

**REPORT No. 166/11**  
**PETITION 970-06**  
**INADMISSIBILITY**  
**BALLINAS GRANADOS AND BALLINAS LÓPEZ HEIRS**  
**PERU**  
November 2, 2011

**I. SUMMARY**

1. On September 11, 2006, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or the "IACHR") received a petition lodged by Armando Ballinas Granados, Yolanda Ballinas Granados de Vlasica, María Angélica Ballinas Granados de Rosas, María Cristina Ballinas Granados de Oliva, Luis Ballinas Granados, César Raúl Gálvez Flores, Ana Cecilia Gálvez Ballinas, Rocío Consuelo Gálvez Ballinas, and Alfredo Luis Samuel Gálvez Gálvez Banillas, represented by Ana Cecilia Gálvez Ballinas and by Rafael Valentín Trujillo Pérez (hereinafter "the petitioners") against the State of Peru (hereinafter "Peru," "the State," or "the Peruvian State") for the alleged violation of the rights embodied in Article 21 (right to property) and Article 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"). The petitioners argue that, as of that date, the State has not met its obligation to pay the debt contracted in the context of the agrarian reform (agrarian bonds), a debt that was recognized in the Constitutional Court's ruling of March 15, 2001, which ordered that the bonds be paid at their current market value, as well as in Supreme Decree Nº 148-2001-EF.

2. For its part, the State contends that the agrarian reform expropriations were consistent with the 1933 Constitution and with Decree Law Nº 17716, and that, in accordance with that legal framework, the State has paid part of the appraised value in the form of agrarian bonds issued in 1972 and payable over 25 years, and that the bondholders collected interest on the bonds until the 1983 due date, after which time a serious economic crisis occurred that shattered the Peruvian currency. The State points out that at no time did the petitioners question the appraisal made or the form of payment. With regard to the Constitutional Court's ruling of March 15, 2001, the State maintains that that ruling did not question the legality or constitutionality of the expropriations, but rather the fact that, in accordance with Articles 1 and 2 of Law Nº 26597, a prohibition was placed on payment of the updated monetary debt.

3. The State contends that the petitioners have not exhausted domestic remedies since, although they filed an action for enforcement (*proceso de cumplimiento*) to obtain payment of the updated monetary value of the agrarian bonds, both the Judiciary and the Constitutional Court declared the action without merit, since the petitioners had failed to use the proper procedures for obtaining a favorable ruling, given that the purpose of the action for enforcement is execution of a norm or administrative act. Accordingly, it does not involve a preliminary stage allowing the filers to present expert testimony with a view to determining the updated value of the bonds. The State argues that the proper remedy for receiving payment of the agrarian reform bonds is a civil proceeding in which the judge hears the conflicting views and makes a determination (*proceso de conocimiento en la vía civil*), and it presented four judgments in which payment of the agrarian debt was decided on in favor of the plaintiffs.

4. Having examined the available information, the Commission concluded that it is competent to hear the case, and it concludes that said case is inadmissible under Article 46(1)(a) of the American Convention. The Commission decided to notify the parties of the present inadmissibility report, to make it public, and to include it in its Annual Report.

**II. PROCESSING BY THE COMMISSION**

5. The Commission received the petition on September 11, 2006, and registered it as No. 970/06. The petitioners presented additional information in communications received on March 26, October 25, November 26, and December 10, 2007, and on February 5, 2008. The IACHR forwarded those communications to the State on May 12, 2008, giving the State two months to present

observations. The State requested an extension in a note received on July 23, 2008, and the IACMR, in a note dated August 6, 2008, granted it an extension until August 13, 2008.

6. The petitioners submitted additional observations in a communication dated September 19, 2008, which was forwarded to the State in a communication from the IACMR on October 15, 2008, giving it one month to make observations. On October 17, 2008, the IACMR transmitted to the State for its information a communication from the petitioners dated April 1, 2008. On November 12, 2008, the IACMR acknowledged receipt of the communication from the petitioners dated October 28, 2008. The State requested a one-month extension in a communication received on November 18, 2008, and the exception was granted by the IACMR in a communication dated November 19, 2008. The State presented its observations in a communication received on December 11, 2008, which the IACMR forwarded to the petitioners in a communication dated December 31, 2008.

7. The petitioners presented observations in communications dated February 3 and 6 and March 3, 2009, which were transmitted to the State in a communication of March 23, 2009. The State presented observations in a communication received on April 29, 2009, which was forwarded to the petitioners in a communication dated May 14, 2009. The petitioners presented observations in a communication dated May 25, 2009, which were forwarded to the State on May 28, 2009, giving it one month to present its observations. On July 7, 2009, the Commission received the State's observations, which were forwarded to the petitioners on July 10, 2009. The petitioners made additional observations in a document dated August 11, 2009, which was transmitted to the State on November 2, 2009.

8. The State presented observations in communications dated November 27, 2009, and January 27, 2010, which were forwarded to the petitioners in a communication dated February 4, 2010. On February 23, 2010, the IACMR responded to the petitioners' communications of January 14, 22, and 23, 2010, in which they expressed an interest in attending a hearing during the 138<sup>th</sup> regular session. The Commission indicated that it would not be possible to grant that request.

9. On November 3 and 10, 2010, the State provided the IACMR with additional observations, which were transmitted to the petitioners on December 1, 2010. Likewise, on December 1, 2010, the IACMR transmitted to the State for its information the petitioners' communications of February 21 and 25, 2010. The petitioners presented observations in a communication dated December 31, 2010, which was forwarded to the State in a communication dated March 3, 2011, giving it one month to make observations. Also, in the communication of March 3, 2011, the IACMR transmitted to the petitioners the State's communication dated December 30, 2010, establishing a one-month deadline for observations. The State presented observations on August 25, 2011, which were transmitted to the petitioners for its information on October 3, 2011.

### **III. POSITION OF THE PARTIES**

#### **A. Position of the petitioners**

10. The petitioners state that they owned certain rural lands included in the expropriations carried out in Peru as part of agrarian reform under the 1933 Constitution, in compliance with Law 17716, of June 24, 1969. In payment for the appraised value of the expropriated land, each of the petitioners was given some agrarian debt bonds.

11. The petitioners hold that Law N° 26597, passed in 1996, established that the agrarian bonds would be paid at face value, in addition to the interest set for each bond. They point out that this method of calculating the face value and of updating it was declared unconstitutional by the Constitutional Court in a ruling of March 10, 2001, published on May 11, 2001, which declared unconstitutional Articles 1 and 2 and the First Final Provision of that law and Article 1 of Law N° 26599, as a result of the action on grounds of unconstitutionality filed by the Peruvian Engineers Association (*Colegio de Ingenieros del Perú*).

12. The petitioners note that in that ruling the Constitutional Court declared that, while the intention to use bonds as a means of payment was not unconstitutional under the 1933 Constitution since the Constitution authorized it, the procedures stipulated for payment of the bonds were and are indeed unconstitutional. They point out that the previous judgment established the obligation to adjust the value of the agrarian reform bonds to the current market value.

13. The petitioners indicate that in Supreme Decree N° 148-2001, published on July 15, 2001, the State recognized that payment of the costs associated with the agrarian reform process carried out by the Peruvian State was still pending, that the rulings of the Constitutional Court were binding on the other branches of government, in keeping with Article 35 of the Organic Law of the Constitutional Court, and that the State committed itself to payment of the updated value of the agrarian debt, in fulfillment of the Constitutional Court's ruling of March 10, 2001. They state that, in keeping with the provisions of the aforementioned Supreme Decree, a commission was to be established to propose measures to enforce the decisions of the Constitutional Court in its ruling of March 10, 2001. Said commission should (1) evaluate the fiscal impact of the decision issued by the Constitutional Court; (2) determine the validity of Emergency Decree N° 088-2000 in light of that ruling, including mechanisms for facilitating the recognition of debts and, as appropriate, propose regulations for Emergency Decree N° 088-2000, or propose other possible solutions consistent with the Constitution and the law; and (3) gather any existing information from various government entities in order to determine the magnitude of the debt the State owes to persons whose land was expropriated as a result of the agrarian reform. Moreover, they state that the Supreme Decree establishes the composition of said commission, which was set up by Supreme Decree N° 148-2001-EF on July 14, 2001.

14. The petitioners point out that this commission was made up of two members of the Ministry of Economy and Finance, two from the Ministry of Agriculture, and one representative of the persons whose land had been expropriated, and it recommended that (1) the adjusted consumer price index be used; (2) the value of the debt be updated using the methodology for realigning the original debt minus the updated values of the total payments made for amortization; and (3) the updating index and updating methodology be applied to those debts that have been duly confirmed and certified through administrative procedures. The petitioners indicate that the commission estimated that, if the amount of the "agrarian debt" were updated according to the criteria established by the commission, it could total as much as 4,312 million nuevos soles (\$1,232 million dollars). The commission estimated that the State could honor \$810 million dollars of that \$1,232 million of debt. The petitioners contend that the State concealed that report for more than five years.

15. The petitioners state that, on September 29, 2004, they filed an action for enforcement of the Constitutional Court's ruling of March 10, 2001, and of Supreme Decree 148-2001, against the Ministry of Economy and Finance and the Ministry of Agriculture, with the 16th Specialized Civil Court of Lima, which, on October 4, 2004, ruled that the action was without merit. The petitioners indicate that they

appealed that decision in the Third Civil Chamber of Lima, which upheld the lower court ruling on April 12, 2005. The petitioners argue that the action for enforcement continues in principle against any authority or civil servant who refuses to abide by a legal norm or administrative act, without prejudice to responsibilities under the law, as it constituted the appropriate remedy.

16. They state that on June 14, 2005, they filed an appeal with the Constitutional Court against the ruling issued by the Third Civil Chamber of Lima on grounds of violation of constitutional rights (*recurso de agravio constitucional*). The Constitutional Court issued a ruling on that appeal on December 5, 2005, which was notified on July 13, 2006, declaring the appeal without merit since neither of the two articles of Supreme Decree N° 148-2001 establishes as a mandate the payment of agrarian debt bonds at current market value; rather it establishes the constitution of the commission.

17. The petitioners contend that the objective of Supreme Decree N° 148-2001-EF will not be achieved solely through the establishment of a commission—since that circumstance could lead to a situation of noncompliance *ad infinitum*—but rather through updating of the value and payment of the agrarian bonds. They hold that, in view of the Constitutional Court's ruling on the appeal, there would not be any remedy to enforce the Peruvian State's obligation to pay the agrarian reform bonds at current market value.

18. The petitioners report that on March 26, 2006, the Peruvian State, through its legislative branch, passed the Juridical Security Law on the Legal Physical Rehabilitation of Rural Lands Affected by the Agrarian Reform Process and on Updating the Agrarian Debt, in which it recognized the existence of that debt.

19. As concerns the State's argument that domestic resources have not been exhausted, the petitioners point out that the State bases its position on the supposed existence of other domestic channels for asserting their right, thus diminishing the importance of the Constitutional Court's *res judicata*. They point out that the State does not refer to the Constitutional Court's ruling set forth in File N° 22-96-I-TC, published on May 11, 2001, which is the subject of this petition as it has been disregarded. They state that Supreme Decree N° 148-2001-EF expressly recognized the State's obligation to establish a commission charged with enforcing the Constitutional Court's ruling.

20. They mention that the Peruvian Ombudsman Office pointed out, in note N° 066-2006-DP/PDA, that the basic rights of the bondholders were being violated, since more than 30 years had elapsed and they had not received compensation from the Peruvian State. They indicate that in the previous report the Peruvian Ombudsman Office considered that the Constitutional Court's ruling, published on May 11, 2001, was instructive as far as agrarian reform debt payment was concerned, in that it addressed the criteria for determining the updated value of, and payment for, the expropriated lands. It says that the Court's ruling took also note of a series of regulatory changes related to agrarian reform issues, the Executive had not yet taken effective action to pay the massive debt, thus having a detrimental effect not only on the assets of individuals but also on the precepts embodied in the Constitution, such as the defense of property, legal security, and respect for the rule of law.

21. The petitioners contend that the Constitutional Court's ruling of March 10, 2001, is not subject to the authority of any branch of the Peruvian State and that, in cases of appeals on grounds of unconstitutionality, the Constitutional Court has sole and exclusive competence and acts as the sole instance. Intervention by the Judiciary is not admissible in this type of case, given the binding, compulsory, and final nature of the decision. They state that, as a result, the Constitutional Court's rulings are binding in nature on all branches of government, exhaust remedies under domestic jurisdiction, and demonstrate the absence of any legal proceeding to assert the right to enforce the Constitutional Court's ruling, which constitutes a violation of Article 25 of the American Convention.

22. The petitioners argue that the purpose of the Constitutional Court's ruling, published on May 11, 2011, is to protect the rights of those whose lands were expropriated as a result of agrarian reform. They state that nonetheless the government administration is unwilling to comply with the Constitutional Court's ruling. They indicate that, consequently, there is a violation of Article 21 of the

American Convention in conjunction with Article 25 thereof, since the prolonged and unjustified failure to comply with domestic court decisions results in a breach of the right to property. They point out that the State's expropriation of the petitioners' property was not based on a governmental decision taken on grounds of public utility or social interest and that "even if that had been the case, the State's decision was not processed in accordance with procedures established by law and with rules of due legal process." In addition, they state that there is no record that such a limitation was based on "any criterion of reasonableness," that is, that it corresponded to a legitimate end, "inasmuch as it would alter the substance of the rights temporarily infringed upon." The petitioners therefore contend that their right to property was infringed upon beyond the scope allowed by the Constitution.

23. Regarding a possible violation of Article 25 of the Convention, the petitioners state that this second breach would stem from the alleged prolonged failure to implement the Constitutional Court's ruling of March 10, 2001, which establishes the need to update the value of the agricultural bonds and effectively pay them. They argue that when the American Convention refers to "simple and prompt" recourse, that recourse should not be subject to "formalism or ritualism inappropriate as regards a remedy whose intention is to promptly safeguard basic human rights." They claim that the State's obligations to provide judicial protection are not met simply by the issuance of judgments but by effective compliance with those judgments.

24. In summary, the petitioners argue that compliance with court decisions cannot remain at the discretion of one of the parties, especially in those cases where the State may have been the party determined to be at fault. Based on these considerations, the petitioners consider that the State is responsible for violations of Articles 21 and 25 of the American Convention.

## B. Position of the State

25. The State points out that the petition cannot be examined without understanding the "agrarian reform" process that took place in Peru from 1969 to 1975, during General Juan Velasco Alvarado's term, when lands were expropriated from all large landowners along the coast and in the Andean valleys and highlands. The State holds that reputable scholars have stated that the agrarian reform process in Peru was carried out for reasons of public utility and social interest, given the situation the country was facing at that time.

26. According to the State, Agrarian Reform Law N° 17716, promulgated on June 24, 1969, defined the rural lands likely to be affected, the conditions of expropriation, the adjudicatory entities, and the institutions responsible for carrying out the reform. That law deemed the appraised value of the affected lands to be the value set by the owner for rural land tax purposes in 1968. The State indicates that except for livestock, which was purchased in cash, payments to the owners were made in bonds of three different types: (1) class A bonds, redeemable in 25 years and yielding an annual interest rate of 6 percent; (2) class B bonds, redeemable in 25 years and yielding an annual interest rate of 5 percent, which were given to owners whose lands were leased at the time of the expropriation; and (3) class C bonds, redeemable in 30 years and yielding an annual interest rate of 4 percent, which were given to owners of fallow or freehold land.

27. It states that the law authorized the bondholders to exchange the bonds for stocks in industrial firms, as long as they invested an equivalent amount in cash. The State points out that the expropriated lands were given to cooperatives, rural communities, farm groups, and individuals qualified by the General Land Reform Office (*Dirección General de Reforma Agraria*). In addition, it states that an Agrarian Tribunal based in Lima was set up, as the jurisdictional body of last resort to hear and resolve any conflicts and disputes that might originate in implementing the agrarian reform legislation, and at least one land court was established in each agrarian reform zone. The State claims that the total amount of compensation paid was 15,000,000,000 soles (approximately US\$66 million at the 1979 exchange rate), an amount equivalent to half of the total loan portfolio of the Agrarian Bank (*Banco Agrario*) in 1977. The State reports that "only a fourth was paid out in cash."

28. The State points out that, in the 1970s, at the time of the agrarian-reform expropriation, the petitioners did not file any claims with the national courts in connection with the expropriation or the appraisal values set out in the expropriation judgment. The State indicates that since the petitioners do not provide additional data on when the expropriation occurred or on the location of the lands expropriated, and since the State was never served with a compliance order as the action for enforcement was rejected *in limine* by the Judiciary and the Constitutional Court, it cannot furnish additional information in this regard.

29. The State points out that the agrarian reform took place in accordance with Article 29 of the 1933 Constitution<sup>1</sup>, which was in force at that time. It indicates that, in keeping with the aforementioned legal framework, it carried out several expropriations, one of lands belonging to the petitioners, the Ballinas Granados and Ballinas López heirs, and that, in that framework, part of the appraised value had been paid out in the form of agrarian bonds issued in 1972, and that the bondholder had collected interest on their bonds until the 1983 due date. The State points out that 1983 marked the beginning of the serious economic crisis in Peru, which led to a change in the currency in which the agrarian bonds were issued. It notes that in subsequent years a series of rules governing the procedure for collection on and payment of the agrarian reform bonds was put into effect and that currently the Legislative Decree dated August 1, 1991, was in force, which establishes that the appraisal and payment for expropriations must be made at the market price and in cash.

30. The State contends that the Constitutional Court's ruling of March 10, 2001, published on May 11, 2001, does not question the legality of the expropriation, but rather the fact that the amount of the debt could not be updated to market value. The State indicates that the above mentioned ruling declared that Articles 1 and 2 and the First Final Provision of Law N° 26597 were unconstitutional as they violated the principle pertaining to the inherent value of the property.

31. The State points out that after publication of the Constitutional Court's ruling of May 11, 2001, and the adoption of Supreme Decree N° 148-2001-EF, of July 15, 2001, the petitioners, seeking compliance with the prior ruling, filed an action for enforcement with the 16th Civil Court of Lima, which found the action to be without merit. The State notes that, in its ruling, the 16th Civil Court of Lima stated that while an action for enforcement is filed against administrative authorities who fail to perform an individual administrative act or meet a general requirement or who simply do not carry out an action, as long as there is a related constitutional or legally established obligation to do so, in the instant case there is no formally established act or decision that has to be carried out or that anyone has refused to carry out, since what the petitioners are calling for is payment of the updated value of the agrarian debt and there is another instance for making that demand. The State points out the Higher Court of Justice of Lima confirmed the ruling of the 16th Civil Court of Lima in deciding on the appeal filed by the petitioners against the earlier ruling. Along the same lines it states that in a ruling of December 5, 2005 the Constitutional Court, in declaring without merit the appeal filed by the petitioners on grounds of violation of constitutional rights, said that ". . . none of the norms mentioned by the petitioners establishes, in terms of a mandate, payment of the updated amount of the agrarian bonds. For this reason, if what the petitioners are demanding is enforcement of Supreme Decree N° 148-2001-EF that is obtainable through the establishment of the commission, but not through any other act."

32. The State indicates that, in accordance with Article 200.6 of the Peruvian Constitution and Article 66 of the Procedural Constitutional Code: "the purpose of the action for enforcement is to order a remiss civil servant or public authority: (1) to comply with a legal norm or execute a specific

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<sup>1</sup> Article 29 of the 1933 Constitution: "Property is inviolable. No one may be deprived of his property except by a court order or for reasons of public utility or social interest, legally proven and subject to appraised compensation. In the case of expropriation for purposes of Agrarian Reform, irrigation, settlement, or expansion and accommodation of populations or of expropriation of energy sources or for reasons of war or public disaster, the law may establish that the compensation be paid in installments or by means of bonds whose acceptance is mandatory. The law shall indicate the payment periods, interest rates, issue amounts, and any other appropriate terms and shall determine the maximum amount of compensation that must be paid in cash and in advance.

administrative act; or (2) to speak out expressly when legal norms order him to issue an administrative resolution or a regulation.” The State argues that the petitioners have not made use of the appropriate procedural measures since, given that what is involved here is payment of the agrarian bonds at their updated value, the competent judge is a civil and not a constitutional one. It indicates that the action for enforcement is not a proceeding capable of clarifying the dispute over the claim for payment of agrarian bonds at their updated value, inasmuch as an essential aspect of that claim is the presentation of expert evidence to support it, which an action for enforcement does not allow for.

33. In short, the State argues that in the instant case the petitioners have not exhausted domestic remedies since, although they filed an action for enforcement to seek payment of the updated value of the agrarian bonds, both the Judiciary and the Constitutional Court declared the action without merit because the petitioners had not used the proper procedural measures for obtaining a ruling consistent with their petition. The State contends that the appropriate remedy for seeking payment of the agrarian reform bonds is through civil proceedings. In this connection, the State provides information on four cases in which the jurisdictional body ruled in favor of the petitioners’ claims for payment. It points out that the Ministry of Agriculture is handling those payments and that, in three of them, the amounts indicated by the court have been settled in full and that, in the fourth, an amount was set in 2009. Likewise, the State contends that nine individuals received firm and final judgments issued in civil proceedings, which are governed by Article 475 of the Civil Procedural Code currently in force<sup>2</sup>. Moreover, the State reports on six other cases in which the Legal Office of the Ministry of Agriculture is dealing with payment commitments resulting from court cases on expropriation, in which persons whose lands have been expropriated demanded payment of the updated value of the agrarian bonds. Consequently, the State requests that the petition be declared inadmissible under Article 46(1)(a), owing to the failure to exhaust domestic remedies.

34. The Peruvian State further contends that the alleged facts do not constitute a violation of the American Convention. As concerns the alleged violation of Article 21 of the American Convention, the State recalls that, according to the jurisprudence of the Inter-American Court, the right to property must be understood within the context of a democratic society and is not an absolute right, since Article 21(2) of the Convention states that, for the deprivation of a person’s property to be in keeping with the right to property, such deprivation must be based on reasons of public utility or social interest. In this connection, the State maintains that judgments have been issued on payment of the updated value of agrarian bonds in which the court verified the right of the plaintiffs and the execution of the final judgments, which are scheduled and funded under the budget of the Ministry of Agriculture, as well as firm and final judgments issued in civil court proceedings on the payment of agrarian debt, together with various resolutions issued in compliance with judgments aimed at determining through expert advice the amounts of the obligation, for the purpose of concluding the respective budgetary plan and making payments.

35. Likewise, the State argues that there was no violation of the right to property, since the dispute has to do with payment of the updated value of the agrarian debt and that claim cannot be deemed to constitute an alleged violation of the right to property, given that the expropriation took place under the 1933 Political Constitution and Decree Law N° 17716. Consequently, there was no breach of any fundamental right.

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

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

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<sup>2</sup> Art. 475 of the Peruvian Civil Code: “Contentious matters are processed in civil court proceedings (*proceso de conocimiento*): 1. If they do not have access to any other proceedings, if they have not been assigned by law to other jurisdictional bodies, and further the judge considers the use of these proceedings appropriate given the nature of the matters or the complexity of the claim; 2. The estimated value of the petition is greater than 300 Procedural Reference Units (*Unidades de Referencia Procesal*); 3. They cannot be assessed in monetary terms or there is some question about the amount involved, as long as the judge considers the use of these proceedings appropriate; 4. The claimant considers that the matter debated should be exclusively *de jure*”; 5. The law so stipulates.”

36. The petitioners are authorized under Article 44 of the American Convention to lodge petitions with the Commission. According to the petition, the alleged victims are natural persons with respect to whom the Peruvian State has pledged to respect and guarantee the rights enshrined in the American Convention. For its part, Peru ratified the American Convention on July 28, 1978. The Commission therefore has competence *ratione personae* to examine the petition.

37. The Commission has competence to hear the petition *ratione loci*, inasmuch as the petition has to do with alleged violations of rights protected under the American Convention that took place within the territory of a state party to said treaty. The Commission has competence *ratione temporis* since the obligation to respect and guarantee the rights established in the American Convention was already in effect for the Peruvian State. Finally, the Commission has competence *ratione materiae* because the petition concerns violations of human rights protected under the American Convention.

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

38. Article 46(1)(a) of the American Convention establishes that for a petition lodged with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible the remedies of domestic law must have been pursued and exhausted in accordance with generally accepted principles of international law.

39. In the instant case, the petitioners allege failure to comply with the Constitutional Court's ruling of March 10, 2001, published on May 11, 2001, and Supreme Decree N° 148-2001, of July 15, 2001, which acknowledge the existence of the agrarian debt and establish the obligation to adjust the value of that debt to market value. For its part, the State alleges that the petition does not meet the requirement stipulated in Article 46(1)(a) of the Convention since, although the petitioners filed an action for enforcement of the provisions of the Constitutional Court's ruling and of Supreme Decree N° 148-2001, as indicated by the Judiciary as well as by the Constitutional Court itself in a ruling of December 5, 2005, the action for enforcement is not the appropriate means for updating the appraised value of the agrarian bonds and receiving payment at the adjusted value. The State contends that the appropriate remedy for payment of the agrarian reform bonds is through civil court proceedings and points out that in other cases the civil jurisdiction has determined that claimants should be paid that debt and that, in those prior cases, said debt has been paid.

40. The Commission notes that the Constitutional Court, in its judgment of March 10, 2001, declared partially founded the petition alleging unconstitutionality filed by the Peruvian Engineers Association, specifically Articles 1 and 2 and the First Final Provision of Law N° 25597, as well as the Single Transitional Provision of Law N° 25755, establishing the obligation to adjust the value of the agrarian reform debts to their present market value. Subsequently, on July 15, 2001, the President of the Republic approved Supreme Decree N° 148-2001-EF, providing for the establishment of a commission to propose measures for compliance with the Constitutional Court's ruling of March 10, 2001, which consists of two substantive articles:

Article 1.- That a commission be established to propose measures for complying with the decision of the Constitutional Court in its judgment rendered on March 10, 2001, in the case brought by the Peruvian Engineers Association, File N° 022-96-I-TC. Said commission shall evaluate the fiscal impact of the decision issued by the Constitutional Court, the validity of Emergency Decree N° 088-2000 in light of that decision, including mechanisms for facilitating recognition of the loans and, if appropriate, shall propose regulations to implement Emergency Decree N° 088-2000 or propose other possible solutions consistent with the Constitution and the law. To that end, said commission shall gather any existing information from government entities to make it possible to determine the magnitude of the debt the State owes to persons whose land was expropriated as a result of the Agrarian Reform.

Article 2.- The commission shall consist of two representatives of the Ministry of the Economy and Finance, one of whom shall preside over it, two representatives of the Ministry of Agriculture, and one representative of the association of farmers whose land was expropriated through agrarian reform (*Asociación de Agricultores Expropiados de la Reforma Agraria –Adaepa*).

41. On September 29, 2004, the petitioners filed an action for enforcement of the Constitutional Court's ruling of March 10, 2001, and of Supreme Decree N° 148-2001, against the Ministry of Economy and Finance and the Ministry of Agriculture, with the 16th Specialized Civil Court of Lima, which ruled the action without merit as it was not the appropriate procedure for obtaining payment of the updated amount of the agrarian debt, and indicated that there was another procedure for them to petition for enforcement. On April 12, 2005, the Third Civil Court of Lima ruled on the appeal filed by the petitioners. It upheld the lower court's ruling and reiterated that:

...nor can it be construed that S.D.148-2001-EF contains within it a specific, defined, and enforceable obligation for the respondent authority to pay, since all that norm does is to establish a commission to propose measures for compliance with the Constitutional Court's ruling referred to therein.

42. On April 12, 2005, the petitioners filed an appeal on grounds of violation of constitutional rights against the ruling of the Third Civil Court of the Higher Court of Justice of Lima, which was decided on by the Constitutional Court on December 5, 2005. The Constitutional Court declared the appeal without merit as a considered that Articles 1 and 2 of Supreme Decree N° 148-2001 did not establish "as a mandate, the payment of the updated value of the agrarian bonds," but rather the establishment of the commission.

43. The Commission notes that, in accordance with the burden of proof applicable to the matter, the State alleging noncompliance must indicate the domestic remedies that are to be exhausted and must provide evidence of their effectiveness.<sup>3</sup> This has been done by the Peruvian State in the instant case, as it pointed out that the suitable remedy for payment of the updated value of the agrarian bonds was through civil proceedings, given that those proceedings allow for the presentation of witness evidence in support of the claim, which is not provided for through an action for enforcement. Moreover, the State reported on four civil proceedings in which the claimants obtained payment of agrarian reform debt. The Commission observes that, although the petitioners had the procedural opportunity to respond to those arguments by the State, it did not do so.

44. By virtue of the foregoing and bearing in mind that for a petition to be admissible it is necessary for domestic resources to have been pursued and exhausted in accordance with generally recognized principles of international law, the Commission finds that in the instant case, although the petitioners had access to the remedies under Peruvian law, they did not appropriately exhaust them under the terms of Article 46(1)(a) of the American Convention.

45. Accordingly, the Commission abstains, since the matter is rendered moot, from examining the other admissibility requirements provided in the Convention.

## V. CONCLUSION

46. The Commission concludes with respect to the alleged violations of the Convention that the petitioners failed appropriately to pursue the suitable procedure under domestic law in order to meet the requirement of prior exhaustion of domestic remedies set forth in Article 46(1)(a) of the American Convention.

47. Based on the foregoing considerations of fact and law,

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### **DECIDES:**

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<sup>3</sup> IACtHR, Report N° 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community Case. Preliminary Exceptions*. Judgment of February 1, 2000. Serie C No. 66, para. 53; *Durand and Ugarte Case. Preliminary Exceptions*. Judgment of May 28, 1999. Serie C No. 50, para. 33; and *Cantoral Benavides Case. Preliminary Exceptions*. Judgment of September 3, 1998. Serie C No. 40, para. 31.

1. To declare the instant case inadmissible.
2. To notify the parties of this decision.
3. To make this decision public and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of November, 2011.  
(Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.