

**REPORT No. 107/11**  
PETITIONS 1105-04 – MOISÉS SIMÓN LIMACO HUAYASCACHI  
1201-04 – NÉSTOR ANDRÉS LUYO PÉREZ  
1216-04 – MARIO MERWAN CHIRA ALVARADO  
ADMISSIBILITY  
PERU  
July 22, 2011

**I. SUMMARY**

1. This report concerns three petitions lodged on behalf of Moisés Simón Limaco Huayascachi (P 1105-04),<sup>1</sup> Néstor Andrés Luyo Pérez (P 1201-04),<sup>2</sup> and Mario Merwan Chira Alvarado (P 1216-04)<sup>3</sup> [hereinafter also "the alleged victims"], which allege the violation on the part of the Republic of Peru (hereinafter also "Peru," "the State," or "the Peruvian State") of rights enshrined in the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention"). The petitions indicate that the alleged victims were arrested, prosecuted, and convicted for the crime of high treason between 1993 and 1994, in application of decree laws that were adopted beginning in May 1992. They assert that those decree laws, as well as the criminal proceedings stemming from them, run contrary to a series of provisions of the American Convention. The petitions also contended that the alleged victims were tortured, isolated for long periods, and subjected to inhumane detention conditions. The petitioners indicated that after being convicted in the military justice system, the alleged victims had to undergo new trials in the ordinary courts. They stated that those trials were conducted in accordance with a legislative framework on terrorism adopted as of January 2003, which they contended was also incompatible with the American Convention.

2. The State maintained that the initial allegations regarding the proceedings that took place in the 1990s have changed substantially in view of the adoption, at the beginning of 2003, of a new legislative framework on terrorism. It indicated that this new framework and the criminal trials stemming from it conform to the rights protected in the American Convention and the Political Constitution of Peru. Finally, the State held that the petitioners' allegations do not tend to establish violations of provisions of the Convention, and asked the IACHR to declare the complaints inadmissible pursuant to Article 47(b) of the aforementioned international instrument.

3. After examining the parties' position in light of the admissibility requirements established in Articles 46 and 47 of the Convention, the Commission concluded that it is competent to examine the three petitions, and that they are admissible due to the alleged violation of the rights enshrined in Articles 5, 7, 9, 8, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of the Convention, and in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The IACHR also decided to join the three petitions and process them together in the merits phase, under Case No. 12.822. The Commission decided to give notice of this Admissibility Report to the petitioners, make it public, and include it in its Annual Report.

**II. PROCESSING BY THE COMMISSION**

4. Petition 1105-04 was received on October 20, 2004, and the petitioners submitted additional information on January 26, 2005; June 3, 2008; and August 11 and September 8, 2009. The pertinent parts of that documentation were forwarded to the State on March 24, 2010, and the State was given a two-month period to respond. On June 1, 2010, the State submitted its response, and on December 7 it sent an additional communication. The petitioners, in turn, submitted an additional brief on September 10, 2010 and June 20, 2011.

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<sup>1</sup> Lodged on October 20, 2004, by Simón Limaco Hilario, Julia Huayascachi Beraun, and Carmen Rosa Hualla Muriel.

<sup>2</sup> Lodged on his own behalf on November 9, 2004.

<sup>3</sup> Lodged on his own behalf on November 10, 2004. On June 2, 2010, Mrs. Doris Lorena Chira Alvarado became a co-petitioner.

5. Petition 1201-04 was received on November 9, 2004, and the petitioner sent additional information on December 19, 2005, and January 3, 2006. The pertinent parts of this documentation were forwarded to the State on August 26, 2008, and the State was given a two-month period in which to respond. On January 22, 2009, the State submitted its response, and on January 29 of the same year it sent in the respective annexes. The petitioner submitted additional information on April 30 and August 14, 2009. The State, in turn, sent briefs on June 15, November 2, and December 22, 2009.

6. Petition 1216-04 was received on November 10, 2004, and the petitioners submitted additional information on May 5, 2006. The pertinent parts of this documentation were forwarded to the State on December 10, 2008, and the State was given a two-month period to respond. On March 12, 2009, the State submitted its response, and on March 30 of that year it sent the respective annexes. The petitioners submitted additional briefs on June 2, 2009, and on January 4 and 25, 2010, February 1<sup>st</sup> and March 28, 2011. The State, in turn, submitted communications on August 26 and November 2, 2009, and January 4, 2011.

### III. POSITIONS OF THE PARTIES

#### *Preliminary considerations*

7. 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*

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

9. The decrees that made up what was known as the “antiterrorist legislation” had the stated purpose of reining in the escalation of targeted killings against officers of the judiciary, elected officials, and members of the security forces, as well as of disappearances, bombings, kidnappings and other indiscriminate acts of violence against the civilian population in different regions of Peru, attributed to outlawed insurgent groups.

10. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,<sup>4</sup> holding closed hearings, solitary confinement during the first year of prison terms,<sup>5</sup> and summary deadlines for presenting charges and issuing judgments in the case of the crime of high treason.<sup>6</sup> In addition, these decrees denied suspects the assistance of a legal representative prior to their first statement to an agent of the Public Prosecution Service<sup>7</sup> and restricted the attorney’s

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<sup>4</sup> Decree Law No. 25475, Art. 12(d).

<sup>5</sup> Decree Law No. 25475, Art. 20.

<sup>6</sup> Investigations, prosecutions, and sentencing for high treason were governed by Decree Laws Nos. 25708 and 25744.

<sup>7</sup> The right to the assistance of freely chosen defense counsel from the very onset of criminal proceedings was later established by Article 2 of Law No. 26447.

participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,<sup>8</sup> established concealed identities for judges and prosecutors (“faceless courts”),<sup>9</sup> prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.<sup>10</sup>

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

12. On May 12, 1992, the Executive Branch of Government passed Decree-Law 25499, also called the Repentance Law, which regulated the reduction, exemption, remission or mitigation of imprisonment sentences for persons charged or convicted for the crime of terrorism who provided information leading to the capture of chiefs, heads, leaders or principal members of terrorist organizations.<sup>13</sup> 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.<sup>14</sup> The Repentance Law expired on October 31, 1994.<sup>15</sup>

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

13. On January 3, 2003, a series of provisions contained in the terrorism decree-laws enacted during the Fujimori administration were ruled unconstitutional by the Constitutional Court.<sup>16</sup> That decision ruled Decree Law 25659 unconstitutional and ordered accusations for the crime of high treason as defined therein to be tried as terrorism, as provided for in Decree Law 25475. In addition, it annulled the provisions that prevented the recusal of judges and the subpoena of officers involved in the police arrest report as witnesses and the provisions that allowed civilians to be tried by military courts. At the same time, absolute incommunicado detention and solitary confinement during the first year of prison terms were also ruled unconstitutional.

14. With reference to the crime of terrorism, the Constitutional Court upheld the legality of Article 2 of Decree Law No. 25475, but ruled that it would apply solely to willful acts; it also established interpretative guidelines to define the scope of the offense.

15. With regard to statements, arrest warrants, technical and expert opinions given before faceless judges, the Constitutional Court ruled that they were not automatically tainted and that the regular civilian judges hearing the new charges would have to verify their worth as evidence, conscientiously and in conjunction with other substantiating elements as set down in regular criminal procedural law.<sup>17</sup>

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<sup>8</sup> Decree Law No. 25475, Art. 13(h).

<sup>9</sup> With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

<sup>10</sup> Decree Law No. 25744, Art. 2.

<sup>11</sup> Decree Law No. 25475, Art. 2.

<sup>12</sup> Decree Law No. 25475, Art. 3.

<sup>13</sup> Decree Law No. 25499, Articles 1.II.a and 1.III.

<sup>14</sup> Supreme Decree No. 015-93-JUS, Articles 8.a and 36.

<sup>15</sup> The Repentance Law was repealed by Law 26345 of August 30, 1994.

<sup>16</sup> Resolution of the Constitutional Court of January 3, 2003, File No. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens.

<sup>17</sup> Resolution of the Constitutional Court of January 3, 2003, File No. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens, grounds paragraph No. 159.

16. Between January and February 2003, the Executive Branch<sup>18</sup> issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926, and 927,<sup>19</sup> 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<sup>20</sup> and prohibited the imposition of harsher sentences than those that had been handed down in the voided trials.<sup>21</sup>

17. 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**

### **1. Common claims**

18. The petitions dealt with in this report claim that the alleged victims were arrested between 1993 and 1994 by members of the Peruvian National Police, 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 treason against the fatherland, with the examination stage, trial, and sentencing governed by the "antiterrorist legislation" that came into force after May 1992.

19. The petitioners held 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.

20. The petitions claim that the alleged victims were tried before the military justice system by judicial officials whose identities were kept secret. According to the allegations, they were forced to sign blank pages or confessions after being tortured by members of the National Anti-Terrorism Directorate (DINCOTE as in its Spanish acronym), 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.

21. 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.

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<sup>18</sup> On January 8, 2003, the Congress of the Republic of Peru enacted Law 27913, whereby it delegated the power to legislate on terrorism-related matters to the Executive Branch.

<sup>19</sup> 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.

<sup>20</sup> Legislative Decree No. 922, Art. 12(8).

<sup>21</sup> Legislative Decree No. 922, fifth complementary provision.

22. 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 transferred to locations far away from their families; in some cases they were housed in prisons with extremely low temperatures and precarious detention conditions, such as Yanamayo-Puno and Challapalca-Tacna, and that their right to receive visits was restricted.

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

24. 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.

25. The petitioners claimed that following the voiding of their military convictions, the alleged victims were held in custody for several days or months, in the absence of final convictions and of procedural grounds that would have justified their preventive custody. They held that this undermined their right to the presumption of innocence and to personal liberty. They claimed that although the offense of treason against the fatherland, for which the alleged victims were originally convicted, was struck off the Peruvian 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.<sup>22</sup>

26. The petitioners indicated that through Law 29423 of October 2009, the Peruvian Congress abolished Legislative Decree 927 which regulated the criminal law enforcement in matters 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**

### *Moisés Simón Limaco Huayascachi (P 1105-04)*

27. The petitioners alleged that Moisés Simón Limaco was arrested in the city of Lima, without a warrant, by members of DINCOTE on June 17, 1994. They stated that he was taken to facilities of the Special Intelligence Group of the Anti-Terrorism Division (GEIN-DIVICOTE), where he allegedly remained incommunicado for 30 days before being transferred to the DINCOTE jail. Later, he was reportedly transferred to facilities of the Anti-Terrorism Police (DELTAS), where it is indicated that he remained incommunicado for another 60 days, in a place that was unhealthy and overcrowded. The petitioners maintained that after a summary trial heard by military judges, Mr. Limaco Huayascachi was sentenced to life imprisonment for the crime of high treason.

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<sup>22</sup> See paragraph 14, *supra*.

28. According to the allegations, in October 1994 the alleged victim was incarcerated at the Miguel Castro Castro Maximum Security Prison, then was transferred to the Yanamayo-Puno Prison on January 17, 1996. On November 30, 2003, he was taken to the Challapalca-Tacna Prison, then transferred to the Ancón Prison (Piedras Gordas) on December 17, 2004, then back to the Miguel Castro Castro Prison, where he has been incarcerated since April 2, 2009. The petitioners claim that he came down with asthma, tuberculosis, ulcers, and chronic lumbago due to the inhumane detention conditions at the aforementioned prisons. They indicate that doctors attached to the National Prison Institute (INPE) recommended specialized tests, which were never performed. The petitioners state that after those recommendations were made, Mr. Limaco was transferred to the Challapalca Prison, located at an altitude of more than 4,000 meters above sea level, where he remained from November 2003 to December 2004, in extreme conditions of detention.

29. The petitioners stated that since the beginning of 2005, Mr. Limaco Huayascachi had sought specialized medical care and had filed a *habeas corpus* action on February 25 of that year. They indicated that on November 27, 2007, the Constitutional Court, as the court of last resort, declared the *habeas corpus* petition to be inadmissible, on grounds that the plaintiff had received timely medical care. According to the information submitted, it was not until June 8, 2008, that a Medical Board at the Piedras Gordas Prison authorized Mr. Limaco's transfer to a hospital for a tomography, which showed a hypodense, cyst-like formation in a lobe of his liver. The petitioners attached a series of complaints directed toward the prison authorities, seeking specialized medical attention for Mr. Limaco Huayascachi. They contended that the expenses, with tests and medical interventions, were covered by him and his sister, Mrs. Doris Limaco.

30. According to the information provided, after the military proceeding had been voided, Mr. Limaco Huayascachi was subjected to six criminal trials in courts in the departments of Puno and Lima, many of which were joined into one proceeding. The petitioners indicate that on March 16, 2005, the National Terrorism Chamber sentenced the alleged victim to 20 years in prison, in a case docketed as No. 469-93, for the crime of being affiliated with a terrorism organization, established in Article 5 of Decree Law No. 25475. They contend that on September 21, 2005, the Permanent Criminal Chamber of the Supreme Court of Justice declared that the verdict could not be voided.

31. The petitioners stated that several of the acts attributed to Mr. Limaco allegedly took place between 1988 and 1991, when Decree Law No. 25475 was not in effect. In that regard, they stated that the Peruvian judicial authorities applied a harsher criminal law to him retroactively. They added that the prosecutorial indictment in the case docketed as No. 469-93 refers to crimes that were allegedly not included in the order to open the criminal proceeding, a situation they argued violated the right to defense.

32. Finally, the petitioners stated that the Peruvian State is responsible for violating the rights enshrined in Articles 1(1), 2, 5, 7, 8, 9, and 24 of the American Convention.

*Néstor Andrés Luyo Pérez (P 1201-04)*

33. The petitioner alleged that on January 29, 1993, he was detained by members of the Peruvian National Police and taken to the facilities of the Sol de Oro Police Station. Later, he was allegedly incarcerated for five months in the DINCOTE jail in Lima. He said he was subjected to torture and coercion so that he would confess his membership to the insurgent organization *Sendero Luminoso* (Shining Path). He indicated that in May 1994, he was admitted to the Yanamayo Prison, and that in December 2002 he was transferred to the Miguel Castro Castro Maximum Security Prison.

34. According to the information submitted, Mr. Luyo Pérez was prosecuted for the crime of high treason and in August 1994 he was sentenced in the court of last resort to life imprisonment by the Special Military Supreme Court. On February 17, 2003, the National Terrorism Chamber voided that proceeding, and on February 24, 2003, the Third Specialized Court on Terrorism issued an order to open the criminal proceeding for crimes against public order—terrorism. On November 26, 2004, the National

Criminal Chamber handed down a judgment of 30 years in prison, and on April 20, 2005, the Supreme Court of Justice increased the sentence to 35 years in prison.

35. According to the information provided, in his preliminary statement before the Third Specialized Court on Terrorism, Mr. Luoy Pérez complained of having been assaulted by members of DINCOTE so that he would incriminate himself. That statement refers to the existence of a certified medical document dated January 30, 1993, in which these alleged assaults were reportedly recorded.

36. Finally, the petitioner stated that the Peruvian State is responsible for violating the rights enshrined in Articles 1(1), 2, 5, 7, 8, 9, and 24 of the Convention.

*Mario Merwan Chira Alvarado (P 1216-04)*

37. The petitioners stated that Mr. Chira Alvarado was arrested in his home by members of DINCOTE on January 5, 1993. They indicated that he was jailed in Lima, in facilities of that police agency, for 30 days, during which time he was allegedly subjected to torture so that he would acknowledge being a member of Shining Path. They stated that a report of the Institute of Legal Medicine, dated January 19, 1993, certified the presence of "light swelling in the left parietal region caused by a hard blunt instrument," which they maintained proved the acts of torture to which the alleged victim was purportedly subjected.

38. The petitioners indicated that after being incarcerated at the Miguel Castro Castro Prison, Mr. Chira Alvarado was deprived of liberty for eight years at the Yanamayo Prison, where he allegedly was unable to tolerate the cold and had vision problems, conditions purportedly caused by a blow he had received to the head while he was held in DINCOTE facilities.

39. According to the information submitted, Mr. Chira Alvarado was prosecuted for the crime of high treason and sentenced to life imprisonment by military courts. After those proceedings were voided in early 2003, he was tried for crimes against public order—terrorism, and on April 11, 2006, he was sentenced by the National Criminal Chamber to 24 years in prison. On October 19, 2007, the Supreme Court of Justice ruled that the conviction would not be overturned, and increased the sentence to 25 years of incarceration.

40. The petitioners emphasized that other defendants in the same proceedings brought against Mr. Chira Alvarado in the National Criminal Chamber acknowledged the charges of the Public Prosecution Service, for which they were sentenced under a plea bargain to 15 years in prison. The petitioners stated that because the alleged victim knew he was innocent, he did not acknowledge the charges against him, and as a result he allegedly received a much longer sentence than that imposed to his codefendants.

41. Finally, the petitioners stated that the Peruvian State is responsible for violating the rights enshrined in Articles 1(1), 2, 5, 7, 9, 24, and 25 of the Convention.

**B. State**

**1. Common claims**

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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**

*Moisés Simón Limaco Huayascachi (P 1105-04)*



51. The State maintained that at the time the petition was lodged with the IACHR, the criminal proceedings for the crime of terrorism brought against Moisés Simón Limaco had not come to an end. In that regard, it stated that the petition was lodged without the remedies under domestic law having been exhausted.

52. The State gave a similar account as that of the petitioners with respect to the criminal proceedings brought against the alleged victim. It indicated that in the terrorism proceedings, docketed as No. 469-03, he was sentenced to 20 years in prison, in a judgment made final on September 21, 2005. It emphasized that in those proceedings, the judicial authorities considered that it had been proved that Mr. Moisés Simón Limaco was one of those responsible for transporting funds to the leadership of the insurgent organization Shining Path and finding places and vehicles for its leaders' housing and transportation.

53. The State affirmed that Mr. Limaco Huayascachi had the counsel of a court-appointed attorney and later a defense attorney of his own choosing, who continuously filed the remedies he believed to be most suitable for his client's defense. It added that the proceedings filed under docket No. 469-03 included 40 hearing sessions, which ended on March 16, 2005. It maintained that the other proceedings brought in judicial districts in Puno and Lima were joined together into docket No. 542-03. It indicated that in view of the judgment issued in docket No. 469-03, on February 15, 2010, the National Criminal Chamber found that there were grounds for the *res judicata* exception claimed by Mr. Limaco Huayascachi's attorneys and ordered the proceedings filed under docket No. 542-03 to be closed.

54. In terms of the allegations that Mr. Limaco had not received adequate medical care, the State noted that on November 27, 2007, the Constitutional Court found baseless a *habeas corpus* action lodged against the Director and Physician of the Piedras Gordas Prison Establishment for alleged violation of the constitutional rights to life, health, integrity, and dignity. It added that the Constitutional Court's decision was based on the fact that the alleged victim's right to health "was protected within the sphere of benefits professed by the Peruvian State itself, and he was never confined to a situation of extreme urgency and need that would have placed his life in danger."

*Néstor Andrés Luyo Pérez (P 1201-04)*

55. The State affirmed that "when the petitioner presented his complaint to the Inter-American Commission, in September 2004, his criminal case was still being processed in domestic jurisdiction," and it argued that the petition had been lodged without the alleged victim having exhausted domestic remedies under the terms of Article 46(1)(a) of the Convention.

56. The State gave a similar account as that of the petitioner with respect to the result of the criminal proceedings brought against him. It indicated that both the National Criminal Chamber and the Supreme Court of Justice considered that it had been established that Mr. Luyo Pérez participated in selective murders of security agents, acts of sabotage, confiscations, and other criminal acts as a member of the military command of the insurgent group Shining Path.

57. The State indicated that at the time the IACHR gave notice of the petition, on August 26, 2008, "the legal situation of Mr. Néstor Andrés Luyo Pérez had been resolved in domestic jurisdiction as a result of a proceeding that had every guarantee established in the American Convention, in which the petitioner's liability was determined..." Based on the foregoing, the State affirmed that the petition should be closed on the grounds contemplated in Article 48(1)(b) of the Convention.

*Mario Merwan Chira Alvarado (P 1216-04)*

58. The State gave a similar account as that of the petitioners with respect to the result of the criminal proceedings brought against Mr. Chira Alvarado. It stated that the judicial authorities considered his membership in the insurgent group Shining Path to be established fact, along with his participation in the seizure of vehicles to make car bombs and in attacks against public establishments and the life and safety of security agents.

59. The State indicated that both the April 11, 2006, judgment of the National Criminal Chamber and the October 19, 2007, final judgment of the Supreme Court of Justice were duly reasoned, in the framework of regular proceedings held in accordance with judicial guarantees. It emphasized that based on the evidence examined in the proceedings, the aforementioned courts convicted Mr. Chira Alvarado of crimes against public order in the form of aggravated terrorism.

60. The State attached a report from the National Prison Institute (INPE), dated August 5, 2009, which indicates that Mr. Chira Alvarado is following a normal prison regime at the Miguel Castro Prison, and that he "is not a victim of torture, inhumane or humiliating treatment, or any other act that violates his dignity."

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

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

61. The petitioners are entitled, under Article 44 of the Convention, to file complaints. The alleged victims were under the jurisdiction of the Peruvian State on the date of the alleged incidents. In addition, Peru ratified the American Convention on July 28, 1978. Consequently, the Commission has competence *ratione personae* to examine the petitions.

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

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

64. 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, which instrument of ratification was deposited by the Peruvian State on March 28, 1991.

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

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

66. With regards to petitions 1105-04 and 1201-04, the State maintained that they were filed with this international body while the Peruvian courts had not reach a final ruling in the criminal proceedings against the alleged victims. In this respect, it alleged that the complaints do 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.<sup>23</sup>

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<sup>23</sup> IACHR, Report No. 108/10, Petition 744-98 and others, *Orestes Auberto Urriola Gonzales 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.

67. The three 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 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.

68. 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.<sup>24</sup>

69. 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.

70. 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 three alleged victims were convicted under rulings handed down on final appeal by the Supreme Court of Justice between April 2005 and October 2007.

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

### **C. Filing period**

72. 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.

73. As established in paragraph 70 above, the second set of criminal trials brought against the three alleged victims concluded between April 2005 and October 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 to the exhaustion of domestic remedies and it has consequently been satisfied.

74. 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 67 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 three petitions were filed within a reasonable period of time in relation to these claims.

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<sup>24</sup> 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***

75. 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**

76. 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.

77. In view of the evidence submitted by the parties, the IACHR deems that the circumstances in which the alleged victims are said to have been detained, and the alleged acts of torture and detention conditions in DINCOTE facilities and in prison establishments, could tend to establish a violation of the rights enshrined in Articles 5 and 7 of the American Convention, in conjunction with Articles 1(1) and 2 therein, and also, based on the principle of *iura novit curia*, a violation 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 Moisés Simón Limaco Huayascachi, Néstor Andrés Luyo Pérez, and Mario Merwan Chira Alvarado. The IACHR also deems that the effects of the facts to which this paragraph refers, as well as the alleged victims' reportedly being held incommunicado for long periods and being restricted from receiving visits, could tend to establish a violation of the right enshrined in Article 5(1) of the Convention, also to the detriment of their family members.

78. The IACHR also finds that the allegations about the criminal trials conducted by the military and ordinary justice systems, along 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 Moisés Simón Limaco Huayascachi, Néstor Andrés Luyo Pérez and Mario Merwan Chira Alvarado. 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.

79. 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.

80. 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**

81. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case, the Inter-American Commission concludes that Petitions 1105-04, 1201-04 and 1216-04

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 1105-04, 1201-04 and 1216-04 admissible as regards Articles 5, 7, 9, 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 three petitions addressed in this Report on Admissibility in the record of case 12.822 and to begin the processing of the merits of the case.

5. To publish this decision and to include it in its Annual Report, to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 22<sup>nd</sup> 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.