

REPORT Nº 27/08
PETITION 11.769-A
ADMISSIBILITY

PERU

March 14, 2008

I. SUMMARY

1. On June 17, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the American Commission,” or “the IACHR”) received a petition lodged by Dr. Curtis Francis Doebbler, representing [REDACTED] (hereinafter “the alleged victim” or “the petitioner”) alleging the responsibility of the Republic of Peru (hereinafter “the State,” “the Peruvian State,” or “Peru”) for human rights violations experienced by the petitioner when she was arrested, tried for the crime of terrorism in 1992, and then re-tried after having been found not guilty. At the time the present report was drawn up, the alleged victim had assumed responsibility for her own representation before the IACHR.

2. The petitioner alleges that the State is responsible for violating the rights protected in Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 9 (Freedom from Ex Post Facto Laws), 11 (Privacy), 13 (Freedom of Thought and Expression), 14 (Reply), and 25 (Judicial Protection) of the American Convention on Human Rights (hereinafter “the Convention”, or “the American Convention”) in relation to the general obligation to respect and protect as defined in Article 1.1 of the above mentioned international instrument. She also argues that the petition is admissible because it is exempt from the admissibility requirement of prior exhaustion of remedies under domestic law, in accordance with Article 46.2 of the Convention, as Peruvian terrorism legislation does not afford due process of law.

3. The State, for its part requests that the Commission declare the present petition inadmissible by application of Article 46 of the American Convention, as the petitioner has not pursued and exhausted remedies under domestic law. Furthermore, the State maintains that at the time the petition was lodged the period allowed for the presentation of a petition before the IACHR had expired with “reasonable margin”, when considering the date of the alleged violation or, “in any case, since the alleged victim was notified of the decision regarding the reopening of criminal proceedings against her.”

4. Having examined the information available, the Commission declared the petition admissible in relation to the alleged violation of the rights protected in Articles 5, 7, 8, 9, 11, and 25 of the American Convention in line with Articles 1.1 and 2 of the above mentioned international instrument, and inadmissible in relation to the alleged violation of Articles 4, 13, and 14 of the same international instrument. Furthermore, the IACHR declared that it was competent to examine at the merits stage the alleged violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and the alleged violations of the rights enshrined in Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the Convention of Belém do Pará) (hereinafter “Convention of Belém do Pará”) in accordance with the requirements set forth in Articles 46 and 47 of the American Convention, and decided to notify the parties and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. The Commission registered the petition on June 5, 1997. It was received at the Executive Secretariat on June 17, 1997, as case number 11.769, and on July 8, 1997, the Commission proceeded to forward the relevant parts to the State, granting a period of 90 days to provide information on the allegations, in accordance with Article 34 of the Rules of Procedure of the IACHR, in force at that time.

6. In a communication received on July 21, 1997, Dr. Curtis F. Doebbler reported that Dr. Fiona McKay, a lawyer belonging to the international organization Redress Trust, had been appointed as co-petitioner and legal representative of the alleged victim in the case. Furthermore, by means of communications dated

September 8 and November 20, 1997, the lawyer, Fiona McKay supplied additional information and a power of attorney letter in which she was appointed legal representative in the case by [REDACTED].

7. On October 10, 1997, the State presented its observations on the petition. On October 24, 1997, the Commission forwarded the relevant parts of the State's response to the petitioners, requesting that they make whatever observations they deemed appropriate within a period of 30 days.

8. By means of a communication received by the Executive Secretariat of the IACHR on December 23, 1997, the petitioners lodged their observations on the response from the State, which the Commission transmitted to the State by way of a communication dated January 12, 1998, granting it a period of 30 days to present its observations.

9. On February 13, 1998, the State presented its observations in report No. 253-98-JUS/CNDH-SE, which the Commission proceeded to forward to the petitioners granting them a period of 45 days to lodge their observations. On March 10, 1998, the petitioners sent a communication in which they stated that they had no observations in relation to the report from the State and that they believed the positions of both parties had been clearly expressed in previous communications, and the IACHR was asked to proceed to its decision.

10. On March 31, 2000, the Executive Secretariat received a communication from [REDACTED] informing the IACHR that Dr. Curtis Doebbler no longer had powers of representation in the case. On April 4, 2000, the Executive Secretariat of the Commission sent a communication to Dr. Curtis Doebbler informing him of the above.

11. On May 31, 2000, the Executive Secretariat received a communication from the petitioner in which she filed additional information relating to the case, which was transmitted to the State on August 17, 2000.

12. On June 29, 2000, the Commission, in accordance with Article 40.1 of its Rules of Procedure, decided to break down file No. 11.769 into two new files, numbered 11.769-A and 11.769-B, and agreed that file 11.769-A would henceforward deal with the part of the petition referring exclusively to the arrest, trial, and other events directly and personally relating to [REDACTED], which are the subject of the denunciations.

13. The IACHR also agreed that file No. 11,769-B would henceforward deal with the events which are the subject of the denunciations that gave rise to case No. 11,769 and which took place in the Castro y Castro prison, Lima, in May 1992. This case was combined with Case No. 11.015 for joint processing and was lodged with the Inter-American Court of Human Rights on August 13, 2004, and resolved by judgment in the Miguel Castro Castro Prison Case (Hugo Juárez Cruzatt and Others Case) on November 25, 2006.

14. On January 3 and March 12, 2007, the petitioner submitted additional information concerning the petition, which was duly transmitted to the State.

15. On August 6, 2007, the Executive Secretariat received a communication in which the petitioner informed the IACHR that Dr. Fiona McKay no longer had powers of representation in the case. On August 23, 2007, the Executive Secretariat transmitted the communication from the petitioner of August 6, 2007, to the State, along with its respective appendices.

16. On September 26 and October 1, 2007, the State submitted its observations in report No. 137-2007-JUS-SE/CESAPI, which was duly forwarded to the petitioner by the Commission, with a one month period in which to lodge her observations.

17. On October 23, 30, and November 2, 2007, the Executive Secretariat of the Commission received additional information submitted by the petitioner in the case, which was duly transmitted to the State on November 6, 2007.

18. On January 4, 2008, the Executive Secretariat of the IACHR acknowledged receipt of a request for precautionary measures on behalf of [REDACTED] following her arrest in Germany in accordance with a request from INTERPOL Lima for her extradition and future trial in Peru. On January 7 and 9, 2008, the petitioner submitted additional information relating to said trial.

III. POSITIONS OF THE PARTIES

A. Petitioners

19. The petition states that from March to April 1992, [REDACTED] worked with an international television company making a documentary in various areas of Peru. She says that it was in this context when, on April 13, 1992, at 8.30 p.m., she was arrested while showing a potential tenant a property belonging to her parents.

20. The petitioner indicates that her arrest was carried out by a group of heavily armed men dressed as civilians, who belonged to the GEIN (Special Group of the State Security Forces made up of members of the police and army). They allegedly forced their way into the property where the petitioner was, broke the glass at the entranceway, grabbed her violently by the hair and pointed a gun at her. She states that once the men had gained entry, both she and the potential tenant were thrown to the floor and dragged to the other end of the room, tied up, blindfolded, and indecently searched. It is stated in the petition that the petitioner was subjected to sexual assault by a member of the GEIN who "inserted his fingers into her vagina" while another officer held her by her legs on the floor¹. The petitioner states that when she voiced a complaint regarding the situation she was hit by the officer.

21. The petitioner indicates that it was under those circumstances that she was interrogated about her participation in the television program she was working on. She then heard that she was to be transferred to a military barracks. According to the allegation, this, along with the fact that there was no prosecutor present, caused her to fear that she was about to be disappeared. She states that after an extended period of time, a prosecutor arrived at her place of detainment and, although he had not been present when the officers arrived at the property, he accepted unquestioningly the information provided by the officers present. She claims that her apartment was searched that same night without her presence or consent and without the presence of a lawyer.

22. The petitioner states that she was prevented from communicating with anyone but her captors and that she was transferred to a vehicle in which she remained blindfolded, handcuffed, terrified and being threatened with torture and death by her captors, while they spent the entirety of the night driving around the outskirts of Lima. She alleges that at around 6.00 am on April 14, 1992, she was taken to a building adjoining DINCOTE (National Terrorism Headquarters) where she was forced to remain in a room with other detainees all day.

23. The petitioner adds that during her detainment she was forced to remain against the cement wall without speaking or moving, and that she was denied food and water. She claims that along with the other detainees, which, from what she could deduce were a great number, she was arbitrarily deprived of access to a bathroom and was forced to urinate in her clothes, into a can, while blindfolded and in the presence of male officers.

24. The petitioner indicates that at night she was transferred to another building in which she was ordered to stand up facing the wall for the whole night and was beaten with sticks on her legs whenever they gave way, as well as being hit in the face. She states that they irritated her eyes with a dirty, dusty cloth, threatened her with torture and with her own death and that of a close relative who was arrested at the same time as the petitioner.

25. The petitioner states that at about 12:00 PM on April 15, 1992, two days after her arrest she was searched while in custody by DINCOTE officers, and that up until that time she had been forced to remain awake, blindfolded, and handcuffed for approximately 40 hours without food, water, or access to a bathroom.

26. The petitioner states that she remained in DINCOTE for the following two weeks in a damp cell shared by two other women measuring approximately 2.5m by 2.5m, completely unfurnished except for a dirty mattress on the floor. She alleges that the bathroom they had access to consisted of a cockroach-infested hole in the floor which, having no door, was in plain view of both the police and detainees.

27. The petitioner alleges that on April 23, 1992, she was introduced to the media through a press conference at which the Interior Minister announced that she was a high-ranking member of Sendero Luminoso (*Shining Path*), with no consideration for the fact that she had not been tried or found guilty and furthermore, that she was prevented from responding to those accusations.

28. The petitioner states that she was interrogated several times during her detention at DINCOTE and, with the exception of one occasion, said interrogations took place without the presence of her lawyer and with no representative from the public prosecutor's office (*Ministerio Publico*), contrary to the provisions of the law.

29. She states that seventeen days after her arrest, on April 30, 1992, she was brought before the trial judge of the Tenth Court, whose responsibility it was to establish whether there was sufficient evidence to justify her prosecution. The petitioner alleges that some weeks before this date, on April 5, 1992, the then-President Alberto Fujimori had suspended constitutional guarantees, dissolved Congress, and issued decrees removing magistrates from the Judiciary, and replacing them with *ad hoc* judges elected by the Executive or those beholden to it. She alleges that her case was officially opened on April 28, 1992, before the *ad hoc* judge had been informed, and she was ordered to remain under arrest. The petitioner alleges that she was only brought before the *ad hoc* judge on one occasion and that no investigation was carried out into her case, the only information that taken into account for the judge's finding being the information contained in the police report.

30. The petitioner states that after being detained for seventeen days in DINCOTE, on April 30, 1992, she was transported to the Miguel Castro y Castro prison in Canto Grande, where she was imprisoned in Pavilion 1A with people who had already been sentenced and was forced to sleep on the floor due to overcrowding. The petitioner alleges that during that time she received no information regarding the progress of her case. She additionally claims that seventeen days after her arrest police officers issued a report describing the circumstances of her arrest. This allegedly formed the basis of the *ad hoc* judge's later sentence, No. 118-92, which was undated.

31. Furthermore, she states that on January 8, 1993, the prosecutor responsible for cases dealing with terrorism brought formal charges against her and requested a minimum prison sentence of 20 years for having violated the criminal code and decree law No. 25.475 which came into force on May 6, 1992.

32. The petition states that [REDACTED] was tried before the Superior Court in six sessions that took place between March and June 1993. Finally, the petitioner states that on June 18, 1993, the Superior Court acquitted her, and she was released. However, following this she claims that the Peruvian government appealed this finding before a faceless Supreme Court which, on December 27, 1993, annulled the acquittal and ordered a new oral hearing to take place. The petitioner states that the court based its finding on the argument that "...the sentence before us does not effect a proper examination of the facts on which the acquittal was based, nor is the evidence on which the acquittal is based sufficiently compelling to establish the innocence or guilt of the accused..." Considering this, the petitioner alleges that it amounts to "an infringement of the guarantee that a person shall not be subjected to a new trial for the same cause, enshrined in Article 8(4) of the Convention." Furthermore, the petitioner states that annulling the acquittal and ordering a new oral hearing against her was a pretext to influence the outcome of proceedings and "change the verdict to a guilty one." The petitioner states that since April 1992 the Peruvian State has had criminal proceedings open against her with a warrant for her arrest, which was the basis of the request for her extradition.

33. The petitioner argues that the faceless Supreme Court's declaration of annulment is unlawful and does not affect the *res judicata* of the acquittal judgment, on the grounds that the acquittal was not based

on the exhaustive assumptions envisaged in law; that there was an implicit call for the acceptance of unlawfully acquired evidence; and that the ruling was made outside the legal period and by a faceless Supreme Court, which was declared unlawful by the Constitutional Court.

34. For her part, the petitioner states that during the period of her imprisonment, between April 1992 and June 1993, she was granted only three 15-25 minute opportunities to speak to her lawyer, each of these occasions under the strict supervision of the authorities. She alleges that in spite of being accused of committing an act which allegedly took place before April 6, 1992 (specifically between the month of March and April 6, 1992), the charges against her are based on the provisions of the Criminal Code, modified by Decree Law No 23475, dated August 5, 1992, which she alleges amounts to an imposition of *ex post facto* laws.

35. Once she was released, the petitioner states that she was harassed by policemen on two occasions and was the victim of a series of death and torture threats. She alleges that as a result of these incidents she was forced to leave Peru in August 1993, and since then has lived in the United Kingdom where she was granted political asylum and has been receiving treatment for tuberculosis for over a year², which she claims she contracted during her detainment. Furthermore, the information indicates that up to the date on which the petition was lodged, the petitioner continued to suffer posttraumatic nervous disorders as a result of the mistreatment she suffered at the hands of the Peruvian authorities.

36. The petitioner has filed additional allegations and provided a series of press cuttings as evidence that while the criminal proceedings against her were still underway she was described to the Peruvian and international press by high-ranking state authorities as “a terrorist,” thus infringing her right to the presumption of innocence.

37. To conclude, the petitioner requests that this petition be declared admissible and the responsibility of the Peruvian State established for the violation of the rights protected in Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 9 (Freedom from Ex Post Facto Laws), 11 (Privacy), 13 (Freedom of Thought and Expression), 14 (Reply), and 25 (Judicial Protection) of the American Convention on Human Rights. With regard to the requirements for the admissibility of the petition, the petitioner states that she is exempt from the admissibility requirement of prior exhaustion of remedies under domestic law in accordance with Article 46.2 of the Convention as Peruvian anti-terrorist law does not afford due process of law.

B. The State

38. The State indicates that the petitioner was arrested by the police in conjunction with the public prosecutor’s office (*Ministerio Público*) and brought to trial for the crime of terrorism, with all due guarantees. She was initially acquitted, but the Supreme Court subsequently declared the finding of the court of first instance void and ordered a new oral hearing to be launched.

39. In its allegations relating to the present petition, the State says that the petitioner, [REDACTED], was arrested by the police while with her [REDACTED], on April 13, 1992, and that a representative of the public prosecutor’s office (*Ministerio Público*) participated throughout the investigation. The State also claims that when the petitioner’s house was searched in the presence of a lawyer, weapons, ammunition, and subversive documentation were found. The State further claims that a representative of the public prosecutor’s office and the petitioner’s own defense lawyer were present and participated when she made her statement to police.

40. The State claims that the arrest of the petitioner and her sister took place on April 13, 1992, and that they were released to judicial authorities *via* the Prosecuting Attorney’s office (*Fiscalía Penal*) on April 28, 1992, meaning that they were under arrest for 15 days, in accordance with Article 12 (c) of Decree Law No. 25475 and in line with the Political Constitution of Peru for a case concerning the alleged crime of terrorism.

41. The State points out that the petitioner’s claim that she was subjected to the violation of her human rights at the hands of DICONTE police officers are false, and that at all times DICONTE personnel acted

in accordance with current rules governing anti-terrorism efforts. Furthermore, the State claims that the petitioner exercised her right to legal protection, as she was assisted by her defense lawyer in relation to the charges against her.

42. Additionally, the State affirms that because the petitioner fled the country in August 1993 while legal proceedings against her were pending, she is guilty of evasion, and therefore she would have to comply with the law and appear before the Peruvian justice system, which offers due legal process and guarantee of rights.

43. Furthermore, with regard to the admissibility requirements of the instant petition, the State says that in June 1993, the Superior Court of Lima acquitted the petitioner at first instance. Subsequently, in December 1993, the Supreme Court declared void the sentence handed down by the Superior Court and ordered new oral proceedings to be opened. Therefore, as the proceedings indicate that the petition was lodged with the Commission on the 17th of June 1997, it would have been filed extemporaneously, exceeding the allowed period for the presentation of petitions. The State also adds that the petitioner did not claim that there existed any impediment or insurmountable obstacle preventing her from appealing in the time allowed, in an exercise of her rights before this legal body.

44. Consequently, the State claims that the petitioner has not exhausted the remedies available under domestic law in relation to the present case and that, on the contrary, there are still legal proceedings at her disposal. Therefore, in recent communications relating to the preparation of the present report, the State presented up-to-date information from which it can be seen that in the judgment dated January 24, 2006, the National Criminal Court declared it had grounds to continue to the oral proceedings (*juicio oral*) against the accused, ██████████, for the crimes of Disturbing the Peace, Disturbing the Public Peace, Advocating Criminal Behavior to the detriment of the State, and for Terrorism against the State, and because the accused is declared absent, instructions have been issued to re-open the warrants for her location and arrest.

45. Furthermore, the State indicates that by means of a judgment issued by the National Criminal Court on May 25, 2006, it was established that "(...) this case charges ██████████, (...) for the crime of membership of a terrorist organization, participation in writing, editing, coordinating, and disseminating the underground newspaper "El Diario," a channel for instigating and publicizing the terrorist acts perpetrated by members of the Peruvian Communist Party, the Shining Path, fulfilling in this way the orders and specific tasks entrusted to her by the leaders of the aforementioned organization. Furthermore, ██████████ is charged with the crime of advocating criminal behavior defined in Article 316 of the Criminal Code; (...)". In this same resolution, judgment was reserved against the accused ██████████ in her absence until such a time that she was located and brought before the competent legal authorities. Moreover, the State says that resolution dated January 24, 2007, orders the activation of the warrants issued for the arrest of ██████████.

46. The State reports that in a resolution dated January 4, 2008, the National Criminal Court indicated that the crimes listed in the prosecution charge include, among others: 1. Crime of Disturbing the Public Peace, in the form of advocating criminal behavior to the detriment of the State, defined and sanctioned in Article 316 of the Criminal Code of 1991, original text; which for the aggravated form imputed, establishes a punishment of no less than four years and no greater than six years, and; 2. Crime of Disturbing the Public Peace – Terrorism (in the form of Membership of a Terrorist Group), to the detriment of the State, defined and sanctioned in Article 322 of the Criminal Code of 1991, which in its original text establishes a punishment of no less than ten years and no greater than twenty years imprisonment; with the Superior Prosecuting Attorney's office (*Fiscalía Superior*) seeking a sentence of twenty years. The State adds that criminal proceedings are currently in effect in accordance with Articles 48, 80, 82 iv) and 83 of the Criminal Code, having been submitted – according to the charge – in legal concurrence and because the second of the two charges refers to a permanent crime. According to the State, the above-mentioned resolution also states that the decision could not be implemented because at the time the judgment of acquittal issued in the case had been annulled by faceless judges, the petitioner was defined as evading the law, having not turned herself in to regularize her status.

47. Furthermore, the State mentions that by a resolution dated January 21, 2008, the Second Criminal Transitory Court of the National Supreme Court declared inadmissible the application for extradition for the crime of disturbing the public peace in the form of advocating criminal behavior; and admissible for the crime of disturbing the public peace, in the form of terrorism by membership of a terrorist group to the detriment of the Peruvian State, and consequently requested the extradition of citizen [REDACTED] from the Federal German Republic, and ordered the proceedings to be remitted to the Executive branch.

48. Finally, the State indicates that by means of document No. 048-2008-JUS-DNJ/DICAJ dated January 28, 2008, the Director Coordinating the Administration of Justice of the Ministry of Justice indicated that the executive branch had issued supreme resolution No. 013-2008-JUS, published in the official newspaper "El Peruano" on January 24, 2008, which resolves in Article 1 to: " Agree to the request for active extradition of the accused [REDACTED] filed by the National Criminal Court of the National Supreme Court of Justice and declared lawful by the Second Criminal Transitory Court of the National Supreme Court, for allegedly committing crimes against the public peace, specifically, terrorism and advocating criminal behavior; and arrange for its presentation via diplomatic channels to the government of the Federal Republic of Germany, in accordance with the relevant Peruvian legal provisions."

IV. ANALYSIS

A. Competence

49. The petitioner is empowered, in principle, by Article 44 of the American Convention to lodge petitions before the Commission. The petition names as alleged victim [REDACTED], whose rights, as enshrined in the American Convention, the Peruvian State was committed to respect and protect. With regard to the State, the Commission observes that Peru has been a State party to the American Convention since July 28, 1978, the date on which it deposited its instrument of ratification of said Convention. Therefore, the Commission has competence *ratione personae* to examine the petition.

50. Furthermore, the Commission has competence *ratione loci* to examine the petition inasmuch as it alleges violations of rights protected by the American Convention that took place within the jurisdiction of the State. The Commission has competence *ratione temporis* to examine the petition because the obligation to respect and protect the rights enshrined in the American Convention was already binding upon the State at the date on which the events alleged in the petition took place. Finally, the Commission has competence *ratione materiae*, because the petition alleges violations of human rights enshrined in the American Convention.

51. Moreover, although the petitioner has not invoked Articles 1, 6, and 8 of the Convention to Prevent and Punish Torture, along with Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the Convention of Belém do Pará), by virtue of the principle *iura novit curia*, the Commission will examine the alleged violations of said articles, as will be described in the appropriate section of this report.

52. The State of Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991. The petition in question refers to events that took place after the date on which these international instruments were ratified. Furthermore, the Peruvian State ratified the Convention of Belém do Pará on February 4, 1996, and deposited the corresponding instrument of ratification on April 6, 1996. Therefore, the Commission considers it relevant to highlight that it has competence *ratione temporis* in the present case by virtue of the time that has elapsed given that the complaint refers to possible incidents of sexual violence for which those responsible have not been investigated, brought to trial, or punished, up to the date of the preparation of the present report. Therefore, this would mean that the State had tolerated a situation of impunity with long-lasting effects continuing after the date on which Peru submitted to the above-mentioned Convention of Belém do Pará³.

B. Other requirements for Admissibility

1. Exhaustion of remedies under domestic law

53. Article 46.1 of the American Convention states that for a petition lodged before the Commission to be admissible according to Article 44 of the Convention, it is necessary that all remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

54. The requirement of prior exhaustion is applicable when domestic legislation does in fact provide remedies that are adequate and effective to remedy the alleged violation. In this sense, Article 46(2) specifies that the requirement is not applicable when: a) domestic law does not afford due process of law for the protection of the right in question; b) the alleged victim has been denied access to the remedies under domestic law or; c) there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies.

55. In the present case, with regard to the question of admissibility, the petitioner alleges that she is exempt from the requirement to exhaust the remedies available under domestic law in accordance with Article 46.1 of the American Convention, by virtue of the fact that her case falls within the sphere of the exemptions to the rule of prior exhaustion as defined in Article 46.2 of the Convention. In this respect, the petitioner alleges that Peruvian legislation does not afford due process of law for the protection of the rights which in the petition are alleged to have been violated and that she has been denied access to the remedies under domestic law and prevented from exhausting them. Specifically, the petitioner alleges that Peruvian terrorism legislation, which forms the basis of the charges against her (Decree Law No. 25,475), is legally defined in such a way as to be vague and imprecise. Secondly, she alleges that her trial took place at a time when the judiciary was losing power to the executive, and she states that she was prevented from exhausting the remedy of *habeas corpus* because once Decree Law No. 25659 had come into force, in August 1992, the right to interpose a writ of *habeas corpus* was revoked in cases involving accusations of terrorism. The petitioner also states that she was prevented from exhausting remedies under domestic law because she was obliged to leave Peru from fear for her life. She states that she applied for asylum in the United Kingdom, and while this request was being processed, up until February 1997, she had to face the fear and uncertainty of possible repatriation. Consequently, she states that she was living in a country in which the language was foreign to her, with inadequate financial resources, and in which she did not have easy access to specialist legal advice concerning the inter-American system. Finally, she states that following this any possibility of seeking legal remedy under domestic law was closed to her with the Government enacted Laws No. 26479, and 26,472, known as the "Amnesty Laws."

56. For its part, the State alleges that the petition does not comply with the corresponding requirements for admissibility because the remedies available under domestic law have not been exhausted prior to the submission of the complaint. The State alleges that in the present case, the finding of acquittal, which was handed down on June 18, 1993, by the Superior Court, ordering the release of the petitioner did not bring an end to the legal proceedings pending against her because a higher instance existed in domestic law. In effect, the State says that the Supreme Court of Justice reviewed the acquittal and finally decided that it needed to carry out new oral hearings, and this did not amount to a violation of due process. Consequently, criminal proceedings are still pending in the domestic legal system for the alleged crime of terrorism. In addition, the State mentions that Peruvian legislation provides for the observation of due process and legal protection by means of different remedies, which have not been used by the petitioner, and that therefore the exception provided for by Article 46.2.a. is not applicable. Furthermore, the State claims that during the police investigation and trial of the petitioner, she had access to her defense lawyer as well as the participation of the Public Prosecutor's office (*Ministerio Público*) and, as can be seen from the petition, she did not lodge any complaint or denunciation of the alleged abuse or prevention from exercising her right to a defense.

57. In view of the allegations from both parties, the Commission considers it pertinent, in order to examine to what extent, the requirement established in the Convention of prior exhaustion of domestic remedies has been complied with, to make a preliminary finding regarding the object of the complaint lodged before the IACHR. In this respect, the Commission points out that in reference to the petitioner's allegations, the content of the petition concerns various issues relating to the alleged arbitrary arrest, detention conditions, abuse, and alleged failure to guarantee due process in the trial of the alleged victim.

58. In this regard, the Commission notes that at the time when the detention and subsequent trial of ██████ took place, the writ of *habeas corpus* had been suspended in the Peruvian jurisdiction under the terms of Decree Law No. 25,659, in relation to those accused of crimes of treason against the nation and terrorism⁴. The remedy of *habeas corpus* provides basic and essential protection and constitutes the ideal remedy in cases in which allegations are made of arbitrary detention and abuse. Furthermore, both the Commission and the Inter-American Court have on several occasions described the legal and practical obstacles experienced by persons accused of crimes linked with terrorism and treason against the nation during the same period in which the events that are the subject of this study took place⁵.

59. Concerning the petitioner's allegation that her right protected by the Convention to not be subjected to a new trial for the same facts was violated as a result of the annulment of the judgment acquitting her and the opening of new legal oral proceedings against her, and in relation to the argument by the State that legal proceedings already existed against the alleged victim and that these would continue to be in force even in her absence, the Commission considers that these allegations deserve complete and detailed study in the respective merits stage.

60. Therefore, based on the allegations by the parties, an examination of the relevant laws, and in accordance with the evidence described in the file lodged before the Commission, the IACHR considers that the obstacles mentioned above might have denied the petitioner access to appropriate and effective remedies to resolve the alleged violations of her rights.

61. Based on the foregoing, the Commission considers that there exist sufficient grounds to exempt the petitioner from the obligation of prior exhaustion of domestic remedies as the exceptions described in Article 46.2.a and b of the American Convention are applicable in this case and therefore the requirement envisaged with regard to the prior exhaustion of domestic remedies may not be demanded.

2. Deadline for presentation of petitions

62. Article 46.1.b. establishes that for a petition to be declared admissible, it must be presented within a period of six months from the date on which the complaining party was notified of the final judgment from the domestic court. This six-month rule serves to guarantee legal certainty and stability once a decision has been adopted.

63. Pursuant to Article 32.2 of the Rules of Procedure of the IACHR, in cases where the exception to the exhaustion of remedies available under domestic law is applicable, the Commission must decide whether the petition was lodged within a reasonable time. In accordance with this article, the Commission "shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

64. In the present case, the Commission has established that the exceptions provided in Article 46.2.a and b. of the Convention are applicable and it must therefore decide whether the petition was lodged within a reasonable time, taking into account the specific circumstances of the situation presented for its consideration. In this regard, the Commission notes that the petitioner alleges that she lodged the petition within a reasonable period in view of the particular nature of her complaint.

65. Therefore, the IACHR must consider that this petition alleges that the petitioner was subjected to abusive treatment and torture, within the framework of criminal proceedings opened against her on April 30, 1992, for the crime of terrorism and that these, following a final, definitive acquittal, were re-opened on the basis of the same circumstantial evidence, and are still pending resolution at the time of preparing this report, almost 16 years later, which could amount to an assumption of ongoing violation. The above is considered in conjunction with the petitioner's allegations regarding the conditions in which she was detained and her sudden departure from the country on August 16, 1993, due to alleged death threats and other intimidating acts. In view of these circumstances and considering that the petition was lodged on June 17, 1997, the Commission finds that the petition has been lodged within a reasonable period of time. The Commission therefore concludes that the requirement defined in Article 46.1.b. of the Convention with regard to the presentation of the petition within a reasonable period has been observed.

3. Duplication of proceedings and international *res judicata*

66. Nothing in the case file suggests that the subject matter is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the Commission considers that the requirements established in 46(1) (c) and 47(d) have been met.

4. Characterization of the facts alleged

67. As the Commission has held in previous cases, at this stage in the proceedings it is not called upon to establish whether or not a violation of the American Convention has actually occurred. The IACHR must simply establish, for the purposes of admissibility, if the allegations, if proven, state facts that tend to establish a violation of the American Convention, as described in Article 47.b, and whether the petition is “manifestly groundless,” or “obviously out of order,” as described in sub-paragraph c) of the same Article. The standard for assessing admissibility is different from the one used to decide on the merits of a petition. For admissibility, the Commission need only make a *prima facie* examination, which does not imply any prejudgment or preliminary opinion on the merits. By distinguishing two clearly demarcated phases –one for admissibility and the other for the merits- the Commission’s own Rules of Procedure reflects the distinction between the assessment that the Commission must make for purposes of declaring a petition admissible, and the one required to establish whether a violation has in fact occurred.

68. In the case in question, the petitioner alleges that the facts denounced amount to violations of the rights enshrined in Articles 4, 5, 7, 8, 9, 11, 13, 14, and 25 of the American Convention, all in relation to the general obligation to respect and protect established by Article 1.1 of the same international instrument.

69. For its part, the State indicates that the petitioner’s detention and subsequent trial were carried out, and continue to be carried out, in accordance with the norms of due process.

70. Firstly, the IACHR indicates that the subject of the present petition concerns the alleged arbitrary detention, cruel, inhumane, and degrading treatment, as well as alleged acts of torture, all to the detriment of ██████████ when she was arrested in 1992 and brought to trial for the crime of terrorism.

71. In accordance with the above, the Commission considers that the allegations concerning the alleged arbitrary detention of the petitioner, cruel, inhumane, and degrading treatment, the acts of torture allegedly perpetrated during her detention by state agents, and the alleged violations of the guarantees of due process and judicial protection, all of which either took place or are taking place within the framework of the criminal proceedings against the petitioner, were they proven, would amount to alleged violations of Articles 5, 7, 8, 9 and 25 of the American Convention.

72. Furthermore, the petitioner has alleged that the State on many occasions described her publicly as a “terrorist” even though she has not been found guilty, and the Commission therefore considers that the facts described warrant precise and detailed examination at the corresponding merits stage in relation to the alleged violation of the right to have one’s honor respected and one’s dignity recognized in accordance with Article 11 of the American Convention⁶.

73. Moreover, the Commission finds that the allegations of the petitioner regarding the acts of sexual violence to which she was subjected, in addition to being violations of the rights protected by the American Convention, would, if true, also be violations of the rights enshrined in the Convention to Prevent and Punish Torture and in the Convention of Belem do Pará. In point of fact, although the petitioner has not invoked them, on the basis of the principle of *iura novit curia*⁷, the IACHR considers that the facts described warrant a more precise and exhaustive examination at the merits stage with regard to the alleged violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent, Punish and Eradicate Torture, as well as Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women

(Convention of Belém do Pará). Finally, on the basis of the above-mentioned principle, the IACHR considers it appropriate to examine the compatibility of the norms applied to the trial of the alleged victim with Article 2 of the American Convention.

74. However, the Commission finds that the petitioner alleges that the threats against her life and the imminent danger of an attempt on her life during her detention at the DINCOTE facilities amount to a violation of the right to life set forth in Article 4 of the Convention. The Commission, in accordance with the previous paragraphs, will consider such arguments at the merits stage in relation to the provisions of Article 5 (right to humane treatment) of the American Convention, and in relation to Articles 1, 6, and 8 of the Convention to Prevent and Punish Torture. On these grounds, the Commission finds the allegation of the violation of Article 4 of the Convention inadmissible.

75. Furthermore, the Commission considers that the petitioner did not substantiate independent facts to establish a *prima facie* case for the possible violation of her rights to freedom of expression and to reply or make a correction as enshrined in Articles 13 and 14 of the American Convention. Consequently, the Commission declares inadmissible this element of the petition.

76. In consideration of the above, the IACHR concludes that the petitioner has *prima facie* established the elements required according to Article 47.b of the American Convention, with regard to the alleged violations of the rights enshrined in Articles 5, 7, 8, 9, 11, and 25 of the American Convention, all in relation to the general obligation to respect and protect established by Article 1.1 and with the duty to adopt domestic legal effects established in Article 2, both found in the Convention. For its part, the IACHR concludes that by virtue of the principle of *iura novit curia*, it will proceed to examine the alleged violation of Articles 1, 6, and 8 of the Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará at the corresponding merits stage. Finally, the Commission concludes that the petition does not include sufficient allegations of independent violation of the rights protected by Articles 4, 13, and 14 of the American Convention.

V. CONCLUSIONS

77. The Commission concludes that it has competence to examine the complaints lodged by the petitioner in relation to the alleged violation of rights protected under Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 9 (Freedom from ex Post Facto Laws), 11 (Privacy), and 25 (Judicial Protection) of the American Convention on Human Rights, in line with the general obligation to respect and protect established in Article 1.1 and with the duty of domestic legal effects established in Article 2, both of the aforementioned international instrument, to the detriment of the alleged victim. Furthermore, the Commission concludes that it is competent to examine at the merits stage the alleged violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convention of Belém do Pará, in accordance with the requirements enshrined in Articles 46 and 47 of the American Convention.

78. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible in relation to the violation of rights protected under Articles 5, 7, 8, 9, 11 and 25 of the American Convention, in line with Articles 1.1 and 2 of the aforementioned international instrument, to the detriment of the alleged victim.
2. To declare this case admissible in relation to Articles 1, 6, and 8 of the Convention to Prevent and Punish Torture and to Article 7 of the Convention of Belém do Pará, to the detriment of the alleged victim.

3. To declare this case inadmissible in relation to Articles 4, 13, and 14 of the American Convention, to the detriment of the alleged victim.
4. To give notice of this decision to the Peruvian State and to the Petitioner.
5. To continue analysis of the merits of the case.
6. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 14th day of the month of March 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Florentín Meléndez and Víctor E. Abramovich, members of the Commission.

¹ On December 23, 1997, the Executive Secretariat of the IACHR received a document from the petitioner in which she asked for the English version of the petition to be accepted as the original version. Therefore, the above-mentioned allegation was taken from the English version of the document lodged by the petitioner on June 17, 1997, which reads as follows: "*While petitioner was laying on the floor, bound and blindfolded, the man searched her, inserting his hands underneath her clothes, touching her body and raping her, by inserting his fingers in her vagina, while another man held her down by standing on her legs.*"

² The petitioner states in her document dated June 17, 1997, that the conditions in which she was detained brought on a deterioration in her health until in November 1992 she was diagnosed with tuberculosis.

³ See general I/A Court H.R., *Castro Castro Prison Case*. Judgment November 25, 2006. Series C. 160, in particular paragraphs 27.6, 292, 306, 344 and 346, that examine and apply the obligation to investigate, bring to trial and punish contained in the Convention of Belém do Pará.

⁴ IACHR, *Report into the human rights situation in Peru*, OAS/Ser.L/VII.83, Doc. 31, March 12, 1993, paragraphs 22, 23, and 24, and I/A Court H.R., and *Loaysa Tamayo Case*, Judgment September 1997. Series C. No. 33, paragraphs 51-54.

⁵ I/A Court H.R., *De la Cruz Flores Case*, Judgment November 18, 2004. Series C, No. 115, paragraph 114. See also *Castillo Páez Case*, Judgment November 1997, Series C, No. 34, paragraphs 81 and 82.

⁶ See in general I/A Court H.R., *Castro Castro Prison Case*, Judgment November 25, 2006, Series C. 160, in particular paragraphs 351-360.

⁷ See similarly, IACHR, Report No. 93/06, Petition 972-03 (admissibility), Valentina Rosendo Cantú and others, vs. Mexico, October 21, 2006, paragraph 33 and following.