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REPORT No. 19/15
PETITION 320-03 and others
REPORT ON ADMISSIBILITY

JORGE LUIS CUYA LAVY AND OTHERS
PERU

Adopted by the Commission on March 24, 2015
154 Regular Period of Sessions

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**REPORT No. 19/15
PETITION 320-03 AND OTHERS
JUDGES NOT RENEWED BY THE CNM
ADMISSIBILITY
PERU
MARCH 24, 2015**

I. SUMMARY

1. The present report refers to five petitions submitted between 2003 and 2008 by judges and prosecutors (hereinafter also referred to as “the alleged victims”) who had been dismissed from their jobs by the National Judicial Council of Peru (Consejo Nacional de la Magistratura—CNM) (hereinafter referred to as “CNM”) in the framework of the process of evaluating and renewing judges and prosecutors as established by the Constitution.

2. In general, the alleged victims allege that CNM’s resolutions that led to non-renewal of their employment, were not substantiated. It was indicated that, at the time they were terminated, the regulatory framework that was in force prohibited judicial and administrative review of CNM’s decisions. Finally, in the petitions, it is alleged, in general, that the State is responsible for violation of the rights enshrined in Article 5 (right to humane treatment), Article 8 (right to a fair trial), Article 9 (principle of applicable law and non-retroactivity), Article 11 (protection of honor and dignity), Article 23 (political rights), Article 24 (equality before the law), Article 25 (judicial protection), and Article 26 (progressive development), in connection with Article 1.1 (obligation to respect rights) and Article 2 (duty to adopt domestic legal effects) of the American Convention.

3. The State requested that the petitions be ruled inadmissible because the cases were no longer a matter of dispute as, in terms of domestic law, legislative amendments had been made to the regulatory framework that breached the rights protected by the American Convention or because the incidents described do not constitute a breach of the rights enshrined in said treaty. It also indicated that, in domestic law, there were all the regulatory and judicial opportunities afforded to the petitioners to secure protection of their right, and therefore the State alleges that remedies under domestic law were not exhausted.

4. After examining the positions of the parties and compliance with the requirements set forth in Articles 46 y 47 of the Convention, the Commission decided to declare petition 822-08 inadmissible and to declare petitions 320-03, 948-04, 739-08 and 1065-08, included in the present report, admissible with respect to Articles 8, 9, 23 and 25 of the Inter-American Convention on Human Rights in connection with the obligations established in Articles 1.1 and 2 of the same instrument, and inadmissible with respect to possible violations of articles 5, 11, 24 and 26 of the American Convention. The Commission also decided to bring together the admissible petitions under number 12.993. It also decided to notify the parties and order its publication in the Annual Report of the General Assembly of the OAS.

II. PROCEEDINGS WITH THE COMMISSION

5. The Commission accumulates the petitions of this report due to the fact that the alleged violations arose in connection to the same legal framework and have a factual similarity. All the petitions were received between May 2003 and July 2008. Each one of the petitions was duly forwarded to the State, and the communications sent by the petitioners were also forwarded to the State on a timely basis, in accordance with the terms of the Convention and the Rules of Procedure. The details of the principal aspects of the procedures of each petition can be found in the section on the specific allegations, which summarizes the position of each petitioner.

III. PRELIMINARY QUESTION

6. The Political Constitution of 1993 establishes in its Article 154, subparagraph 2, that it pertains to the National Judicial Council “to renew judges and prosecutors at all levels every seven years. Those who are not renewed cannot be reinstated into the Judiciary or into the Attorney General’s Office. The process of ratification is apart from disciplinary measures.” On the basis of the above, in 2000, the Peruvian State extended invitations to processes to evaluate and renew judges and prosecutors. The regulatory framework governing this process, that is, the Constitution, Basic Law of the National Judicial Council No. 26397, and the Regulations for the Evaluation and Renewal of Judges and Prosecutors stipulated that the decisions of the CNM with respect to the renewal of judges and prosecutors were not subject to either administrative or judicial review, and they did not require any indication of the reasons behind these decisions.

7. On December 1, 2004, the Constitutional Proceedings Code came into force, making it possible to file constitutional proceedings against CNM’s rulings concerning the renewal of judges and prosecutors, as long as these rulings had not indicated their reasons or had been issued without a prior hearing for the interested party. Afterwards, the CNM adjusted its Regulations for Evaluation and Ratifications, as stipulated by the Constitutional Proceedings Code.

8. In turn, jurisprudence of the Constitutional Court started changing. Indeed, as a result of judgment No. 1550-2003-AA/TC of July 16, 2003, the Constitutional Court established that nonrenewal was a vote of no confidence and that therefore it could not entail the impossibility of being reinstated into the judicial sector, opening up the possibility for judges and prosecutors who had not been renewed to submit their candidacies to merit-based admissions processes. Afterwards, as a result of judgment 03361-2004-PA/TC issued August 12, 2005, the Court established that the grounds for CNM’s rulings had to be given and that a series of guarantees had to be provided, among which the right to a hearing. Nevertheless, the Constitutional Court established that this change in jurisprudence would not be retroactive, establishing that, for all those proceedings that had been ruled upon on the basis of the previous jurisprudence, it would not be possible to file once again an appeal on constitutional grounds.

9. This criterion of jurisprudence was in force until the issuance of judgment No. 01412-2007-PA/TC of February 11, 2009, when the Constitutional Court ruled that “regardless of when it was issued,” all rulings of the CNM must be substantiated, ordering that this approach be taken into account by all the judges of the nation to resolve analogous cases. That same judgment overturned a ruling of nonrenewal issued by the CNM, ordering the immediate reinstatement of the magistrate who had filed an appeal on constitutional grounds.

IV. POSITION OF THE PARTIES

A. Position of the petitioners

1. Common allegations

10. In the petitions, it was argued that the Peruvian State had failed to comply with Article 8 (right to a fair trial), Article 9 (principle of applicable law and retroactivity), and Article 25 (judicial protection), in connection with Article 1.1 (obligation to respect rights) and Article 2 (duty to adopt domestic law effects) of the American Convention, because the actions of the National Judicial Council, whereby it was decided to not renew the alleged victims, failed to respect their right to be informed about the charges against them on the basis of which it was decided to not renew their employment, without the possibility of presenting their case and evidence or to challenge judicially or administratively the decision of nonrenewal. Furthermore, the petitions argue that there was a breach of Article 11 (protection of honor and dignity), Article 23 (political rights), Article 24 (equality before the law), and Article 26 (progressive development), because their nonrenewal had damaged their reputation and honor, as well as their right to work, their right to have access to public office without having been convicted in a criminal court, and their right to be treated

with equality compared with other judges who had been renewed, even when the latter had disciplinary penalties against them. Finally, the petitioners pointed out that, because their nonrenewal had the effect of making it impossible for them to be reinstated into the Judiciary and the Attorney General's Office, this ruling exerted the same impact as if they had been the targets of a disciplinary penalty.

11. All the petitioners alleged that the impossibility of filing appeals against the decision of nonrenewal makes the exception to the exhaustion of remedies under domestic law applicable, as provided for in Article 46.2 a) of the American Convention.

2. Specific allegations

Jorge Luis Cuya Lavy (P-320-03)

12. The present petition was received by the IACHR on May 6, 2003 and was forwarded to the State on July 25, 2012. The additional observations and information submitted by the parties were forwarded, respectively, by the Commission.

13. The petitioner alleged that, in the framework of the process of evaluating and renewing judges and prosecutors, on November 20, 2002, the Plenary of the CNM had decided to not renew his position as Specialized Civil Judge of the Cono Norte of Lima. He indicated that, by Resolution No. 500-2002-CNM of the same date, his appointment had been terminated and his title withdrawn.

14. Finally, he alleged that, although the exception indicated in Article 46.2 a) of the American Convention is applicable to his case, the remedies under domestic law had been exhausted as a result of the judgment of the Constitutional Court of July 15, 2003, whereby the appeal on constitutional grounds filed for the complainant's irregular termination as a result of CNM's resolution had been ruled inadmissible.

Walter Antonio Valenzuela Cerna (P-948-04)

15. The petition was filed by Walter Antonio Valenzuela on September 27, 2004, and it was forwarded to the State on May 6, 2009. The additional observations and information submitted by the parties were duly forwarded, respectively, by the Commission.

16. The petitioner alleged that he began his career in the Judiciary with the rank of Judge of the Third Lower Court of Justice of the Peace of Surco and Surquillo on January 10, 1985 when the Political Constitution of Peru of 1979 was in force and when its Article 242, subparagraph 2, guaranteed his tenure in the judicial service until he reached the age of 70. He indicated that he had been called by the National Judicial Council by means of proceedings No. 0002-2002-CNM in his capacity as Specialized Judge of the Court District of Lima to an evaluation and renewal process reintroduced by the 1993 Constitution, as a result of which he believed that said call would make the new Constitution's application retroactive, in violation of Article 9 of the American Convention. He pointed out that he had not submitted to this evaluation and renewal process because he considered that submitting to it would entail a waiver of his labor rights.

17. Regarding this, he pointed out that, on June 20, 2002, he had filed an appeal on constitutional grounds against this invitation; nevertheless he indicated that the National Judicial Council had continued the process of evaluation and had decided not to renew him in his absence, a decision that indicates that it was not substantiated. He indicated that the appeal on constitutional grounds that he filed had been dismissed in the last instance by the Constitutional Court on January 9, 2004, a ruling that had been notified to him on March 27 that same year.

Atilio Regis Canelo Ramírez (P-822-08)

18. The petition was filed personally by Atilio Regis Canelo Ramírez on July 14, 2008, and it was forwarded to the State on November 18, 2013. Additional observations and information submitted by the parties were duly forwarded, respectively, by the Commission.

19. The petitioner pointed out that, in the framework of the process to evaluate and renew judges and prosecutors to which he was subjected, the National Judicial Council, by Resolution No. 159-2001 of August 17, 2001, resolved to not renew his position as First Court Judge of the province of Chepén of the Judicial District of La Libertad, a decision that was notified to him on August 20, 2001.

20. As for the exhaustion of remedies, the petitioner stated that in the Peruvian State there are no due legal guarantees to protect the rights that were allegedly violated. In particular, he indicated that, if he had filed an appeal on constitutional grounds, the Constitutional Court would have ruled that the decisions of the National Judicial Council were autonomous and, as a result, they would not require any review by another instance, as had occurred in similar cases.

Jean Aubert Alvarado Díaz (P-739-08)

21. The petition was filed personally by Jean Aubert Alvarado Díaz on June 25, 2008, and it was forwarded to the State on November 20, 2013. Additional observations and information submitted by the parties were duly forwarded, respectively, by the Commission.

22. The petitioner argued that he became a part of the Judiciary as a Deputy Provincial Criminal Prosecutor with tenure in 1989. He indicated that he had acted, over the past few years, as Provincial Prosecutor for Aggravated Offenses and Contraband in Huancayo. He indicated that, in the framework of the process of evaluating and renewing judges and prosecutors, on July 13, 2001, the National Judicial Council, by Resolution No. 095-2001-CNM, notified him of its decision to not renew him in the position of Deputy Provincial Criminal Prosecutor, a decision that did not provide any reasons whatsoever.

23. Against this decision, he filed an appeal on constitutional grounds with the Mixed Jurisdiction Court of Puente Piedra of the Superior Court of Justice of North Lima, which was ruled inadmissible in the last instance by the Constitutional Court on December 19, 2007, a decision that was notified to him on March 19, 2008. This appeal was dismissed because it had been filed on December 6, 2006, six years after CNM's ruling, which according to the Constitutional Court had incurred the statute of limitations for the proceedings as the time-limits of 60 days provided for in Article 44 of the Constitutional Proceedings Code had expired.

Marta Silvana Rodríguez Ricse (P-1065-08)

24. The petition was filed personally by Marta Silvana Rodríguez Ricse on September 15, 2008, and it was forwarded to the State on January 14, 2014. Additional observations and information submitted by the parties were duly forwarded, respectively, by the Commission.

25. The petitioner argued that she started working for the Attorney General's Office in March 1982. She pointed out that, from February 2, 1993 to July 13, 2001, she discharged the duties of Deputy Provincial Prosecutor of the Mixed Jurisdiction Provincial Prosecution Service of Huancayo, Judicial District of Junín, a position that was not renewed after she had undergone the process of evaluation and renewal. CNM's decision was notified to her by official letter No. 565-SG-CNM-2001 of June 13 of that year.

26. She pointed out that she had filed an appeal on constitutional grounds against the decision of nonrenewal, which was ruled inadmissible in limine by the Mixed Jurisdiction Court of Puente Piedra on September 18, 2006. She contended that she had also filed an appeal with the First Specialized Civil Court of

North Lima, which upheld the ruling of the first instance. Finally, she indicated that she had filed a special appeal with the Constitutional Court, which was ruled inadmissible on December 20, 2007, a decision that was notified to her on March 19, 2008. That appeal was dismissed because it had been filed on December 11, 2006, six years after CNM's resolution, which according to the Constitutional Court had incurred the statute of limitations because the 60-day time-limits provided for in Article 44 of the Constitutional Proceedings Code had expired.

B. Position of the State

1. Common allegations

27. The State contended that the renewal processes were characterized by unsubstantiated resolutions and that personal interviews were given only for those judges who expressly requested them and with those the Plenary CNM called *ex officio*. It indicated that, as of 2003, jurisprudence began to break away from the provisions set forth in the Constitutional Proceedings Code and the Basic Law of the National Judicial Council, which led to applications different from the law which had led to the violations that resulted in the filing of international complaints.

28. It also alleged that, progressively, national legislation had been adjusted to constitutional regulations and principles and to the American Convention. It especially indicated that the regulatory scenario had been amended by the enactment of the Constitutional Proceedings Code, the General Administrative Procedures Law, Law No. 27444, and the Regulations for the Evaluation and Renewal of Judges of the Judiciary and the Prosecutors of the Attorney General's Office, where it was recognized that CNM's final resolutions had to be substantiated. In addition, it pointed out that the CNM had provided for a special review remedy that would have provided a simple and rapid mechanism for reviewing processes of evaluating and ratifying judges.

29. Nevertheless, it indicated that, by Supreme Resolution No. 261-20005-JUS of December 16, 2005, it had authorized the head of the Judiciary to enter into Friendly Settlement Agreements for petitions or cases filed with the IACHR in connection with judges not renewed by the National Judicial Council and that, in the framework of this regulation, it had signed 10 friendly settlement agreements. Nevertheless, the possibility of reaching a friendly settlement agreement for the petitions included in the present report never materialized.

30. Finally, on the one hand, it contends that, in the present case, there is no longer a matter of dispute as, in terms of domestic law, legislative amendments had been made to the regulatory framework that had breached the rights protected by the American Convention, and a simple and effective mechanism had been established to provide comprehensive reparations for the violations reported by the petitioner(s). On the other hand, the State alleged that all of the judges and prosecutors who had not been renewed at that time should have filed appeals on constitutional grounds, taking into account that, in some cases, that appeal was successful.

31. Regarding three of the petitions included in the present report, the State submitted specific additional allegations.

2. Specific allegations

Atilio Regis Canelo Ramírez (P-822-08)

32. The State pointed out that the alleged victim did not file any appeal on constitutional grounds against Resolution No. 159-20002-CNM whereby it was decided not to renew his employment. It indicated that the Constitutional Court admitted a series of complaints filed by judges and prosecutors who

had not been renewed and that, in some of these cases, these complaints had been heard and had succeeded, and therefore the position taken by the petitioner that he had not filed an appeal on constitutional grounds because appeals filed by other judges had not been successful is unacceptable.

33. Furthermore, it indicated that the petitioner had not filed the petition within reasonable time-limits as it was filed in July 2008, that is, six years after the resolution he was challenging had been issued. The State considered that, because the petitioner had not exhausted the appeal on constitutional grounds against the resolution to not renew his employment, he had not used the mechanisms provided by the jurisdiction to validate his claim. As a result, it requests the Commission to rule that the petition was inadmissible by virtue of Article 47 b) and c) of the American Convention.

Jean Aubert Alvarado Díaz (P-739-08)

34. It indicated that the appeal on constitutional grounds was ruled inadmissible on the basis of Article 5, subparagraph 7, of Law No. 28237, which establishes that constitutional appeals are not admissible when challenges are made to final resolutions taken by CNM in connection with the dismissal and renewal of judges and prosecutors, as long as said resolutions were substantiated and issued on the basis of a prior hearing with the interested party. Regarding this, the petitioner had been interviewed in the process prior to his nonrenewal.

35. It also contended that the Constitutional Court had pointed out that, when the petitioner filed the appeal on constitutional grounds, more than six years had elapsed since the decision taken by the National Judicial Council to not renew him in his position, as a result of which the statute of limitations had been incurred, since the time-limits provided for in Article 44 of the Constitutional Proceedings Code had expired. As a result of the above, the State requests that the petition be ruled inadmissible on the basis of Article 47 b) and c) of the Convention.

Marta Silvana Rodríguez Ricse (P-1065-08)

36. The State pointed out that the alleged victim filed the appeal on constitutional grounds five years after CNM's decision to not renew her in her position as Deputy Provincial Prosecutor of the Judicial District of Junín. Regarding this, it indicated that, when the appeal on constitutional grounds was filed, the Constitutional Proceedings Code of 2004 had entered into force and its Article 44 established that the time-limits for filing an appeal on constitutional grounds was 60 working days after the ruling affecting the right, as a result of which the appeal of the alleged victim had been ruled inadmissible in all instances, because it had failed to meet a basic procedural requirement. The State believes that the petition fails to meet the requirement of admissibility envisaged in Article 46.1 a) of the American Convention in connection with the exhaustion of remedies under domestic law.

IV. REVIEW OF JURISDICTION AND ADMISSIBILITY

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

37. The petitioners are entitled by Article 44 of the Convention to file petitions. The alleged victims were under the jurisdiction of the Peruvian State at the time of the incidents that were reported. As for Peru, it ratified the American Convention on July 28, 1978. As a result, the Commission has jurisdiction *ratione personae* to hear the petitions.

38. The Commission has jurisdiction *ratione loci* to hear the petitions, as they allege violations of rights protected by the American Convention that took place in the territory of a State party to said treaty.

39. The Commission also has jurisdiction *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was in force for the State at the time the incidents alleged in the petitions occurred.

40. Finally, the Commission has jurisdiction *ratione materiae*, because as will be explained in the characterization section below, the petitions considered in the present report allege facts that could tend to establish a violation of the rights protected by the American Convention.

B. Exhaustion of remedies under domestic law

41. Article 46.1.a of the American Convention provides that, for a petition filed with the Inter-American Convention to be admissible in conformity with Article 44 of the Convention, it is necessary to have filed and exhausted remedies under domestic law in line with generally recognized principles of international law. Nevertheless, subparagraphs a) and b) of Article 46.2 of the Convention establish that said requirement shall not be applicable when “the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated” or when “the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.” In that respect, the Inter-American Court has established that when, for reasons of fact or law, remedies under domestic law are not available to the petitioners, they are exempt from the obligation of exhausting them.

42. In response to the allegations by the parties, the Commission observes that, when the resolutions that ordered nonrenewal of the petitioners were issued, the Political Constitution of Peru, the Basic Law of the National Judicial Council, and Regulations for the Evaluation and Ratification of Judges and Prosecutors (Resolutions No. 043-2000-CNM and No. 241-2002-CNM) all made it impossible to file administrative or judicial appeals against the decisions taken by the National Judicial Council. Despite this, the alleged victim of petition 320-03 filed an appeal on constitutional grounds that was dismissed in the last instance by the Constitutional Court, taking into account the existing legal framework that was already cited. Likewise, the alleged victim of petition 948-04 filed an appeal on constitutional grounds against the call for renewal, which was ruled inadmissible in the last instance of the Constitutional Court, on the basis of the above-mentioned legal framework.

43. As for the alleged victims of petitions 739-08 and 1065-08, they filed appeals on constitutional grounds, on the basis of the change in legislation and jurisprudence that took place on December 1, 2004 and August 12, 2005, respectively, which made it possible to file appeals on constitutional grounds against the decisions of the CNM. Thus, the petitioner Jean Aubert Alvarado Díaz filed an appeal on constitutional grounds on December 6, 2006, and the petitioner Marta Silvana Rodríguez Ricse filed said appeal on December 11, 2006. Nevertheless, when these appeals on constitutional grounds reached the Constitutional Court, the latter dismissed them, indicating that when they were not renewed in July and June 2001, they had lost their status as prosecutors, so that one way or another they were aware of the fact and were legally capable of challenging the termination of their employment, and that therefore by filing the appeal on constitutional grounds six years later, “the statute of limitations had come into effect, because the time-limits set forth in Article 44 of the Constitutional Proceedings Code, that is, 60 days, had been by far exceeded.

44. The Commission found that, at the time that CNM issued the resolutions of nonrenewal between 2001 and 2002, there was a ban in the legal framework on filing judicial and administrative appeals against the decisions taken by the CNM. Therefore, the alleged victims did not benefit from a rapid and effective remedy to challenge their nonrenewal. Furthermore, although, as alleged by the State, the legislation and jurisprudence changed to make it possible to file appeals on constitutional grounds against the decisions taken by the CNM, this did not provide the already affected parties the possibility of benefiting from said changes. Indeed, the Constitutional Court established, with respect to the alleged victims of petitions 739-08 and 1065-08, that they should have filed an appeal on constitutional grounds within 60 days

following notification of the resolution of nonrenewal by the CNM, although at that time the judicial, constitutional, legal and jurisprudence framework banned said possibility.

45. With respect to what has been described, the IACHR considers that there were reasons of law why remedies under domestic law were not available to the petitioners, as a result of which the latter are exempt from fulfilling the obligation of exhausting these remedies, and therefore the exception to exhaustion under domestic law set forth in Article 46.2 a) of the American Convention is applicable.

C. Time-limits for submitting petitions

46. Article 46.1 b) of the Convention establishes that, for the petition to be declared admissible, it is necessary that it be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment that exhausted remedies under domestic law. In addition, Article 32.2 of the Rules of Procedures of IACHR establishes that “[i]n those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission.” Taking into account that, regarding the five petitions that been joined, the exception provided for in Article 46.2 a) of the Convention has been applied, the IACHR must examine whether or not these petitions were submitted within a reasonable period of time.

47. Petition 320-03 was submitted two months before the final judgment made by the Constitutional Court; petition 948-04 was filed at least six months after the final judgment of the Constitutional Court; and petitions 739-08 y 1065-08 were filed one to four months, respectively, after the petitioners, according to them, were notified of the final judgment of the Constitutional Court. Therefore, the Commission deems that the petitions were submitted on time, thus meeting the requirement established in Article 46.1 b). Regarding petition 822-08, it was submitted to the IACHR on July 14, 2008, six years eleven months after the CDM issued its resolution of nonrenewal. Taking into account this lapse of time, the Commission deems that this petition was not submitted within a reasonable period of time and therefore establishes that it does not meet this requirement of the Convention.

D. Duplication of proceedings and international res judicata

48. Article 46.1 c) of the Convention provides that admissibility of the petitions is subject to the requirement that the subject of the petition “is not pending in another international proceeding for settlement,” and Article 47 d) of the Convention stipulates that the Commission shall not admit any petition that is substantially the same as a petition or communication previously studied by the Commission or by another international organization. In the petitions considered in the present report, the parties have not shown the existence of any of these two circumstances, nor can it be inferred from the case file.

E. Characterization of the facts alleged

49. For admissibility purposes, all the Commission need establish is whether the petitions allege facts that tend to establish violations of the American Convention, as stipulated in Article 47 b) of the American Convention, whether the petition is “manifestly groundless” or is “obviously out of order,” in line with subparagraph (c) of the same article. The standard for evaluating these points of law is different from the standard for deciding the merits of a petition. The Commission must conduct a prima facie evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the American Convention, but not to establish the existence of a violation. In the present stage, a summary review must be conducted, one that does not imply a prejudgment or prior opinion on the merits.

50. Likewise, neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that the State is allegedly violating in the case referred to the Commission, although the petitioners are entitled to do so. It pertains to the Commission, on the basis of System’s jurisprudence, to decide in its admissibility reports, what provision of the relevant inter-American

instruments is applicable and could establish its violation if the allegations are proven on the basis of sufficient evidence.

51. The Commission considers that the allegations filed by the petitioner in connection with the nonrenewal to which they were subject and the absence of a judicial or administrative remedy to challenge it, could tend to establish a violation, to the detriment of the alleged victims of petitions 320-03, 739-08 and 1065-08, of judicial guarantees and protection, as well as the right to access public service under general conditions of equality, rights enshrined in Articles 8, 23 and 25 of the American Convention. Taking into account that said violations would presumably be inferred from the application of the legal framework in force at the time they were evaluated and not renewed, the Commission considers that it could tend establish a violation of Article of the Convention to the detriment of these petitioners.

52. Regarding petitions 320-03, 739-08, and 1065-08, the Commission does not find any elements indicating the possible violation of the right to the progressive development of economic, social and cultural rights, the right to protection of honor, the right to integrity, or the right to equality before the law enshrined in Articles 24, 26, 11 and 5 of the Convention. Regarding the supposed constitutional retroactivity, the Commission shall examine, in the stage of the merits, whether or not the creation and application of a constitutional regulation that creates a process to evaluate the suitability of judges and prosecutors in itself constitute a violation of the principle of judicial independence with respect to the guarantee of tenure, which could constitute a violation of the rights set forth in Articles 8 and 9 of the American Convention, in connection with Article 2 of said instrument.

53. Regarding petition 948-04, the Commission notes that the alleged victim opted for not appearing at the evaluation and renewal process to which he was called, because he felt that it represented a retroactive application that breached the terms of his appointment, which provided security of tenure until he was 70 years of age. The Commission shall examine, in the stage of the merits of the case, if the Political Constitution of Peru of 1993, by establishing processes of evaluation and renewal for judges and prosecutors, might have been incompatible with the guarantees of due process of law and judicial independence, non-retroactivity, and the right to access public service under general conditions of equality, as enshrined in Articles 8, 9, 23 and 25 of the Convention, in connection with the obligation to adopt provisions of domestic law enshrined in Article 2 of the same instrument.

V. CONCLUSIONS

54. On the basis of the considerations of fact and law presented and without detriment to the merits of the matter, the Inter-American Commission concludes that three of the petitions reviewed in the present report meet the requirements of admissibility as set forth in Articles 46 and 47 of the Inter-American Convention and as a consequence,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare petition 822-08 inadmissible on the basis of the terms set forth in paragraph 47 of the present report.
2. To declare petitions 320-03, 948-04, 739-08 and 1065-08 included in the present report admissible with respect to Articles 8, 9, 23 and 25 of the Inter-American Convention on Human Rights in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument.
3. To declare petitions 320-03, 948-04, 739-08 and 1065-08 included in the present report inadmissible with respect to Articles 5, 11, 24 and 26 of the same instrument.

Done and signed in the city of Washington, D.C., on the 24th day of the month of March, 2015. (signed):
Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez,
Second Vice President; Felipe González, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners