a fair trial, that he had the opportunity to exercise his defense and to question the conviction imposed. It contended that the mere disagreement of the petitioner with the results of the criminal proceeding does not represent a violation of his fundamental rights and that the IACHR is not entitled to review judicial decisions issued by competent authorities acting within the guarantee of due process.

65. The State did not submit any specific allegations regarding the presumed violations of the alleged victim's right to humane treatment and to personal liberty. Finally, it stated that the facts set forth by the petitioner do not characterize a violation of the rights protected in the American Convention, and it requested that the petition be declared inadmissible in accordance with Article 47(b) of that instrument.

Rubén Galván Borja (P 802-04)

66. It alleged that at the time the petition was transmitted by the IACHR on August 2, 2008, "the Peruvian State had satisfactorily corrected the irregularities that occurred in the decade of the 1990s, during the trial of civilians for the crime of high treason in the military jurisdiction or in the regular jurisdiction with faceless magistrates." The State reported facts similar to those of the petitioner regarding the decisions issued in criminal proceedings against the presumed victim in military and ordinary courts. It indicated that in the October 11 2004 judgment, the National Criminal Chamber found that he had confiscated land, participated in kidnappings, "people's courts," and "political and military training" as a political commander of the Shining Path in the Félix Jorge Caucana" settlement. With regard to the allegations of torture against Mr. Galván Borja at the facilities of DINCOTE, the State indicated that on October 30, 1996, the magistrate in charge of the Specialized Criminal Court in Lima found the *habeas corpus* action filed on his behalf to be without merit.

67. It indicated that in the conviction judgment of October 11, 2004, the National Criminal Chamber dismissed the allegations of torture and mistreatment at the police facilities, and pointed out that his police statement had been taken with the intervention of an attorney freely selected by him, and that the police affidavit did not contain a confession of guilt or indications of evidence produced under torture. As for the restrictions on the media for the proceeding in the regular courts, the State maintained that this principle prohibits secret trials, but it does not require unrestricted access on the part of the press to oral hearings, especially in cases in which public order and national security could be affected by such media coverage.

68. The State indicated that Mr. Galván Borja filed an appeal based on constitutional rights injury (*recurso de agravio constitucional*), which was declared without merit on September 20, 2006 by the Constitutional Tribunal. It concluded that the facts set forth by the petitioner do not tend to establish a violation of the rights protected in the American Convention, and requested that the petition be considered inadmissible, pursuant to Article 47(b) of said instrument.

Eduardo Eliud Espinoza Narcizo (P 869-04)

69. The State presented facts similar to those submitted by the petitioner regarding the rulings handed down in the criminal proceedings pursued. It indicated that the March 21, 2003 decision of the National Terrorism Chamber voided the military criminal proceedings, and that on May 9 of that year, the Fourth Specialized Criminal Court for Terrorism issued an order to open a preliminary proceeding.

70. It further stated that in its October 10, 2005 judgment, the National Criminal Chamber found Mr. Espinoza Narcizo responsible for the crime against public order—terrorism, and determined that he had participated in the theft of properties, planning of attacks with explosives, and that he was the head of an armed detachment of the Shining Path in the Constitutional Province of Callao. It contended that the National Criminal Chamber had reasonable grounds for its assessment of the conduct of Mr. Espinoza Narcizo and that the evidence was weighed in accordance with Peruvian legislation. He indicated that the defense attorney was able to present the elements of defense stipulated therein and that the right of the alleged victim to remain silent during the oral hearing was respected, and was not used against him.

71. The State affirmed that on the date that this petition was transmitted by the IACHR, August 20, 2008, its legislation on terrorism had already been amended, and it pointed out that the criminal proceeding against Mr. Espinoza Narcizo culminated in a final judgment of the Supreme Court of Justice on May 11, 2007. It concluded that the facts alleged in the petition no longer exist, and requested the IACHR to close the case, in accordance with Article 48(1)(b) of the Convention. Finally, it contended that the facts laid out by the petitioner do not tend to establish a violation of the rights protected in the Convention, and requested that the IACHR consider the petition inadmissible by virtue of Article 47.b of that instrument.

Vladimir Carlos Villanueva (P 996-04)

72. The State's account was similar to that of the petitioners with regard to the judgments handed down in the proceedings against Vladimir Carlos Villanueva, and to the *habeas corpus* actions initiated by him. It indicated that this petition was lodged with the IACHR in September 2004, whereas the final judgment of the Supreme Court of Justice was issued in December 2006. On this basis, the State argued that the petition was lodged when the remedies under domestic law had not been exhausted and requested the IACHR to consider it inadmissible pursuant to Article 46(1)(a) of the Convention.

73. The State contended that the proceeding in the regular court unfolded in accordance with due process. As for the allegations that two witnesses and another person who had availed himself of the Repentance Law had changed their initial statements to DINCOTE during the court proceeding, the State indicated that the National Criminal Chamber ruled as follows in its judgment of May 16, 2006:

> In the case of witnesses or defendants who indiscriminately give statements during both stages of a criminal proceeding, as long as the statement made during the preliminary stage of the proceeding was given in accordance with legally actionable guarantees, a situation that covers statements at police headquarters, and provided that it was given in accordance with what is specifically set forth in the pertinent authorizing law as regards the presence of a prosecutor, and, if applicable, a defense attorney, the sentencing court is not required to believe what is said during the oral proceeding, but is free to give greater or lesser credibility to either statement.

74. The State added that the National Criminal Chamber determined that Vladimir Carlos Villanueva was responsible for the crime of terrorism based on the procedures carried out by DINCOTE throughout the decade of the 1990s, which are consistent with a document of admission and a statement by two persons who indicated that they knew Vladimir Carlos Villanueva and that he was a political commander of Shining Path.

75. The State emphasized that on July 12, 2007, the alleged victim obtained the prison benefit of conditional freedom or parole, and was released on that same date. Finally, it alleged that the facts laid out by the petitioners do not establish a violation of the rights contained in the American Convention, and requested that the IACHR consider the petition inadmissible pursuant to Article 47(b) of that instrument.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

76. 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.

77. 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.

78. 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 petitions allegedly occurred.

79. Finally, the Commission has competence *ratione materiae*, because as explained 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.

B. Exhaustion of domestic remedies

80. 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.

81. Regarding petition 996-04, the State maintained that it was filed with this international body while the Peruvian courts had not reach a final ruling in the criminal proceedings against Mr. Vladimir Carlos Villanueva. In this respect, it alleged that the petition does not satisfy the exhaustion of domestic remedies requirement. As to this allegation, 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.[24]

82. The petitions addressed by this report describe, on the one hand, acts of aggression, torture and mistreatment, allegedly committed by state agents. The available information indicates that the alleged acts of violence and purportedly subhuman detention conditions were reported to the domestic jurisdiction authorities in different occasions throughout the 1990s. In addition, the judicial

[24] IACHR, Report No. 108/10, Petition 744-98 and others, *Orestes Auberto Urriola Gonz[ales and others* (Peru), August 26, 2010, para. 54, 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.

authorities of the ordinary justice system who tried the new cases brought in and after 2003 heard allegations about evidence obtained through coercion and torture.

83. 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 suitable channel to clear up incidents, prosecute the guilty, and impose the applicable criminal punishments, in addition to enabling other forms of reparation. The petitioners' allegations of torture and other supposed 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 adequate remedy for the petitions addressed in this report.[25]

84. The Peruvian State has submitted no information on investigations eventually carried out into the alleged torture and inhuman conditions of detentions to the prejudice of the alleged victims. It neither raised the objection of prior exhaustion of domestic remedies concerning these allegations, and so it has tacitly waived the right to present such a defense.

85. 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 July 2005 and May 2007.

86. 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

87. 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.

88. As established in paragraph 85 above, the second set of criminal trials brought against the four alleged victims concluded between July 2005 and May 2007, 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.

89. 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 82 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 filed within a reasonable period of time in relation to these claims.

[25] IACHR, Report No. 99/09, Petition 12.335, Colombia, Gustavo Giraldo Villamizar Durán, October 29, 2009, para. 33.

D. Duplication of international proceedings and *res judicata*

90. 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

91. 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.

92. In light of the elements 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 without warrants and their alleged public presentation in prison garb could 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 Jaime Humberto Díaz Alva, Rubén Galván Borja, Eduardo Eliud Espinoza Narcizo and Vladimir Carlos Villanueva. 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.

93. The IACHR also finds that the allegations about the criminal trials conducted by the military and ordinary 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 Jaime Humberto Díaz Alva, Rubén Galván Borja, Eduardo Eliud Espinoza Narcizo and Vladimir Carlos Villanueva. 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.

94. In the merits stage, the IACHR will examine whether the alleged prohibition of access to educational materials, newspapers and magazines on the part of the presumed victims during their imprisonment ultimately constitutes a violation of the right established in Article 13 of the American Convention, which is determined as admissible in this Report by virtue of the *iura novit curia* principle.

95. Regarding the alleged violation of the right established in Article 24 of the Convention, the IACHR deems that the petitioners have not submitted sufficient evidence to indicate the potential violation of that provision.

96. 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

97. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case, the Inter-American Commission concludes that Petitions 755-04, 802-04, 869-04 and 996-04 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 755-04, 802-04, 869-04 and 996-04 admissible as regards Articles 5, 7, 9, 11, 13, 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. To declare inadmissible the alleged violation of the right established in Article 24 of the American Convention in view of Article 47(b) of the same treaty.

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 12.784 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.

Aproved on the 1st day of the month of November, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez and Rodrigo Escobar Gil, members of the Commission.