

REPORT No. 111/11
PETITIONS 240-00 – JOSÉ FÉLIX ARCE APAZA
4582-02 – LUIS ENRIQUE QUISPE VEGA
ADMISSIBILITY
PERU
July 22, 2011

I. SUMMARY

1. This report refers to two petitions, one filed on behalf of José Félix Arce Apaza (P 240-00)¹ and the other on behalf of Luis Enrique Quispe Vega (P 4582-02)² [hereinafter also “the alleged victims”] in which it is alleged that the Republic of Peru (hereinafter also “Peru,” “the State,” or “the Peruvian State”) violated rights enshrined in the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and in the Inter-American Convention to Prevent and Punish Torture. The petitions argue that the alleged victims were detained and convicted under decree-laws on terrorism adopted during the government of Alberto Fujimori. It is said that those decrees, as well as the criminal proceedings that stemmed from them, are contrary to a series of provisions of the American Convention. It is indicated that the alleged victims were convicted based on evidence fabricated by the National Police of Peru, witness statements, and representations of co-defendants made without guarantees of due process.

2. The State argued that the proceedings brought against the alleged victims were substantiated in keeping with the provisions pre-established in the domestic law, and that they were convicted by impartial and competent courts, with strict observance of due process guarantees. It stated that in early 2003 a new legislative framework was adopted on terrorism that is in line with the American Convention and the Constitution of Peru. It argued that the facts narrated in the complaints do not tend to establish violations of provisions of the Convention and asked that the IACHR find them inadmissible under Article 47(b) of the Convention.

3. After examining the parties’ positions in light of the admissibility requirements set forth in Articles 46 and 47 of the Convention, the Commission concluded that it is competent to examine the petitions and that they are admissible for the alleged violation of the rights enshrined in Articles 5, 7, 9, 11, 8, and 25, as related to Articles 1(1) and 2 of the American Convention, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission decided to join the petitions and process them together in the merits stage, as case number 12.826. Finally, it decided to notify the parties of this Admissibility Report, make it public, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE COMMISSION

4. Petition 240-00 was filed on May 18, 2000, and the petitioner submitted additional information on July 18, 2000, and April 3, 2006. On November 19, 2008, that documentation was forwarded to the State, which was given two months to file its response. On February 24, 2009, the State sent its response, and on October 15 and November 2, 2009, it forwarded additional briefs. The petitioner sent additional information on May 7 and 27, 2009 and June 8, 2010.

5. Petition 4582-02 was received on December 3, 2002, and on May 9, 2006, the petitioners submitted additional information. On November 19, 2008, that documentation was forwarded to the State, which was given two months to submit its response. On February 24, 2009, the Peruvian State filed its response, and on March 13 and November 2, 2009, it sent additional communications.

III. THE PARTIES’ POSITIONS

¹ Filed on May 18, 2000, on his own behalf and by Ursula Arce Apaza and Teresa Arce Apaza.

² Filed on December 3, 2002, on his own behalf and by the Fundación EcuMénica para el Desarrollo y la Paz (FEDEPAZ).

Preliminary Issue

6. In the complaints considered in the instant report, the petitioners and the State described criminal proceedings under decree-laws on terrorism promulgated during the government of former President Alberto Fujimori. Those decrees were in force until the adoption of a new legislative framework on terrorism in January and February 2003. Before describing the position of the parties, the IACHR deems that it is necessary to refer to the regulatory frameworks mentioned by the parties.

Antiterrorist legislation in force from May 1992 to January 2003

7. Decree Law No. 25475, dealing with different forms of the crime of terrorism, was enacted in May 1992. In August of that year, Decree Law No. 25659 was enacted, criminalizing the offense of treason against the fatherland and giving the military justice system 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 treason against the fatherland.

8. 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.

9. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,³ holding closed hearings, solitary confinement during the first year of prison terms,⁴ and summary deadlines for presenting charges and issuing judgments in the case of the crime of treason against the fatherland.⁵ In addition, these decrees denied suspects the assistance of a legal representative prior to their first statement to an agent of the Public Prosecution Service⁶ and restricted the attorney’s participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,⁷ established concealed identities for judges and prosecutors (“faceless courts”),⁸ prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.⁹

10. 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*;¹⁰ and they only indicated minimum prison terms, without setting maximum penalties.¹¹

11. 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

³ Decree Law No. 25475, Art. 12(d).

⁴ Decree Law No. 25475, Art. 20.

⁵ Investigations, prosecutions, and sentencing for treason against the fatherland were governed by Decree Laws Nos. 25708 and 25744.

⁶ 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.

⁷ Decree Law No. 25475, Art. 13(h).

⁸ With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

⁹ Decree Law No. 25744, Art. 2.

¹⁰ Decree Law No. 25475, Art. 2.

¹¹ Decree Law No. 25475, Art. 3.

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.¹² 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.¹³ The Repentance Law expired on October 31, 1994.¹⁴

Antiterrorist legislation in force as of January 2003

12. On January 3, 2003, a series of provisions contained in the terrorism decree-laws enacted during the Fujimori administration were ruled unconstitutional by the Constitutional Court.¹⁵ That decision ruled Decree Law 25659 unconstitutional and ordered accusations for the crime of treason against the fatherland as defined therein to be tried as terrorism, as provided for in Decree Law 25475. In addition, it annulled the provisions that prevented the recusal of judges and the subpoena of officers involved in the police arrest report as witnesses and the provisions that allowed civilians to be tried by military courts. At the same time, absolute incommunicado detention and solitary confinement during the first year of prison terms were also ruled unconstitutional.

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

14. With regard to statements, arrest warrants, 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.¹⁶

15. Between January and February 2003, the Executive Branch¹⁷ issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926, and 927,¹⁸ 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 proceedings¹⁹ and prohibited the imposition of harsher sentences than those that had been handed down in the voided trials.²⁰

A. The petitioners' position

¹² Decree Law No. 25499, Articles 1.II.a and 1.III.

¹³ Supreme Decree No. 015-93-JUS, Articles 8.a and 36.

¹⁴ The Repentance Law was repealed by Law 26345 of August 30, 1994.

¹⁵ 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.

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, grounds paragraph No. 159.

¹⁷ 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.

¹⁸ Legislative Decree 927 regulated the criminal law enforcement in matters 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.

¹⁹ Legislative Decree No. 922, Art. 12(8).

²⁰ Legislative Decree No. 922, fifth complementary provision.

1. Common arguments

16. In the petitions considered in the instant report it was argued that the alleged victims were prosecuted and convicted for the crime of terrorism, with the preliminary proceeding, trial, and criminal enforcement regulated by the "antiterrorist legislation" adopted as of May 1992. The petitioners indicated that decrees that made up that legislation are incompatible with the 1979 Constitution of Peru, in force when it was issued, and the 1993 Constitution of Peru, as well as international human rights treaties ratified by Peru. They asserted that the charges brought by the Office of the General Prosecutor were based on evidence fabricated by the National Police (planted evidence), statements by third persons made under coercion and accusations by persons who waived themselves from the benefits of the Repentance Law, without any possibility of questioning these persons since the initial stages of the criminal proceeding.

17. They asserted that the alleged victims were subjected to abuse and torture by the police officers who detained them and during the stay in prison. As regards the conditions of detention, it was indicated that they suffered isolation for periods greater than 23 hours a day; they did not have any socio-pedagogic activities geared to their reinsertion, they were continuously transferred to localities far from their immediate family, and in some cases housed in prisons with extremely low temperatures and precarious conditions of detention, and with a series of restrictions on the right to receive visits.

2. Specific arguments

José Félix Arce Apaza (P 240-00)

18. The petitioners alleged that on January 16, 1999, José Félix Arce Apaza was detained at the home of his ex-wife by officers of the National Directorate Against Terrorism (DINCOTE as in its Spanish acronym). They stated that the police who participated in the operation planted evidence in the home with the intent of involving him in the insurgent group Shining Path (*Sendero Luminoso*). They indicated that a representative of the General Prosecutor appeared there after the search, and signed the respective arrest and seizure report without exercising any control whatsoever over the legality of the police conduct.

19. The petitioners alleged that the criminal proceeding brought against Mr. José Félix Arce Apaza was plagued by irregularities, violating the principle of legality, constantly violating the right to due process and judicial protection. They indicated that the judges in charge of the case refused to pursue the evidentiary leads proposed by the alleged victim's attorney, and kept him from questioning the witnesses who testified against him.

20. According to the information presented, on May 22, 1999, the alleged victim was convicted and sentenced to 15 years deprivation of liberty by the National Corporative Criminal Chamber for Terrorism Cases (Sala Nacional Corporativa Penal para Casos de Terrorismo), a decision that was appealed and subsequently affirmed by the Supreme Court of Justice on November 24, 1999. It was indicated that those judgments impute to Mr. Arce Apaza facts of which he was already acquitted in earlier proceedings, and it is adduced that the crime of which he was convicted was not in the complaint presented by the Public Ministry, which they adduced violated his right to defense.

21. The petitioners indicated that Mr. José Félix Arce was initially held at the Socabaya prison, but that on November 29, 2001, he was transferred to the Challapalca prison in Tacna, department of Puno, located more than 4,600 meters above sea level, with extremely low temperatures. They alleged that when he was taken into the second prison he was beaten for several hours, sprayed with pepper gas, and subjected to electric shocks. They alleged that these acts of violence and the conditions of detention to which he was subjected resulted in a fractured neck, chronic pharyngitis, and pulmonary pains. It is indicated that on December 27, 2001, the alleged victim filed a *habeas corpus* action before the criminal courts of Puno in order to demand his transfer to Challapalca prison to be overturned. It was noted that the *habeas corpus* action was found to have merit on final appeal by the

Constitutional Court on November 20, 2002, resulting in the return of the alleged victim to the Socabaya prison in Arequipa on December 29, 2002.

22. The petitioners indicated that in view of the change in the terrorism laws that went into effect in January and February 2003, Mr. Arce Apaza filed a writ of *habeas corpus* on October 7, 2004, seeking annulment of the criminal proceeding against him. They argued that on November 22, 2004, the Specialized Judge for Criminal Matters of Arequipa found the action filed inadmissible, a decision that was affirmed by at all levels of judicial appeal.

23. Finally, the petitioners alleged that the State is responsible for violating the rights protected in Articles 1, 2, 5, 7, 8, 9, and 25 of the American Convention on Human Rights.

Luis Enrique Quispe Vega (P 4582-02)

24. The petitioners alleged that Luis Enrique Quispe was first detained on March 8, 1989, by officers of the National Police of Peru, who took him, that same day, to a police station in Lima and subsequently to DINCOTE facilities. On that first occasion he was accused of the crime of terrorism, and was acquitted by the Thirteenth Correctional Court of the Superior Court of Lima on December 5, 1990. It is indicated that during his detention Mr. Luis Quispe was subjected to physical and psychological torture and forced to sign a blank sheet of paper that years later would be used as evidence to incriminate him. As the petitioners described it, police agents beat him and threatened to kill him, placing a firearm to his temple, forcing him to plead guilty of belonging to Shining Path. They alleged that special reports of a forensic physician in the record of the proceeding decided on last appeal on December 5, 1990 describe acts of torture to the detriment of Mr. Quispe Vega. It was adduced that days after having been detained Mr. Quispe Vega was presented to the media by members of the National Police and called a "terrorist."

25. The petitioners argued that Mr. Quispe Vega was detained on a second occasion on October 31, 1997, and accused subsequently of the crime of treason before the military jurisdiction, as a result of statements by a person who had accepted the benefits of the Repentance Law. They indicated that on November 13, 1999, the Supreme Council of Military Justice disqualified itself from hearing the case and referred the file to the ordinary courts. They noted that on April 27, 2000, the Third Criminal Chamber of the Superior Court of Justice of La Libertad acquitted Mr. Quispe Vega of the crime of terrorism. The applicants did not indicate whether such judgment is now final.

26. The petitioners alleged that in tandem with all the foregoing, on July 16, 1993, the Supreme Court of Justice had annulled the first judgment of acquittal in favor of Mr. Quispe Vega, of December 5, 1990, on the grounds that the evidence had not been properly assessed. They indicated that the alleged victim was not aware of that resolution of annulment until August 2000, when he went voluntarily to the judicial authorities. They stated that he was arrested for the third time on November 30, 2000, and released on December 1, 2000, under probation.

27. According to the information presented, on March 2, 2001, the Superior National Corporative Criminal Chamber for Terrorism Cases (hereinafter "the National Chamber for Terrorism Cases") convicted him and sentenced him to 15 years in prison and other accessory penalties. It was indicated that on November 23, 2001, the Criminal Chamber of the Supreme Court of Justice ruled that there had not been any nullity in the judgment of the trial court, and nonetheless reduced the period of deprivation of liberty to 10 years. The petitioners argued that the attorney for the alleged victim was not notified of the judgment, and that he learned of it on June 3, 2002, when certified copies of the record were given to him. According to the information presented, that documentation had been previously requested to the National Chamber on Terrorism.

28. The petitioners argued that members of the National Police together with the Office of the General Prosecutor manipulated the evidence to the detriment of the alleged victim. They indicated that the verdict of the National Chamber on Terrorism was based mainly on a supposedly adulterated report on the seizure of a firearm and a blank paper sheet signed by Mr. Quispe Vega allegedly under coercion

and torture at the facilities of the police station of Lima in March 1989, which was then turned into a self-incriminating statement.

29. Finally, the petitioners alleged that the State is responsible for violating the rights enshrined in Articles 1, 5, 7, and 8 of the American Convention, and Articles 2, 6, 8, and 10 of the Inter-American Convention to Prevent and Punish Torture.

B. The State's position

1. Common arguments

30. The State argued that the proceedings against the alleged victims were conducted in keeping with the provisions pre-established in the legislation of Peru, that they were assisted by attorneys freely chosen or appointed by the courts, and that they could pursue the remedies provided for in Peruvian legislation without any restriction whatsoever. It stated that the criminal proceedings were decided upon by independent and impartial judges who based their decisions on the evidence produced in the different stages of the proceedings. It stated that it was not up to the IACHR to take the place of the domestic organs when it comes to weighing evidence produced at trial and in determining the criminal liability of the alleged victims, especially when those organs acted within the rules of a fair trial.

31. The State noted that in January and February 2003 legislative reforms were made regarding the investigation, prosecution, and criminal enforcement for the crime of terrorism, which implied annulling the trials conducted in the 1990s by military judges or civilian judges whose identities were kept secret.²¹ It argued that this new legislative framework is in line with the standards of the inter-American human rights system and the Constitution of Peru.

32. The State did not present information on investigations eventually opened into the alleged torture and inhuman conditions of detention to the detriment of the alleged victims, and did not make any allegation on the admissibility requirements set forth at Article 46(1) of the American Convention. It argued that the facts alleged in the complaints do not tend to establish a violation of rights protected in the American Convention and asked that the IACHR find them inadmissible pursuant to Article 47(b) of the same treaty. Finally, the State attached a copy of the judicial resolutions handed down in the proceedings against the alleged victims.

2. Specific arguments

José Félix Arce Apaza (P 240-00)

33. The State made a narration similar to that of the petitioners with respect to the judicial resolutions issued throughout the criminal proceeding against Mr. José Félix Arce Apaza. It argued that the victim was convicted based on Article 5 of Decree-Law No. 25475, whose contents were not derogated or modified by the Constitutional Court in its judgment of January 3, 2003. According to its own interpretation, it asserted that in recent judgments the Inter-American Court of Human Rights has expressed that Article 5 of Decree-Law No. 25475 is not incompatible with the prohibition of *ex post facto* laws established in Article 9 of the Convention.

34. With respect to the arguments that Mr. Arce Apaza was convicted of a crime not mentioned in the prosecutorial indictment, the State asserted that based on the principle of alternative

²¹ Article 2 of Legislative Decree 926 of February 20, 2003, establishes as follows:

The National Chamber on Terrorism, progressively and in a period not greater than 60 working days from the entry into force of this Legislative Decree, shall annul, at its own motion, unless there is an express waiver by the prisoner, the convictions, trials and the indictment in criminal proceedings where judges or prosecutors with secret identities have participated.

determination (*principio de determinación alternativa*) a court can adjust the criminal charges brought by the prosecution to the corresponding criminal law definition.

Luis Enrique Quispe Vega (P 4582-02)

35. The State submitted a statement of facts similar to that of the petitioners with respect to the judgments handed down in the proceedings against Mr. Luis Enrique Quispe Vega. It asserted that those proceedings were processed in keeping with the provisions in force at the moment the acts were committed, and that the trial was held respecting the principle of legality. It noted that the criminal law definitions of which he was convicted are Articles 288-A and 288-C of the Criminal Code, so long as the acts of which he was accused had occurred prior to the enactment of Decree-Law 25475. The State asserted that the sentence imposed on Mr. Quispe Vega derived from a regular proceeding respectful of the rights to judicial guarantees and judicial protection.

IV. ANÁLISIS OF COMPETENCE AND ADMISSIBILITY

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

36. The petitioners are authorized by Article 44 of the Convention to file complaints. The alleged victims are individuals who were under the jurisdiction of the Peruvian State as of the date of the facts alleged. Peru ratified the American Convention on July 28, 1978. Accordingly, the Commission is competent *ratione personae* to examine the petitions.

37. The Commission is competent *ratione loci* to take cognizance of the petitions, insofar as they allege violations of rights protected by the American Convention said to have taken place in the territory of a state party to that treaty.

38. In addition, the Commission is competent *ratione temporis*, for the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the dates of the facts alleged in the petitions.

39. Finally, the Commission is competent *ratione materiae*, because as will be explained in the section on characterization *infra*, the petitions considered in this report allege facts that tend to establish the violation of rights protected by the American Convention and by the Inter-American Convention to Prevent and Punish Torture, whose instrument of ratification was deposited by Peru on March 28, 1991.

B. Exhaustion of domestic remedies

40. Article 46(1)(a) of the American Convention provides that in order for a complaint presented to the Inter-American Commission pursuant to Article 44 of the Convention to be admissible, it is necessary that one have pursued and exhausted domestic remedies, in keeping with the generally accepted principles of international law. The purpose of this is to enable the domestic authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to have the opportunity to solve it before it is taken up by an international body.

41. The petitions considered in the instant report raise, first, alleged acts of torture and ill-treatment allegedly committed by state agents. Based on the available information, those facts were reported to the organs of the domestic jurisdiction by means of briefs on behalf of the accused and *habeas corpus* actions.

42. The precedents established by the Commission indicate that every time a crime subject to public prosecution is perpetrated, the State has the obligation to promote and give impetus to the criminal proceedings, and that, in those cases, this is the suitable jurisdiction for clarifying the facts, prosecuting those responsible and establishing the corresponding criminal sanctions, as well as opening

the door to any possible reparations. The facts stated by the petitioners in relation to acts of torture and other alleged injuries to personal integrity translate in domestic law into criminal conduct whose investigation and trial must be pursued at the initiative of the prosecutorial authorities, and therefore this is the adequate remedy for the claims in this petition.²²

43. The Peruvian State has not presented information on investigations opened into the alleged torture and subhuman conditions of detention to the detriment of the alleged victims, nor has it filed an objection of failure to exhaust domestic remedies.

44. The instant petitions also raise a number of arguments related to the criminal proceedings and the alleged violation of due process guarantees. With respect to petition 240-00, the information presented indicates that the criminal proceeding against Mr. José Félix Arce Apaza culminated with the final judgment by the Supreme Court of Justice of November 24, 1999. That information also indicates that Mr. Arce Apaza filed a writ of *habeas corpus* with the Sixth Specialized Criminal Court of Arequipa, seeking annulment of the criminal proceeding against him.²³ According to the parties' allegations, that action was declared unfounded on November 22, 2004. As for petition 4582-02, the parties have indicated that on November 23, 2001, the Supreme Court of Justice issued a final judgment of conviction against Mr. Luis Enrique Quispe Vega.

45. Based on the foregoing considerations, the IACHR concludes that both petitions satisfy the requirement provided for at Article 46(1)(a) of the Convention.

C. Time period for submitting a petition

46. Article 46(1)(b) of the Convention establishes for a petition to be admissible it must be submitted within six months from the date on which the interested person was notified of the final decision that exhausted domestic remedies. This rule does not apply when the Commission finds that one of the exceptions to the exhaustion of domestic remedies rule set forth at Article 46(2) of the Convention applies. In those cases, the Commission must determine whether the petition was presented in a reasonable time, in keeping with Article 32 of its Rules of Procedure.

47. According to what is narrated at paragraph 44 *supra*, the criminal proceeding against José Félix Arce Apaza concluded with the final judgment of the Supreme Court of Justice of November 24, 1999. In addition, a *habeas corpus* action brought by him seeking annulment of the criminal proceeding was dismissed on November 22, 2004, subsequent to the filing of the petition before the Commission. Accordingly, the requirement established at Article 46(1)(b) has been satisfied.

48. With respect to petition 4582-02, the applicants noted that while the Supreme Court of Justice handed down a final judgment on November 23, 2001, Mr. Luis Enrique Quispe Vega's legal representative was not notified of that decision and only learned of its content when he received the certified copies of the file from the National Chamber on Terrorism on June 3, 2002.²⁴ Given that the Peruvian State has not presented any documentation that refutes those allegations, nor has it filed any preliminary objections with respect to the requirement provided for in Article 46(1)(b) of the Convention, the IACHR considers that petition 4582-02, being filed on December 3, 2002, satisfies that admissibility requirement.

49. As for the allegations on the conditions of detention, torture, and other alleged violations of the right to humane treatment made in both petitions, as indicated in paragraph 41 *supra*, those alleged facts were said to have been reported to the judicial authorities on different occasions. Given the absence

²² IACHR, Report No. 99/09, Petition 12.335, Colombia, *Gustavo Giraldo Villamizar Durán*, October 29, 2009, para. 33.

²³ Article 4 of the Peruvian Code of Constitutional Procedure establishes: "Habeas corpus is available when a firm judicial resolution manifestly violates individual liberty and effective procedural protection."

²⁴ Initial brief filed in petition 4582-02, received on December 3, 2002, annexes, note sent by David L. Velazco Rondón, defense counsel of the alleged victim, with a seal showing it was received by the National Chamber on Terrorism on March 11, 2002.

of arguments by the State and of information in the record on the opening up of criminal investigations as of the date of adoption of this report, the IACHR considers that the two petitions were submitted in a reasonable time with respect to those arguments.

D. Duplication of procedure and international *res judicata*

50. Article 46(1)(c) of the Convention provides that the admission of the petitions is subject to the requirement that the matter "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 substantially reproduces a prior petition or communication already examined by the Commission or another international body. In the petitions considered in the instant report, the parties have not raised the existence of those circumstances, nor can they be deduced from the record.

E. Characterization of the facts alleged

51. For the purpose of admissibility, the Commission must determine whether the petition describes facts that tend to 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 subparagraph c) of the same article. This criteria used to examine these claims are different from the ones required to decide upon the merits of a complaint. The Commission must conduct a *prima facie* evaluation not for the purpose of establishing an alleged violation but to examine whether the petition reports facts that tend to establish grounds for the apparent or potential violation of a right guaranteed by the American Convention. This examination is a preliminary review that does not imply a prejudgment of the merits, neither does it suggest any opinion on the merits of the dispute.

52. In view of the elements presented by the parties, the IACHR considers that the circumstances in which the detention of the alleged victims took place, the alleged acts of torture, and the conditions of detention at the DINCOTE and other prison facilities could characterize a violation of the rights enshrined in Articles 5 and 7, in conjunction with Articles 1(1) and 2 of the American Convention; and of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of José Félix Arce Apaza and Luis Enrique Quispe Vega. In addition, the IACHR considers that the effects of the facts referred to in this paragraph, as well as the alleged incommunicado detention of the alleged victims for long periods and restrictions on the right to receive visits could characterize a violation of the right enshrined in Article 5(1) of the Convention, also to the detriment of their next-of-kin.

53. With respect to the allegations around the criminal proceedings in the military and regular jurisdictions, as well as the alleged incompatibility of the legal framework in which the facts unfolded with the American Convention, the IACHR considers that they could characterize a violation of the rights enshrined in Articles 9, 8, and 25, in conjunction with Articles 1(1) and 2 of said instrument, all to the detriment of José Félix Arce Apaza and Luis Enrique Quispe Vega.

54. As for the alleged search without a judicial warrant of the residence where Mr. José Félix Arce Apaza was on January 19, 1999, and the alleged public presentation of Mr. Luis Enrique Quispe Vega as a "terrorist" by members of the National Police of Peru, the Commission will evaluate at the merits stage whether those facts entail a violation of the right provided for in Article 11 of the American Convention.

55. Finally, as it is not manifest or evident that the petitions considered in this report are groundless or out of order, the Commission concludes that they meet the requirements established at Articles 47(b) and (c) of the American Convention.

V. CONCLUSIONS

56. Based on the arguments of fact and law indicated above and without prejudging the merits of the case, the Inter-American Commission concludes that the petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention, and therefore

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible petitions 240-00 and 4582-02 in relation to Articles 5, 7, 9, 11, 8, and 25 of the American Convention in connection with the obligations established at Articles 1(1) and 2 of the same instrument, and in relation to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify the State and the petitioners of this decision.

3. To join the petitions considered in the instant Admissibility Report and include the matters in the registry as Case 12.826 and begin processing the case on the merits.

4. To publish this decision and include it in the Annual Report to be presented to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 22nd day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, and María Silvia Guillén, Commission Members.