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REPORT No. 8/15
PETITION 1413-04 Et. Al.
REPORT ON ADMISSIBILITY

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PERU

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Organization of
American States

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I. SUMMARY

1. This report concerns 59 petitions lodged on behalf of 63 individuals who were prosecuted in Peru for the crimes of high treason, terrorism, and collaborating with terrorists [hereinafter, “the alleged victims”], provided for in Peru’s anti-terrorism laws. These petitions allege the violation, on the part of the Republic of Peru (hereinafter also, “Peru,” “the State,” or “the Peruvian state”), of rights enshrined in the American Convention on Human Rights (hereinafter also, “the American Convention” or “the Convention”). The petitions indicate that the alleged victims were arrested, prosecuted, and convicted for the crimes of high treason, terrorism, and collaborating with terrorists between 1992 and 2002, in application of decree laws adopted beginning in May 1992; they further assert that those decree laws, as well as the criminal proceedings stemming therefrom, run contrary to a series of provisions of the American Convention. The petitions also contend that the alleged victims were tortured, isolated for extended periods of time upon arrest, and subjected to inhumane conditions during detention. The petitioners indicate that after being convicted in the military justice system, the alleged victims had to undergo new trials in the regular courts. They state that the latter trials were conducted in accordance with a legislative framework on terrorism adopted in January 2003, which they contend was also incompatible with the American Convention.

2. The State maintains that the cases against the alleged victims were prosecuted in accordance with the provisions of domestic law and that they were convicted by impartial and competent courts, in strict adherence to the guarantees of due process. The State further indicates that a new legislative framework on terrorism that conforms to the American Convention and the Political Constitution of Peru was adopted in early 2003. The State holds that the Commission should not admit the petitions since the allegations do not establish violations of the Convention’s provisions and asks the IACHR to declare the complaints inadmissible pursuant to Article 47(b) of the Convention.

3. After examining the parties’ positions in light of the admissibility requirements set forth in Articles 46 and 47 of the Convention, the Commission concluded that it is competent to consider the 59 petitions and that they are admissible for purposes of examining, during the merits stage, the alleged violation of the rights enshrined in Articles 5, 7, 8, 9, 11, and 25 of the American Convention, as they relate to Articles 1(1) and 2 thereof, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The IACHR likewise decided to join the 59 petitions and process them together in the merits phase under case number 12.988. The Commission further decided to give notice of this Admissibility Report to the parties, make it public, and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. The Commission received the first petitions between November 1998 and June 2009. Each one of the petitions was duly forwarded to the State, as were, in turn, the communications sent by both parties, with the requisite periods for the submission of additional observations having been granted. Details about the main aspects of the processing of the petitions can be found in the section on specific allegations, which summarizes the positions of the parties.

III. PRELIMINARY CONTEXTUAL CONSIDERATIONS

Context and legislative framework

5. In the petitions being considered in this report, the State and the petitioners described an initial series of criminal proceedings that took place during the 1990s, as well as a second series that began in 2003. The former were based on terrorism-related decree laws enacted during former President Alberto Fujimori's administration. In January 2003, the Peruvian state adopted a new legislative framework that voided a series of trials for the crimes of terrorism and high treason. Before summarizing the positions of the parties, however, and as it has done in the past with similar cases in this same context,¹ the IACHR deems it necessary to refer to the two legal frameworks within which the facts presented by the parties are inscribed, and which apply to all the cases examined in this report.

Antiterrorism legislation in force from May 1992 to January 2003

6. Decree Law No. 25475, which deals with different forms of the crime of terrorism, was enacted in May 1992. In August of that same year, Decree Law No. 25659 was enacted; this law criminalizes the offense of high treason and establishes the jurisdiction of the military courts to prosecute this crime. These decree laws, along with decrees nos. 25708, 25744, and 25880, and other complementary provisions, equipped the Peruvian legal system with new exceptional procedures for investigating, examining, and prosecuting individuals accused of terrorism or treason.

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

8. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,² holding closed hearings, solitary confinement during the first year of prison terms,³ and summary deadlines for presenting charges and issuing judgments in the case of the crime of treason.⁴ These decrees likewise denied suspects the assistance of a legal representative prior to their first statement to an agent of the Public Ministry⁵ and restricted the attorney's participation in other stages of the criminal proceeding, disallowed the recusal of judges or other judicial officers,⁶ established concealed identities for judges and prosecutors ("faceless courts"),⁷ and prevented the summoning, as witnesses, of state agents who had been involved in preparing the police arrest report.⁸

9. As for their provisions of material law, these decrees provided for the possibility of applying more than one criminal offense to actions of a similar or identical nature; they did not differentiate between

¹ See, *inter alia*, Report No. 111/11. Petitions 240-00 Y 4582-02. ADMISSIBILITY. *José Félix Arce Apaza and Luis Enrique Quispe Vega*. PERU. July 22, 2011.

² Decree Law No. 25475, Article 12(d)

³ Decree Law No. 25475, Article 20

⁴ Investigations, prosecution, and sentencing for the crime of high treason were governed by Decree Laws Nos. 25708 and 25744.

⁵ The right to the assistance of freely chosen defense counsel from the very outset of a criminal proceeding was later established by Article 2 of Law 26447.

⁶ Decree Law No. 25475, Article 13(h)

⁷ With the enactment of Law 26671 on October 12, 1996, "faceless" judges and prosecutors were abolished.

⁸ Decree Law No. 25744, Article 2

different levels of *mens rea*,⁹ and they only indicated minimum prison terms, without setting maximum penalties.¹⁰

10. On May 12, 1992, the Executive Branch of Government passed Decree Law No. 25499, also called the Repentance Law [*Ley de Arrepentimiento*], which regulated the reduction, exemption, remission, or mitigation of prison sentences for individuals charged with or convicted of the crime of terrorism who provided information leading to the capture of chiefs, heads, leaders, or principal members of terrorist organizations.¹¹ By means of Supreme Decree No. 015-93-JUS of May 8, 1993, the executive branch adopted the Regulations for the Repentance Law, which provided for, among other measures, the secrecy or change of identity for the repentant persons making the statement.¹² The Repentance Law expired on October 31, 1994.¹³

Antiterrorism legislation in force as of January 2003

11. On January 3, 2003, Peru's Constitutional Court struck down a series of provisions contained in the terrorism-related decree laws enacted during the Fujimori administration.¹⁴ That decision ruled Decree Law No. 25659 unconstitutional and ordered charges for the crime of high treason as defined therein to be tried as terrorism, as provided for in Decree Law No. 25475. It likewise annulled the provisions that prevented the recusal of judges and the subpoena of officers involved in the police arrest report as witnesses, and the provisions that allowed civilians to be tried by military courts. At the same time, absolute incommunicado detention and solitary confinement during the first year of prison terms were also ruled unconstitutional.

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

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

14. Between January and February 2003, Peru's executive branch¹⁶ issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926, and 927,¹⁷ with the aim of bringing the country's laws into line with the Constitutional Court's judgment of January 3, 2003. In general terms, those decrees ordered the voiding of all judgments and trials conducted before the military courts or faceless judicial operators, together with the referral of all such proceedings to the National Terrorism Chamber, later called the National Criminal

⁹ Decree Law No. 25475, Article 2

¹⁰ Decree Law No. 25475, Article 3

¹¹ Decree Law No. 25499, Articles 1(II)(a) and 1(III)

¹² Supreme Decree No. 015-93-JUS, Articles 8(a) and 36

¹³ The Repentance Law was repealed by Law 26345 of August 30, 1994.

¹⁴ Resolution of the Constitutional Court of January 3, 2003. File no. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens.

¹⁵ Resolution of the Constitutional Court of January 3, 2003. File no. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens, paragraph 159.

¹⁶ On January 8, 2003, the Congress of the Republic of Peru enacted Law 27913, whereby it delegated the power to legislate on terrorism-related matters to the executive branch.

¹⁷ Legislative Decree 927 regulated the enforcement of terrorism-related criminal law. It was repealed on October 14, 2009 with the enactment of Law 29423, which disallowed persons convicted of terrorism from requesting lighter prison sentences, partial release, or conditional release.

Chamber, which was created within the Supreme Court of Justice and charged with distributing the new trials to the Specialized Criminal Courts. The new antiterrorism legislation also provided for partially open hearings during oral proceedings¹⁸ and prohibited the imposition of harsher sentences than those that had been handed down in the voided trials.¹⁹

15. Regarding the steps taken during criminal investigations and examination proceedings before faceless civilian or military judicial officers, Article 8 of Legislative Decree No. 922 upheld the validity of examination proceeding commencement deeds, police statements given in the presence of a representative of the Public Ministry, technical reports, search and seizure reports, statements given to the National Police, and statements made by “repentants.” Lastly, Article 3 of the same Legislative Decree ruled that the voiding of cases tried in the military courts would not trigger automatic release from prison, which could take place only if the Public Ministry declined to press charges or if the judiciary refused to commence examination proceedings.

Ruling on the constitutionality of the existing terrorism-related legal framework

16. Peru’s *Movimiento Popular de Control Constitucional* [Popular Movement for Constitutional Review] filed a constitutional challenge on behalf of 5,186 citizens to legislative decrees 921, 922, 923, 924, 925, 926, and 927. Among the issues raised was an allegation that those decrees were unconstitutional inasmuch as they established that the voiding of sentences and proceedings that had taken place prior to the constitutionality ruling issued by the Constitutional Court on January 3, 2003, did not also require the release of the accused, with the maximum time legally allowed for pretrial detention beginning to lapse only when commencement of examination proceedings for the new cases was ordered. It further challenged the constitutionality of using the police reports and evidence obtained by the military courts in the new trials. On August 9, 2006, the Constitutional Court issued a judgment whereby it ruled the challenge to be groundless.

17. With respect to the allegations pertaining to deprivation of freedom and the length of pretrial detention, the Court determined that the laws aimed to “guarantee constitutional principles and goods that might be affected by a new outbreak of subversive practices, and/or if the state’s legitimate exercise of *ius puniendi* over individuals found guilty of the crime of terrorism were to be frustrated, even if such individuals were convicted by judges who lacked the jurisdiction to do so and without the guarantees inherent to the right to due process.” As to what constitutes a reasonable time period for pretrial detention, the Court concluded that, in enforcing laws that govern such periods, judges and courts must analyze all relevant information in order to determine whether a genuine need exists to keep a person in pretrial detention and state their position clearly in their decisions regarding the release of such individual.

18. Regarding the constitutionality of using evidence that served as the basis for convictions and prosecutions prior to 2003, the Constitutional Court determined that it was not possible to establish through an unconstitutionality action that all of the police reports had been obtained using torture, but that in any case neither the police reports nor the statements given to the Peruvian National Police could constitute full proof. As to evidence obtained under the military courts, the Constitutional Court believed it should be considered conscientiously, but that in and of itself this evidence was not necessarily invalid.

Prison conditions

19. The imprisonment regime put in place by the emergency criminal policy developed in 1992 to combat insurgent groups was fundamentally characterized by prisoner isolation.²⁰ Article 20 of Decree Law No. 25475, the text of which was reproduced in Article 3(b) of Decree Law No. 25.744 of 1992, required sentences for the crimes of terrorism and high treason to be served in maximum security prisons, with solitary confinement throughout the first year of incarceration and with mandatory labor for as long as the

¹⁸ Legislative Decree 922, Article 12(8)

¹⁹ Legislative Decree 922, fifth complementary provision

²⁰ Final Report of Peru’s Truth and Reconciliation Commission (TRC), 2003, Volume V, 2.22. *Prisons*.

individual remained in prison. It was further established that visits were to be restricted to direct relatives. In addition, by means of Decree Law No. 25421 of 1992, the Ministry of the Interior, via the National Police, was given the responsibility for managing and for internal and external security in penitentiaries and related institutions.²¹ The staff of the National Penitentiary Institute (hereinafter, “INPE”) limited itself to administration-related issues and to institutions that dealt with the prisons.²² In 1997, the government issued Supreme Decree 005, whereby it established that, under the maximum-security regime, those charged with and convicted of the crime of terrorism would have just one hour per day in the courtyard and [visits] would be conducted via a system of booths, with no right to conjugal visits.

20. In 2001, the Peruvian state introduced, by means of Supreme Decree No. 003-2001-JUS,²³ a series of reforms aimed at making the maximum-security prison regime, as it applied to prisoners serving time for terrorism and treason, more flexible. These reforms had to do with things like visits from relatives and friends; visits and communication with attorneys; and the amount of time inmates could spend outside of their cells. Together with this law, and for purposes of ensuring the principle of authority in penitentiaries—“especially in maximum security prisons”—Supreme Decree No. 006-2001-JUS was issued. This decree empowered the President of INPE and the Technical Prison Councils to impose restrictions of up to 120 days on inmates with respect to receiving direct visits from family and friends, the time defense attorneys could come, and how long prisoners could spend in passageways and courtyards.²⁴

Sentencing adjustments

21. In 2003, Peru’s executive branch issued Decree Law No. 927, which provided that persons convicted of terrorism could seek reductions in their sentences through study and work, as well as conditional release. In 2007, Legislative Decree 895 was issued; this decree makes individuals sentenced to life imprisonment ineligible for conditional release and imposes the additional requirement that all others convicted of terrorism seeking sentence adjustments must have paid in full the amount levied on them in the form of civil damages and fines. In addition, this decree disallows reductions in sentences for time worked or engaged in studying for persons sentenced to 30 years or more in prison. Two years later, the legislature issued Law No. 29423, which repealed Decree Law 927 and abolished partial release, conditional release, and reductions in sentences through work and/or study for all those convicted of terrorism or high treason.

IV. POSITION OF THE PARTIES

A. Position of the Petitioners

1. Common claims

22. The petitions being dealt with in this report claim that the alleged victims were prosecuted and convicted of the crime of terrorism, with the examination stage, trial, and sentencing governed by the “antiterrorism legislation” that came into force in May 1992. The petitioners hold that the decrees making up this legislation are incompatible with the Constitutions of 1979 and 1993, as well as with international human rights treaties ratified by Peru. They maintain that the alleged victims were arrested between 1992

²¹ Decree Law No. 25421 of April 6, 1992: “*Declaran en estado de reorganización el Instituto Nacional Penitenciario – INPE*” [National Penitentiary Institute – INPE Declared in a State of Reorganization], Article 2. Available at: <http://docs.peru.justia.com/federales/decretos-leyes/25421-apr-6-1992.pdf>.

²² Final Report of the TRC, 2003, Volume V, 2.22. *Prisons*.

²³ Supreme Decree No. 003-2001-JUS: “*Establecen disposiciones sobre el derecho de defensa y el régimen carcelario de los internos en establecimientos penitenciarios*” [Provisions Established on the Right to a Defense and on the Prison Regime for Inmates in Penitentiaries]. Official Journal – *El Peruano*, January 19, 2001 edition. Available at: <http://www.elperuano.pe/PublicacionNLB/normaslegales/wfrmNormasLista.aspx>

²⁴ Supreme Decree No. 006-2001-JUS: “*Facultan al Presidente del Instituto Nacional Penitenciario establecer, en uno o más establecimientos penitenciarios, restricciones al régimen carcelario de los internos*” [President of the National Penitentiary Institute Given the Authority to Establish, in One or More Penitentiaries, Restrictions to the Prison Regime for Inmates]. Official Journal – *El Peruano*, March 23, 2001 edition. Available at: <http://www.elperuano.pe/PublicacionNLB/normaslegales/wfrmNormasLista.aspx>

and 1994 by members of the Peru's National Counterterrorism Directorate (hereinafter, "DINCOTE"),²⁵ while not in *flagrante delicto* and without warrants for their arrest. With reference to their personal liberty, the petitions claim that the alleged victims were detained without being informed of the charges against them and that in most cases, they were not brought before a competent authority to exercise judicial oversight over their arrests.

23. The petitioners indicate that the alleged victims were tried in the military justice system for the crime of high treason, with the examination stage, trial, and sentencing governed by the "antiterrorism legislation" that came into force in May 1992. A group of petitioners claim that they were tried and convicted in the military courts.

24. The petitions claim that the alleged victims were tried before both military and civilian courts by justice officials whose identities were concealed. According to the allegations, they were forced to sign self-incriminating statements after being tortured by members of the National Counterterrorism Directorate (DINCOTE) and they were unable to refute evidence brought against them or meet in private with defense counsel. They further claim that the charges brought by prosecutors were based on fabricated (or planted) evidence, evidence obtained through illegal searches of the alleged victims' homes, statements coerced from third parties, statements made by members of the military, and accusations made by "*arrepentidos*" [repentants], and that the alleged victims were denied the opportunity to cross examine the individuals who provided that information.

25. Regarding their conditions in detention, the alleged victims indicate that they were incarcerated in the following prisons: "El Milagro," "Miguel Castro Castro," "Cristo Rey," "Socabaya-Arequipa," "Yanamayo Prison," "Piedras Gordas," and the "Chorillos High Security Women's Prison," where, they maintain, they were kept in isolation for more than 23 hours a day and were subject to restrictions in terms of receiving visits as well as with regard to the right to access reading materials or to work. They also allege that during their imprisonment (in both the prisons and in police and army facilities), they were physically and psychologically abused and that the food and shelter in those penitentiaries was inadequate and made them prone to contracting diseases.

26. In addition, the petitions allege that the trials held under the 1992 "antiterrorism legislation," were voided by the National Terrorism Chamber in and after February 2003, by virtue of the judgment issued by the Constitutional Court on January 3 of that year and by Legislative Decrees 921 through 927.²⁶ They indicate that following this, new cases were brought almost immediately against the alleged victims where they were convicted in the regular justice system of the crime of terrorism provided for under Decree Law No. 25475, and the sentences imposed were upheld on appeal in each and every instance.

27. In general terms, the petitioners indicated that the new antiterrorism legislation was enacted in 2003, after the commission of the offenses with which the alleged victims were charged, and they hold that the enforcement of those laws in their cases violated the principle of freedom from *ex post facto* criminal laws. They likewise asserted that evidence produced before the faceless military courts, as well as evidence obtained through coercion and illegal searches, was upheld in the new trials before the regular justice system. The petitioners claim that the creation of the National Terrorism Chamber, further named National Criminal Chamber, and its actions in these cases following the alleged incidents, were in breach of the right to be judged by a court pre-established by law. They further contend that the holding of the second trials for charges that had already been ruled on during the 1990's violated the principle of double jeopardy.

²⁵ With the exception of Augusto Luján Flores (P-770-04), who alleges he was arrested by members of the army's Intelligence Service while he was completing his military service.

²⁶ With the exception of petition P-1413-04 (Gloria Beatriz Jorge López), who holds that the case prosecuted in the military justice system was voided by a December 5, 2002 judgment issued by the Special Review Chamber of the Supreme Military Justice Council when it was processing a special appeal for review of the final judgment filed by the alleged victim in case file No. 032-TP-93 ZJFAP

28. The petitioners claimed that following the voiding of their convictions under the 1992 antiterrorism laws, the alleged victims were held in custody for several days or weeks, in the absence of final convictions or of procedural grounds that would have justified their pretrial detention. They held that this undermined their right to the presumption of innocence and to personal liberty. They claimed that although the crime of high treason, for which the majority of the alleged victims had originally been convicted,²⁷ was struck from Peru's criminal law system, the offense of terrorism as provided for in Article 2 of Decree Law No. 25475, as well as the offenses of collaborating and affiliation with terrorist groups, established under Articles 4 and 5 of the same decree law, remain ambiguous and imprecise, in spite of the parameters for interpretation set by the Constitutional Court in its January 3, 2003 judgment.

29. Of the 64 alleged victims covered in this report, 16 are women and 48 are men. The Commission observes that, of the 16 petitions received in representation of women who were prosecuted for terrorism or high treason, 11 contain allegations of different forms of sexual abuse at the hands of state agents.

2. Specific allegations

Hernán Ismael Dipas Vargas and Miguel Angel Dipas Vargas (P-663-98)

30. The petition, lodged by Dionisio Dipas Peralta on behalf of his sons Hernán Ismael Dipas Vargas and Miguel Angel Dipas Vargas, was received by the IACHR on November 11, 1998, and forwarded to the State on September 15 and December 11, 2008. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission. The petitioner asserts that Hernán Ismael Dipas Vargas was arrested by DINCOTE on December 30, 1992, and was tortured in an effort to get him to incriminate himself in the murder of union leader Pedro Huilca Tecse, which had transpired days before. This same murder was the subject of a judgment handed down by the Inter-American Court of Human Rights against the State of Peru.²⁸ He alleges that [Hernán Ismael] was then brought before the military courts and accused of high treason.

31. According to the information furnished by both parties, on February 8, 1993, Hernán Ismael Dipas Vargas was sentenced to life in prison for the crime of high treason; the sentence was appealed and ultimately upheld via a March 7, 1993 ruling. The alleged victim went on to file an appeal to have the judgment vacated; on June 15, 1993, the Special Tribunal for Matters of High Treason of the Supreme Military Justice Council ruled on that appeal, upholding the sentence being challenged. When these proceedings were voided in the wake of the Constitutional Court's January 3, 2003 judgment, a new trial was held, which concluded in an acquittal issued by the National Criminal Chamber on March 7, 2006. In its ruling, the National Criminal Chamber ordered that its decision be referred to the Supreme Court of Justice for consultation. The Office of the Public Prosecutor of the Ministry of the Interior filed an appeal to vacate this judgment; on March 21, 2007, the Provisional Criminal Court issued a decision wherein it upheld the trial court's ruling. Subsequently, on July 2, 2007, the National Criminal Chamber once again upheld the March 7, 2006 acquittal.

32. Lastly, the petitioner states that his sons were mistreated and tortured by DINCOTE, and according to the information contained in the case file, in the trial against them before the National Criminal Chamber, the petitioner alleged that the evidence upon which their convictions was based had been obtained through physical and psychological abuse.

33. The petitioner further alleges that Miguel Angel Dipas Vargas was detained on September 23, 1996, by DINCOTE and was the victim of torture. He states that [Miguel Angel] was then

²⁷ With the exception of Wilbert Baltazar Mamani Cueva (P-935-03) and Benigno Villanueva Ríos (P-1220-04), who were allegedly convicted of the crime of terrorism provided for under Decree Law 25475, via a trial conducted in the regular criminal justice system before faceless justice officials.

²⁸ Inter-American Court of Human Rights. *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005. (Merits, Reparations, and Costs).

brought before a military court, where, on April 10, 1997, he was sentenced to life in prison for the crime of high treason. The petitioner asserts that the alleged victim appealed the sentence, and then subsequently filed an appeal to vacate the judgment, but the judgment was reportedly upheld. The information provided by the parties indicates that when these proceedings were voided because of the Constitutional Court's January 3, 2003 judgment, the alleged victim was retried in the regular justice system. In March 2006, the National Criminal Chamber acquitted him and he was released. That decision was, however, overturned by the Supreme Court of Justice and a new trial was ordered. On January 31, 2008, the National Criminal Chamber ordered the alleged victim be granted pretrial conditional release while awaiting trial.

34. On January 28, 2009, the National Criminal Chamber sentenced Miguel Angel Dipas Vargas to 15 years in prison for the crime of terrorism. Mr. Dipas Vargas filed an appeal to vacate this decision, which was ruled on on November 4, 2009, by the Supreme Court of Justice's 1st Provisional Criminal Chamber. In its ruling, the Court upheld the conviction, but voided the grounds on which the alleged victim had been acquitted of the crime of terrorism in favor of other charges filed against him and ordered that a new trial, based on these charges, be held. The Commission lacks information on the outcome of this last trial.

35. Lastly, the petitioner claims that the alleged victim was the victim of mistreatment and torture by DINCOTE.

Edilberto Antonio Macarlupu García (P-685-98)

36. The petition, filed by José Florencio Macarlupu Ipanaque and Candelaria Úrsula García Pérez on behalf of their son Edilberto Antonio Macarlupu, was received by the IACHR on November 11, 1998, and, after several submissions of additional information, was forwarded to the State on April 4, 2013; the State was given two months to send in its observations pursuant to the IACHR Rules of Procedure in effect at that time. On June 19, 2013, the State requested an extension for submitting its comments; this request was denied pursuant to Article 30(3) of the Rules of Procedure, for having exceeded the deadline. As of publication of this report, the State has not presented any observations related to this case.

37. The petitioners recounted the facts reported by the alleged victim wherein he asserts he was arrested on August 14, 1992, by DINCOTE, after which he was allegedly held in their cells for 16 days and then for 17 days in a small prison of the judiciary; he was reportedly tortured in both places. The alleged victim maintains that he was tried before a military court, where he was sentenced to life imprisonment by a military judge. The information provided by the petitioners indicates that the alleged victim was indeed sentenced to life in prison September 22, 1992, by the military justice system and that he lodged an appeal to have that judgment vacated. The Permanent War Council of the Army's Second Judicial Zone upheld the conviction via an October 10, 1992 ruling.

38. The petitioners claim that the aforementioned conviction was voided based on the Constitutional Court's 2003 ruling, and that the alleged victim was retried in the regular justice system where he was reportedly sentenced to 20 years in prison by the National Terrorism Chamber. The petitioners assert that the alleged victim filed an appeal to vacate that judgment and that the Supreme Court of Justice's Criminal Chamber ruled on that appeal, upholding the judgment.

39. The petitioners allege that they repeatedly insisted that the Office of the Prosecutor take up their complaints about the torture their son had reportedly suffered until finally, on September 9, 1992, the 17th Provincial Criminal Prosecutors Office of Lima registered these complaints. The petitioners nonetheless claim that the Office of the Prosecutor never conducted an investigation. They also assert that the alleged victim reported the alleged torture during the trial against him before the National Terrorism Chamber.

Glicerio Aguirre Pacheco (P-691-98)

40. The petition, filed on his own behalf by Glicerio Aguirre Pacheco and his daughter, Laura Aguirre Mallqui, was received by the IACHR in November 1998 and was forwarded to the State on

September 7, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

41. The petitioner alleges that he was arrested on April 26, 1998. He claims that days later, his home was searched without a warrant and that DINCOTE took him to their cells and held him there for 45 days, and thereafter he reportedly spent 40 days in a military barracks; he was allegedly tortured in both places. The petitioner asserts that he was then tried in a military criminal court, which sentenced him to 30 years in prison for the crime of high treason.

42. The information submitted by the parties indicates that following the Constitutional Court's 2003 judgment and the voiding of his military trial, the alleged victim was retried in the National Criminal Chamber, which acquitted him on March 30, 2006, of the charge of terrorism filed against him by the state, and ordered his immediate release. Thereafter, the Office of the Prosecutor filed an appeal to vacate the judgment; on March 19, 2008, the Permanent Criminal Chamber ruled on this appeal, vacating the judgment acquitting the petitioner, and ordered a retrial. According to the case file, on June 1, 2009, the National Criminal Chamber acquitted the petitioner and ordered the case to be archived definitively and the petitioner's criminal record wiped clean. At the same time, the National Criminal Chamber ordered an ex officio appeal to vacate "as this was a judgment that ran contrary to the State's interests." Neither party has provided information on the outcome of that appeal.

43. Lastly, the petitioner claims he was the victim of mistreatment and torture by DINCOTE, and according to the information provided, during his trial before the National Criminal Chamber, the petitioner alleged that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

Wilbert Baltazar Mamani Cueva (P-935-03)

44. The petition, lodged by Marisol Nicolasa Mamani Cueva on behalf of Wilbert Baltazar Mamani Cueva, was received by the IACHR on November 7, 2003, and forwarded to the State on August 19, 2008. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

45. The information provided by the parties indicates that the alleged victim was tried for the crime of high treason in the military criminal justice system and for the crime of terrorism in the regular justice system, with final judgments that were upheld in 1992 and 1996. The proceedings before the military authorities were decided via a November 28, 1992 ruling whereby the alleged victim was sentenced to life imprisonment, while the trial held in the regular courts was decided through an appeals judgment rendered by the Supreme Court of Justice's Special Terrorism Chamber on May 22, 1996, which imposed a sentence of 20 years in prison "merged" with the punishment imposed by the military court. Once these proceedings were overturned because of the Constitutional Court's January 3, 2003 judgment, a new trial was held, which ended in a conviction for the crime of terrorism and a sentence of 13 years and 8 months that was handed down on June 2, 2006 by the National Criminal Chamber. The alleged victim did not challenge that judgment. The petitioner claims, however, that the alleged victim was mistreated and tortured by DINCOTE, and according to the information submitted by both parties, during his trials, the alleged victim contended that the evidence being used to try him was invalid because it had been obtained through torture.

Augusto Flores Luján (P-777-04)

46. The petition, filed on his own behalf by Augusto Flores Luján, was received by the IACHR on August 30, 2004, and forwarded to the State on August 19, 2008. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

47. The petitioner alleges that he was completing his required military service in the "Los Cabitos" military barracks in Ayacucho when he was arrested on November 14, 1994, and accused of having committed terrorist attacks; he was tried in the military justice system and sentenced to life in prison. In

addition, the petitioner claims that the Peruvian authorities searched his home and seized books that, because they were “Marxist,” were used as evidence in his criminal trial before the military courts.

48. The information furnished by the parties indicates that his conviction was voided in the wake of the January 2003 Constitutional Court judgment and that he was then retried in the regular justice system. On September 21, 2005, the 1st Criminal Chamber of the Superior Court of Justice of Ica convicted the petitioner of the crime of terrorism and sentenced him to 20 years in prison for his involvement in the attacks, as well as for having been involved in “*pintas y volanteos*” [subversive graffiti and seditious pamphleteering]. The petitioner filed an appeal to have his sentence vacated; on April 26, 2006, the 2nd Provisional Criminal Chamber ruled on that appeal, upholding the conviction. The petitioner asserts that he was the victim of mistreatment and torture by DINCOTE, and hence, in his post-2003 trial, he contended that all the evidence obtained by these means should be thrown out.

Benigno Villanueva Ríos (P-1220-04)

49. The petition, lodged on his own behalf by Benigno Villanueva Ríos, was received by the Commission on November 10, 2004, and forwarded to the State on August 26, 2008. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

50. The information provided by the parties indicates that on July 21, 1997, the Special Criminal Chamber of the Superior Court of Lima convicted the alleged victim of collaborating with terrorists and sentenced him to 25 years in prison. After that conviction was voided thanks to the 2003 Constitutional Court judgment, the petitioner was retried in the regular justice system. On September 27, 2004, he was sentenced to 20 years in prison by the National Terrorism Chamber. On March 14, 2005, the petitioner filed a habeas corpus action, requesting to be released; that appeal was ruled inadmissible on March 19, 2005, by Lima’s 18th Specialized Court on Criminal Matters. The petitioner challenged that ruling, but on May 20, 2005, the Supreme Court of Justice’s 2nd Provisional Criminal Court upheld it.

51. Finally, the petitioner claims he was the victim of mistreatment and torture by DINCOTE.

Gloria Beatriz Jorge López (P-1413-04)

52. The petition, filed on her own behalf by Gloria Beatriz Jorge López, was received by the Commission on December 27, 2004, and forwarded to the State on May 18, 2009. The additional information and observations were, in turn, duly forwarded by the Commission.

53. The information furnished by the parties indicates that a Peruvian Air Force judge convicted Gloria Beatriz Jorge López of the crime of high treason on November 17, 1993, and sentenced her to 30 years in prison. This judgment was upheld by the Full Chamber of the Supreme Military Justice Council in a November 29, 2002 ruling that dismissed a special appeal filed against it. On December 5, 2002, the Supreme Military Justice Council vacated the judgments rendered against the petitioner and later decided to refer her case to the regular justice system. On January 7, 2003, a criminal judge in Lima ordered new examination proceedings to begin—as well pretrial detention for the petitioner—but the case was then, once again, referred to a provisional court specializing in terrorism. Finally, on October 20, 2003, the National Terrorism Chamber sentenced her to 19 years in prison. The petitioner filed an appeal to vacate the judgment; on March 30, 2004, the Permanent Criminal Chamber ruled on the appeal, upholding the judgment.

54. The petitioner claims that although her conviction by the military court was voided, this did not void the entirety of the case brought against her in the military justice system and that the evidence collected therein was used against her in her trial before a criminal judge in the civilian courts. She claims the principle of legality was undermined given the similarities between the offenses of high treason and terrorism. Lastly, the petitioner alleges that her right to a fair trial was violated inasmuch as the judgment rendered on the appeal imposed a harsher punishment than that of the trial court. She further argues that her right to be tried by a lawful judge was also violated, first when she was convicted by the military courts, and later when she was convicted by specialized and provisional terrorism courts.

55. Finally, the petitioner confirms that she was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, she informed the authorities of this during the proceedings that took place in the 1990's, specifically in the statement she gave to the DINCOTE examining official on April 22, 1993.

Waldo Wilmer Quezada Valencia (P-1230-04)

56. The petition, filed on his own behalf by Waldo Wilmer Quezada Valencia, was received by the Commission on November 12, 2004, and forwarded to the State on August 26, 2008. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

57. The petitioner claims he was arrested on October 6, 1992, at the building where he worked as guard and was taken to DINCOTE's facilities where he was tortured. He was held at Miguel Castro Castro Prison starting on November 6, 1992. The petitioner holds that he was tried in a military court and sentenced to life imprisonment on November 16, 1992. The information provided by the parties indicates that that conviction was voided and a new trial was held in the regular justice system. The 1st Specialized Court of Trujillo sentenced the petitioner to 15 years in prison on January 4, 2006, and its judgment was upheld on July 23, 2007, when the 2nd Provisional Criminal Chamber ruled against reversing the conviction.

58. Lastly, the petitioner asserts that he was the victim of mistreatment and torture by DINCOTE, and the information contained in the case file indicates that in the trial that took place after 2003, he allegedly contended that all of the evidence obtained through these acts should be thrown out.

Juan Alonso Aranda Company (P-804-04)

59. The petition, lodged on his own behalf by Juan Alonso Aranda Company, was received by the Commission on August 23, 2004, and forwarded to the State on September 7, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

60. The petitioner states he was shot by DINCOTE on June 12, 1993, and was then tortured for five hours, after which time he was finally brought to a hospital where he remained for three days. He was then taken back to the DINCOTE's cells where he claims he was tortured once again in an effort to get him to admit he belonged to the Shining Path. The petitioner alleges he was tried by a military court and sentenced to life in prison for the crime of high treason on August 20, 1993. The information provided by the parties indicates that the petitioner filed an appeal to have that judgment vacated; the Special Supreme Military Tribunal upheld the trial court's decision on December 7, 1993. Following the Constitutional Court's 2003 judgment, a new trial was held and on December 9, 2005, the National Criminal Chamber sentenced the petitioner to 30 years in prison. He filed an appeal to vacate the judgment, but on May 7, 2007, the Provisional Criminal Court upheld the conviction. The petitioner states he was held at Miguel Castro Castro Prison and Yanamayo Prison.

61. The petitioner argues the *ex post facto* nature of applying Legislative Decree 985 of 2007, which required full payment of civil damages as a precondition for obtaining conditional release and abolished sentence reductions for work and study, as well as partial release for those persons sentenced to more than 30 years for terrorism. He also argues that Law 29423 of 2009 was applied to his case in breach of his rights. In the petitioner's opinion, that Law, which abolished sentence reductions for work and study for all individuals convicted of terrorism, excepting those who had already had their sentences reduced or who had already put in a request for a sentence reduction, violated his right to equal protection. The petitioner further holds that requiring payment of civil reparations as a precondition for obtaining sentence reductions amounted to debtors' prison, in breach of Article 7 of the Convention.

62. Lastly, the petitioner alleges that he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, he claimed, both before the National Criminal

Chamber, and when he lodged his appeal to vacate the judgment with the Supreme Court of Justice's Provisional Criminal Chamber, that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

Álvaro Espejo Sebastián (P-806-04)

63. The petition, filed on his own behalf by Álvaro Espejo Sebastián, was received by the Commission on August 23, 2004, and forwarded to the State on April 29, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

64. The petitioner claims he was arrested on February 14, 1994, while in his home, which was searched without a warrant. He alleges that DINCOTE held him in their cells for 21 days, and thereafter he reportedly spent 90 days on a military base; he was allegedly tortured in both places. He states that he was subsequently tried in a military court, which sentenced him to life imprisonment for the crime of high treason. The information provided by the parties indicates that following the 2003 Constitutional Court judgment and the voiding of the trial that had sentenced him to life in prison, the petitioner filed a habeas corpus action on September 12, 2004, requesting his immediate release. The 18th Specialized Criminal Court of Lima dismissed his request on September 13, 2004, and thereafter, the petitioner filed a constitutional appeal that was decided on May 17, 2005, by the Constitutional Court, which upheld the judgment. In the trial against the petitioner in the regular justice system, the National Criminal Chamber sentenced him to 30 years in prison on March 13, 2006. The petitioner filed an appeal to vacate that judgment; on February 25, 2008, the Permanent Criminal Chamber of the Supreme Court ruled against the appeal and upheld the petitioner's conviction.

65. The petitioner also argues the *ex post facto* nature and illegality, as well as violations of his right to equal protection, with respect to the laws that restricted or abolished his sentence reductions. Lastly, the petitioner confirms that he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, he claimed, both before the National Criminal Chamber, and when he lodged his appeal to vacate the judgment with the Supreme Court of Justice's Provisional Criminal Chamber, that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

Juan Cancio García Robles (P-808-04)

66. The petition, lodged on his own behalf by Juan Cancio García Robles, was received by the Commission on September 2, 2004, and forwarded to the State on September 7, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

67. The petitioner states that he was tried by a military court for the crime of high treason and sentenced to life in prison. The information provided by the parties indicates that the petitioner filed a habeas corpus action; the 29th Criminal Court of Lima ruled in favor of the petitioner's action, voiding the trial and ordering the military justice system to refer the petitioner's case to the civilian courts. The petitioner was then retried before the National Terrorism Chamber. On September 20, 2004, the 25th Criminal Court dismissed the habeas corpus action filed by the petitioner against the National Terrorism Chamber wherein he had argued that his detention was illegal and arbitrary. On December 14, 2004, the Superior Court of Justice of Lima upheld that decision, after it had been appealed by the petitioner. Thereafter, the petitioner filed a constitutional appeal, which was ruled on by the Constitutional Court on March 17, 2005. In his appeal, the petitioner claimed that although detention had been ordered in his case, the 133 months he spent in custody without a judgment against him exceeded the maximum term allowed for pretrial detention under the Criminal Procedure Code. The Constitutional Court subsequently denied his appeal based on the fact that Decree Law 922 provides that the maximum period allowed for [pretrial] detention in cases like his begins to lapse upon issue of the "examination proceeding commencement order" for a new trial, which in his case was on May 23, 2003. Lastly, on September 8, 2005, the petitioner was sentenced to 25 years in prison for the crime of terrorism. He filed an appeal to vacate this judgment and his appeal was decided on May 10, 2006, by the 2nd Provisional Criminal Chamber of the Supreme Court of Justice, which upheld the conviction.

68. The petitioner argues the *ex post facto* nature of applying Legislative Decree 985 of 2007, which required full payment of civil damages as a precondition for obtaining conditional release and abolished sentence reductions for work and study, as well as partial release for those persons sentenced to more than 30 years for terrorism. He also argues that Law 29423 of 2009 was applied to his case in breach of his rights. In the petitioner's opinion, that Law, which abolished sentence reductions for work and study for all individuals convicted of terrorism, excepting those who had already had their sentences reduced or who had already put in a request for a sentence reduction, violated his right to equal protection. The petitioner further holds that requiring payment of civil reparations as a precondition for obtaining sentence reductions amounted to debtors' prison, in breach of Article 7 of the Convention.

69. Lastly, the petitioner asserts that he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, he claimed, both before the National Criminal Chamber, and when he lodged his appeal to vacate the judgment with the Supreme Court of Justice's Provisional Criminal Chamber, that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

Wilfredo Patricio Guzmán Moya (P-778-04)

70. The petition, filed on his own behalf by Wilfredo Patricio Guzmán Moya, was received by the IACHR on August 20, 2004, and forwarded to the State on September 7, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

71. The petitioner states that he was arrested on February 18, 1994, by DINCOTE. He claims that after having been kept in isolation and tortured for 30 days, he was tried before a military court, which sentenced him to life in prison for the crime of high treason. He was incarcerated at Miguel Castro Castro Prison. The information provided by the parties indicates that following the Constitutional Court's 2003 judgment he was retried in the regular courts. On March 13, 2006, the National Criminal Chamber sentenced him to 30 years in prison. The petitioner then filed an appeal to have that judgment vacated; on February 25, 2008, the Permanent Criminal Chamber ruled on the appeal, upholding his 30-year prison sentence.

72. The petitioner argues the *ex post facto* nature of applying Legislative Decree 985 of 2007, which required full payment of civil damages as a precondition for obtaining conditional release and abolished sentence reductions for work and study, as well as partial release for those persons sentenced to more than 30 years for terrorism. He also argues that Law 29423 of 2009 was applied to his case in breach of his rights. In the petitioner's opinion, that Law, which abolished sentence reductions for work and study for all individuals convicted of terrorism, excepting those who had already had their sentences reduced or who had already put in a request for a sentence reduction, violated his right to equal protection. The petitioner further holds that requiring payment of civil reparations as a precondition for obtaining sentence reductions amounted to debtors' prison, in breach of Article 7 of the Convention.

73. The petitioner claims that he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, during the trial and appeals stages of the case brought against him in the regular justice system following the Constitutional Court's 2003 ruling, the petitioner alleged that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

Isaac Quispe Gonzáles (P-905-04)

74. The petition, filed on his own behalf by Isaac Quispe Gonzáles, was received by the IACHR on September 17, 2004, and forwarded to the State on September 7, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

75. The petitioner reports that he was arrested by DINCOTE on July 31, 1993, while at his home, which was searched. He claims that DINCOTE held him in their cells for 25 days and thereafter he spent

18 days on a military base; he was allegedly tortured in both places. He states that he was then tried before a military court, which, on August 5, 1993, sentenced him to life in prison for the crime of high treason; his conviction was upheld on September 30, 1993. The information furnished by the parties indicates that the petitioner was retried in the regular justice system following the Constitutional Court's 2003 judgment. On September 8, 2005, that trial ended in a conviction and he was sentenced to 27 years in prison for the crime of terrorism. The petitioner filed an appeal to vacate that judgment, but on May 10, 2006, the 2nd Provisional Criminal Chamber of the Supreme Court of Justice upheld his conviction.

76. Lastly, the petitioner says he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, he claimed, both before the National Criminal Chamber, and when he lodged his appeal to vacate the judgment with the Supreme Court of Justice's Criminal Chamber, that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

José Manuel Mattos Palacios (P-949-04)

77. The petition, lodged on his own behalf by José Manuel Mattos Palacios, was received by the IACHR on September 27, 2004, and was forwarded to the State on September 7, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

78. The petitioner claims he was arrested by DINCOTE on December 2, 1992, and held in their cells for 30 days, where he was tortured. He states that thereafter he was tried in a military court, which sentenced him to life imprisonment for the crime of high treason. The information furnished by the parties indicates that following the 2003 Constitutional Court judgment, he was retried in the regular courts, where he was convicted of the crime of terrorism and sentenced to 25 years in prison by the National Criminal Chamber on March 20, 2006. Both the petitioner and the prosecutor filed appeals to vacate that judgment; on May 2, 2007, the Permanent Criminal Chamber upheld the conviction, but lengthened the sentence to 30 years.

79. The petitioner also argues the *ex post facto* nature and illegality, as well as violations of his right to equal protection, with respect to the laws that restricted or abolished his sentence reductions and holds that requiring payment of civil reparations as a precondition for obtaining sentence reductions amounts to debtors' prison. The petitioner further states that he was the victim of mistreatment and torture by DINCOTE, and that as a result of the blows he received, he suffered several injuries, including a deviated septum that continues to hinder his ability to breathe correctly. According to the information contained in the case file, when lodging his appeal to vacate the judgment with the Permanent Criminal Chamber, the petitioner alleged that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

Rodolfo Palmi García (P-983-04)

80. The petition, filed on his own behalf by Rodolfo Palmi García, was received by the IACHR on April 7, 2006, and forwarded to the State on August 20, 2008. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

81. The petitioner alleges that he was arrested by DINCOTE on June 12, 1993, and held in their cells for 31 days, where he was beaten and kept bound. He states that thereafter he was tried in a military court and that his trial ended on July 24, 1993, when he was convicted and sentenced to life in prison for the crime of high treason. This judgment was reportedly upheld on August 20, 1993. And finally, on December 7, 1993, the Special Naval Tribunal allegedly upheld the judgments appealed by the petitioner. The petitioner states that he was incarcerated in Yanamayo Prison.

82. The information furnished by the parties indicates that the petitioner was retried in the regular justice system following the Constitutional Court's 2003 judgment. The petitioner filed a habeas corpus action, alleging that his detention was illegal and arbitrary. On March 3, 2003, the Constitutional Court

finally issued a ruling on this appeal, whereby it voided the military court trial that had sentenced the petitioner to life imprisonment, but also clarified that pursuant to the guidelines of Legislative Decree 922, the petitioner's release from prison would be out of order. The petitioner later filed another habeas corpus action, arguing that his constitutional rights had been violated in his trial before the regular court; on January 10, 2005, the 5th Specialized Criminal Court of Lima ruled this action to be groundless. With respect to the petitioner's request for release from prison, the Court established that Legislative Decree 922 provides that the maximum term allowed for detention in cases like his begins to lapse once the "examination proceeding commencement order for a new trial is issued" (a period that according to the Criminal Procedure Code would be up to 36 months in the case of persons accused of terrorism), which in the petitioner's case would have been May 2, 2003. This decision was upheld by the Superior Court of Justice of Lima on February 28, 2005, and by the Constitutional Court on August 8, 2005.

83. The information provided by the parties also indicates that the petitioner was sentenced to 25 years in prison on November 9, 2005, by the National Criminal Chamber. On May 7, 2007, the Provisional Criminal Chamber of Lima upheld this judgment after ruling on an appeal to vacate it.

84. The petitioner alleges the *ex post facto* application of Law 29423 of 2009, which abolished sentence reductions for work and study for all individuals convicted of terrorism, excepting those who had already had their sentences reduced or who had already put in a request for a sentence reduction. In the petitioner's opinion, that law violated his right to equal protection. The petitioner further holds that requiring payment of civil reparations as a precondition for obtaining sentence reductions amounted to debtors' prison, in breach of Article 7 of the Convention.

85. Lastly, the petitioner states he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, he claimed, during his trial before the National Criminal Chamber, that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

Alex Manuel Puente Cárdenas (P-1012-04)

86. The petition, filed on his own behalf by Alex Manuel Puente Cárdenas, was received by the IACHR on October 4, 2004, and forwarded to the State on September 7, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

87. The petitioner claims he was arrested by DINCOTE on September 2, 1993, and held in their cells for 30 days, where he was allegedly tortured. He states that he was tried thereafter by a military court and sentenced to 25 years in prison for the crime of high treason on July 24, 1993. The petitioner claims he was incarcerated at Yanamayo Prison. The information furnished by the parties indicates that he was retried in the regular justice system following the Constitutional Court's 2003 judgment. The petitioner filed a habeas corpus action, arguing that his detention was illegal and arbitrary. The Constitutional Court ultimately ruled on this action on August 8, 2005, partially voiding the trial inasmuch as the evidence and statements requested by the petitioner had thus far been ignored, but clarifying that pursuant to the guidelines of Legislative Decree 922, his release from prison would be out of order. On April 11, 2006, the National Criminal Chamber sentenced the petitioner to 18 years in prison; he filed an appeal to vacate this judgment and on October 19, 2007, the Permanent Criminal Chamber ruled on his appeal, upholding the conviction. Lastly, the case file also indicates that the petitioner filed a habeas corpus action wherein he alleged that in his case, the statute of limitations had already run out on the criminal action since when the offense for which he was tried took place, there was a law in place that provided that in no case could individuals younger than 21 years of age be tried more than 10 years after the events leading to such trial had transpired; the statute of limitations in his case would have thus run out in 2002. The Constitutional Court ruled on this appeal on August 9, 2009, upholding it as far as lack of grounds were concerned, but dismissing the petitioner's request for release from prison. Based on this decision, the Constitutional Court ordered the National Criminal Chamber to issue a new ruling on requests having to do with the statute of limitations for criminal proceedings. The Commission does not have information regarding the outcome of this new decision.

88. Lastly, the petitioner asserts that he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, in the both the trial against him in the National Criminal Chamber, and in the case before the Permanent Criminal Chamber, he contended that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

Eloy Nelson Ramírez Falero (P-1016-04)

89. The petition, filed on his own behalf by Eloy Nelson Ramírez Falero, was received by the IACHR on September 13, 2004, and forwarded to the State on April 26, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

90. The petitioner claims he was arrested by DINCOTE on December 20, 1998, and held in their cells for 30 days, where he was allegedly tortured. He states that he was tried thereafter by a military court, which sentenced him to life in prison for the crime of high treason. The petitioner affirms that he was incarcerated in Yanamayo Prison. The information furnished by the parties indicates that he was retried in the regular justice system following the Constitutional Court's 2003 judgment. On April 3, 2006, the National Criminal Chamber sentenced the petitioner to 24 years in prison for the crime of terrorism. The petitioner claims he filed an appeal to vacate that judgment.

91. The information provided by both parties also indicates that the petitioner lodged appeals wherein he argued that the statute of limitations had run out in the case against him. On September 7, 2004, the petitioner filed a habeas corpus action against the National Terrorism Chamber, arguing that his detention was illegal and arbitrary. This action was dismissed at the trial court level, but was upheld on appeal. Finally, on March 27, 2007, the Constitutional Court ruled against granting a constitutional appeal and ordered the case be returned to the 1st Specialized Criminal Court for cases dealing with individuals in pretrial detention. On November 24, 2009, María Luz Miranda Yupanqui filed another habeas corpus action on behalf of the petitioner, which alleged that the statute of limitations had run out in his criminal case since he had been tried and convicted for events that occurred in 1992 when he was less than 20 years old, and hence, both the 10-year statute of limitations for persons younger than 21 years of age in place at that time in the Criminal Code and the standard 20-year period had lapsed. On January 18, 2010, the Constitutional Court dismissed the action. According to the case file, María Luz Miranda Yupanqui filed another habeas corpus action that argued the same thing; that action was dismissed by the 1st Criminal Court of Ica on November 24, 2009. Lastly, on January 6, 2011, the Constitutional Court ruled that the claim was groundless because even though the petitioner could not be prosecuted for offenses committed prior to 1991, he could be tried for those committed after the reforms that lengthened the statute of limitations for criminal proceedings entered into force, which is what the National Criminal Chamber had done.

92. The petitioner states that the reforms to the Criminal Code that expanded the timeline for the statute of limitations for criminal proceedings subsequent to the events for which he was tried transpired, were retroactively applied to him. The petitioner also argues the *ex post facto* nature and illegality, as well as violations of his right to equal protection, with respect to the laws that restricted or abolished his sentence reductions. Lastly, the petitioner claims he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, in the both the trial against him in the National Criminal Chamber, and in the case before the Permanent Criminal Chamber, he reportedly argued that the evidence upon which his conviction was based had been obtained through psychological and physical abuse.

Javier Luis Quevedo Yauremucha and Lourdes Zamora Hurtado (P-1188-04)

93. The petition, filed on his own behalf by Javier Luis Quevedo Yauremucha, and by Lourdes Zamora Hurtado, Mr. Quevedo Yauremucha's spouse, was received by the IACHR on November 10, 2004, and forwarded to the State on June 5, 2009. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission. On November 5, 2004, the Commission also received a request for a precautionary measure for the petitioner; the State was notified of this request on November 16, 2004, and asked to provide additional and up-to-date information about the petitioner's status. The

Commission denied the request for a precautionary measure on February 8, 2012, and both parties were notified of this decision.

94. The petitioner states that he was arrested by DINCOTE on June 26, 1996, while he was in his home, which was searched. He alleges that he was accused of leading a group of law students ideologically affiliated with the Shining Path, and of leading a student march in which eight students were killed, allegedly by state agents. The petitioner maintains that he was first held in DINCOTE's cells for 40 days, where he was claims he was tortured, and then moved to Callao Naval Base, where he was reportedly kept in isolation and incommunicado for 60 days. The petitioner asserts, however, that on September 17, 1993, the Special Chamber for Terrorism-Related Crimes ruled that there were no grounds for prosecuting him. He alleges that he was nevertheless tried and then acquitted on these offenses, but the Supreme Court of Justice reportedly voided that acquittal and ordered a new trial that was ultimately dismissed on September 22, 2000. The IACHR takes note of the copy—furnished by the State—of the May 30, 2003 ruling handed down by the National Terrorism Chamber, wherein it overruled the dismissal and voided all of the proceedings.

95. The information provided by the parties indicates that the alleged victim was retried in the regular justice system. On December 30, 2004, Mr. Quevedo Yauremucha was sentenced to 12 years in prison for providing logistical support to and spreading propaganda for the Shining Path. The petitioner filed an appeal to vacate that judgment but the Permanent Criminal Chamber of the Supreme Court of Justice ruled against that appeal on September 2, 2005, upholding the judgment. In addition, on June 3, 2005, the petitioner was acquitted of a number of the terrorist acts he was charged with, but was sentenced to 15 years in prison for associating with terrorists. The petitioner filed an appeal to vacate the judgment; on October 13, 2005, the Supreme Court's Provisional Criminal Chamber ruled against the appeal and upheld the judgment. According to the case file, the alleged victim was subject to further prosecutions in violation of the principle of double jeopardy. On April 11, 2005, and April 11, 2006, the National Criminal Chamber indeed ruled that *res judicata* existed in both proceedings inasmuch as they were attempting to retry the petitioner on charges for which the Chamber believed he had already been tried.

96. The petitioner also states that the detention conditions he was subjected to aggravated a lung issue he had, which allegedly worsened when the State denied him the treatment he needed by a medical specialist. Lastly, the petitioner claims he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, in his first trial before the Permanent Criminal Chamber, he reportedly argued that the evidence presented in the trial was tainted because it had been coerced.

Roberto Lorenzo Rodríguez Arévalo (P-1195-04)

97. The petition, lodged on his own behalf by Roberto Lorenzo Rodríguez Arévalo, was received by the IACHR on November 9, 2004, and forwarded to the State on September 7, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

98. The petitioner claims he was arrested by DINCOTE on March 22, 1995, and held in their cells for 31 days, where he was allegedly tortured. He states that he was tried thereafter in a military court and was sentenced to life imprisonment for the crime of high treason on May 11, 1995. The petitioner affirms that he was incarcerated at Miguel Castro Castro Prison. The information furnished by the parties indicates that following the Constitutional Court's 2003 judgment he was retried in the regular justice system, where, on May 16, 2006, the National Criminal Chamber sentenced him to 30 years in prison for the crime of terrorism. The petitioner filed an appeal to vacate that judgment, which was ruled on by the 1st Provisional Criminal Chamber on December 14, 2006.

99. The petitioner also alleges that the State first restricted and ultimately eliminated his access to sentence reductions, as well as to opportunities to study and work while in prison. Lastly, the petitioner claims he was the victim of mistreatment and torture by DINCOTE, and he states that because of this, during the oral proceedings in the National Criminal Chamber, he argued that the trial against him was tainted.

Fortunato Felix Utrilla Aguirre (P-1204-04)

100. The petition, filed on his own behalf by Fortunato Felix Utrilla Aguirre, was received by the IACHR on November 9, 2004, and forwarded to the State on September 7, 2010. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

101. The petitioner alleges that he was arrested by DINCOTE on April 9, 2000, and held in their cells for 15 days, where he was reportedly tortured. He claims that he was then moved to the Army Special Forces Division, where he was held in custody for 6 months, during which time he was tried by a military court. The trial ended without any judgment, however, because it was voided in the wake of the 2003 Constitutional Court judgment. He states that because of this, he was retried in the regular justice system.

102. According to the information provided by both parties, the petitioner was retried in the regular justice system following the Constitutional Court's 2003 judgment. On May 21, 2004, the National Terrorism Chamber thus sentenced the petitioner to 15 years in prison for the crime of terrorism. The petitioner filed an appeal to vacate that judgment; on November 17, 2004, the 2nd Provisional Criminal Chamber ruled against that appeal, upholding the judgment.

103. The petitioner also alleges that the State first restricted and ultimately eliminated his access to sentence reductions, as well as to opportunities to study and work while in prison. Lastly, the petitioner asserts that he was the victim of mistreatment and torture by DINCOTE.

David Alcides Gutierrez Cueva (P-1280-04)

104. The petition, filed on his own behalf by David Alcides Gutierrez Cueva, was received by the IACHR on November 30, 2004, and forwarded to the State on March 20, 2013. The additional information and observations submitted by the parties were, in turn, duly forwarded by the Commission.

105. The petitioner alleges that he was arrested by DINCOTE on December 23, 1993, and held in their cells for 32 days, where he was reportedly badly beaten. He was then allegedly taken to a military barracks where he remained for 35 days. The petitioner states that he was tried thereafter by a military court, which sentenced him to life in prison for the crime of high treason.

106. According the information furnished by the parties, the petitioner was retried in the regular justice system following the Constitutional Court's 2003 judgment. On February 17, 2005, the Constitutional Court ruled against a habeas corpus action filed by the petitioner wherein he had requested to be released from prison because he believed he had been in pretrial detention for too long. The Constitutional Court denied this action based on the fact that Decree Law 922 establishes that the maximum term allowed for detention in cases like his begins to lapse upon issue of the "examination proceeding commencement order for the new case," which in his case was on May 9, 2003; this means that the 36-month term provided for under the law had not yet lapsed. On October 10, 2005, the National Criminal Chamber sentenced the petitioner to 22 years in prison for the crime of terrorism. Both the petitioner and the prosecution filed appeals to vacate that judgment, and on May 11, 2007, the Provisional Criminal Court issued a ruling thereon, upholding the conviction, but establishing that the sentence should be 25 years.

107. The petitioner also alleges that the State first restricted and ultimately eliminated his access to sentence reductions, as well as to opportunities to study and work while in prison. Lastly, the petitioner claims he was the victim of mistreatment and torture by DINCOTE, and according to the information contained in the case file, during his trials before both the National Criminal Chamber and the Provisional Criminal Chamber, he alleged that he had been the victim of torture.

Felipe Tenorio Barbarán (1244-04)

108. The petition was filed by Felipe Tenorio Barbarán on his own behalf and received by the IACHR on November 16, 2004. It was sent to the State on September 7, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

109. The petitioner alleges having been arrested May 17, 1994 while at the home of a friend during a search executed without a warrant. The petitioner claims that, in order to capture him, the DINCOTE tortured his girlfriend and her parents. His girlfriend was held in a DINCOTE jail for two months, during which time she was repeatedly tortured to make her reveal the petitioner's whereabouts. He states that once he was captured, DINCOTE jailed him for 35 days, after which he spent 20 days on a military base, where he was allegedly tortured. The petitioner also claims that he was subsequently tried before a military criminal tribunal that sentenced him to life in prison for high treason and imprisoned at the Yanamayo prison.

110. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, a new trial was carried out in a civilian court, where he was sentenced to 35 years in prison by the National Criminal Court on December 5, 2005. Both the petitioner and the Prosecutor's Office filed an appeal to vacate this judgment. On September 26, 2006, the Second Temporary Criminal Chamber of the Supreme Court declared the ruling would stand.

111. The petitioner alleged that Act 29423 of 2009 was retroactively applied, which abolished the reduced sentence for work and studies for all persons convicted of terrorism, excluding those who have already benefited from or filed a request for sentence reduction. In the opinion of the petitioner, this law violated his right to equality before the law. Finally, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The file provided indicates that the petitioner alleged during the trial before the National Criminal Court that the evidence submitted, upon which his conviction was based, was obtained through physical and psychological abuse.

Aydé Sebastiana Chumpitaz Luyo (P-1305-04)

112. The petition was filed by Aydé Sebastiana Chumpitaz Luyo on her own behalf and received by the IACHR on December 2, 2004. It was sent to the State on August 26, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

113. The petitioner alleges that she was arrested on July 27, 1998 close to her home, which had previously been searched without a warrant. The petitioner claims that she was held in a DINCOTE jail for 41 days, during which time she was tortured. She states that she was subsequently tried before a military criminal tribunal that sentenced her to life in prison for high treason. She also maintains that she was imprisoned at the Chorrillos prison, where she was subjected to inhumane detention conditions.

114. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, he was retried in a civilian court. The petitioner filed a writ of habeas corpus, alleging that she was illegally and arbitrarily detained. The Constitutional Court finally ruled on March 16, 2006 that, according to the parameters of Legislative Decree 922, she would not be released from prison. The petitioner was sentenced to 18 years in prison by the National Criminal Court on September 9, 2005. Both the petitioner and the Prosecutor's Office filed an appeal to vacate this judgment. On October 18, 2006, the Second Temporary Criminal Chamber of the Supreme Court of Justice declared the ruling would stand.

115. The files provided by the parties include copies of court documents indicating that the petitioner had another trial underway for terrorism before the First Temporary Criminal Chamber, in which she was acquitted on December 12, 2006, a decision which was upheld by the National Criminal Court on November 11, 2008.

116. The petitioner alleges that her reduced sentence benefits were abolished. In her opinion, this violates her human rights. Finally, the petitioner claims to have been subjected to mistreatment and acts of torture carried out by DINCOTE.

Ciro Teobaldo Canahualpa Valenzuela (P-1314-04)

117. The petition was filed by *Ciro Teobaldo Canahualpa Valenzuela* on his own behalf and received by the IACHR on December 2, 2004. It was sent to the State on September 10, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

118. The petitioner alleges he was detained from 1982 to 1983, during which time he was the subject of a criminal investigation. He was arrested again on July 27, 1998 at his home, during a search executed without a warrant. He claims that he was jailed for 41 days in a DINCOTE jail, where he was allegedly tortured. The petitioner also claims that he was subsequently tried before a military criminal tribunal that sentenced him to life in prison for high treason. The petitioner appealed the ruling and filed a motion to contest jurisdiction, which was initially accepted, but later overturned by the Supreme Court of Military Justice, which sentenced him to 35 years in prison. The petitioner alleges having been detained at the Yanamayo prison.

119. The petitioner contextually alleges that he and his family have been persecuted by the State. He states that two of his siblings and his wife, *Aydé Sebastiana Chumpitáz Luyo* (who filed petition 1305-04, included in this report) have been convicted of terrorism. They were also allegedly victims of the armed takeover of the Castro Castro prison in 1992. He also claims that his mother was detained by DINCOTE in 1994 and tortured. As a result of the torture, her retina detached from her left eye, causing her to lose sight in the eye. Finally, the petitioner states that another brother, *Joel Berchman Canahualpa Valenzuela*, was one of the victims of the El Frontón massacre.

120. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, he was retried in a civilian court, where he was sentenced to 18 years in prison by the National Criminal Court on December 9, 2005. Both the petitioner and the Prosecutor's Office filed an appeal to vacate this judgment. On October 18, 2006, the Second Temporary Criminal Chamber of the Supreme Court of Justice declared the ruling would stand. Finally, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The file provided indicates that the petitioner alleged during the trial before the National Criminal Court that the evidence submitted, upon which his conviction was based, was obtained under coercion.

Miguel Cornelio Calderón Sánchez (P-1348-04)

121. The petition was filed by *Miguel Cornelio Calderón Sánchez* on his own behalf and received by the IACHR on November 18, 2004. It was sent to the State on February 21, 2012. The State was given two months to send its comments, in keeping with the IACHR Rules of Procedure in force at the time. On April 26, 2012, the State requested an extension of the deadline for submitting comments, which was denied, pursuant to Article 10(3) of the Rules of Procedure. At the date of publication of this report, the State had not submitted comments on this case.

122. The petitioner claims to have been arrested on June 1, 1995 by DINCOTE and jailed for 47 days, during which he was subjected to various forms of torture. The petitioner states that he suffers from different physical and psychological aftereffects stemming from the alleged torture he experienced. He was later taken to a military base, where he remained for several months. He claims that he was subsequently tried before a military criminal tribunal that sentenced him to life in prison for high treason, which he unsuccessfully appealed. The petitioner states that he was imprisoned at the Yanamayo prison, where he continued to be tortured.

123. The petitioner states that following the Constitutional Court's 2003 ruling, he was retried in a civilian court, where he was sentenced to 20 years in prison by the National Criminal Court on April 7, 2006. He later filed an appeal to vacate this judgment. On June 18, 2008, the ruling was upheld. Finally, the petitioner claims he was subjected to mistreatment and acts of torture carried out by state agents. He states that he reported these acts in his police statement.

Percy Glodoaldo Carhuas Tejada (P-34-05)

124. The petition was filed by Percy Glodoaldo Carhuas Tejada on his own behalf and received by the IACHR on July 7, 2005. It was sent to the State on September 7, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

125. The petitioner alleges he was arrested at his home by DINCOTE on December 20, 1992 and was tortured to make him confess to the murder of union leader Pedro Huilca Tecse committed the previous day²⁹. He claims that his home was searched. He was then referred to the military criminal tribunal, charged with high treason, and sentenced to life in prison.

126. According to the files provided by the parties, the petitioner was sentenced to life imprisonment on February 8, 1993 by a military court. This sentence was upheld in the court of second instance on March 7, 1993, and again by the Supreme Military Court on June 9, 1993. Following the Constitutional Court's 2003 ruling and the reversal of the life sentence conviction, the petitioner filed a writ of habeas corpus on September 12, 2004 and requested his immediate release. The Constitutional Court finally ruled on the petitioner on May 12, 2005, rejecting the petitioner's request, based on DL 922 and Article 137 of the Code of Criminal Procedure, which – in the opinion of the court – sets the maximum period for pre-trial detention at 36 months for terrorism cases, counting from the arrest warrant issued after to the voiding of the proceedings carried out prior to 2003 (April 2, 2003 in the petitioner's case). He was acquitted in the civilian trial on the charges of having participated in the murder of union leader Pedro Huilca Tecse³⁰ and convicted of being a member of a terrorist group and sentenced to 12 years, six months in prison by the National Criminal Court on March 7, 2006. He appealed to vacate this judgment. On March 21, 2007, the Temporary Criminal Chamber upheld the sentence.

127. The petitioner states that, although he was released after completing his sentence, the State is forcing him to pay civil reparations totaling 20,000 nuevo sol and 120 days of community service, under the threat that if he does not pay these amounts, he could be jailed again. The petitioner believes this violates his human rights. Finally, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The file provided indicates that the petitioner alleged during the trial before the National Criminal Court that the evidence submitted, upon which his conviction was based, was obtained through physical and psychological abuse.

Miguel Atahualpa Inga (P-38-05)

128. The petition was filed by Miguel Atahualpa Inga on his own behalf and received by the IACHR on January 14, 2005. It was sent to the State on September 4, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission. On February 11, 2005, the Commission also received a petition for precautionary measures for the petitioner. The State was informed thereof on August 3, 2005 and the Commission requested additional updated information on the situation. The request for precautionary measures is still under observation by the Commission.

²⁹ This murder generated international outcry against the Peruvian State for human rights violations, as established by the Inter-American Court of Human Rights. See Inter-American Court of Human Rights: Huilca Tecse vs. Peru. March 3, 2005 decision. (Merits, Reparations, and Costs).

³⁰ This murder generated international outcry against the Peruvian State for human rights violations, as established by the Inter-American Court of Human Rights. See Inter-American Court of Human Rights: Huilca Tecse vs. Peru. March 3, 2005 decision. (Merits, Reparations, and Costs).

129. The petitioner, a doctor by profession, claims he was arrested in the city of Huancayo on March 22, 1995 by DINCOTE. He was later taken to his house and his office, at which point both sites were searched. He was subsequently moved to Lima, where he was held in a DINCOTE jail for 30 days. The petitioner says he was referred to a military court, where he was sentenced to 30 years in prison on May 11, 1995 for high treason for having given medical aid to members of Sendero Luminoso and having housed a woman wanted for being a member of said group. The petitioner filed an appeal to vacate the judgment, which was dismissed on August 7, 1995 by the Supreme Military Court.

130. According to the files provided by the parties, following the Constitutional Court's 2003 ruling, he was retried in a civilian court, where he was sentenced to 20 years in prison by the Supreme Court of Junin on March 19, 2004. The petitioner filed an appeal to vacate the judgment, which was upheld by the Criminal Court of Huancayo on June 23, 2004.

131. The petitioner also alleges that he was held in deplorable detention conditions in the Piedras Gordas and Challapalca prisons, with no proper access to essential medical treatments for various illnesses from which he suffered. Finally, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The Commission notes that the petitioner is also the alleged victim in another petition already submitted through Report 12/04, which addresses, *inter alia*, alleged acts of torture perpetrated by State actors while he was held in various Peruvian prisons.

Carlos Enrique Díaz González (P-82-05)

132. The petition was filed by Carlos Enrique Díaz González on his own behalf and received by the IACHR on January 8, 2005. It was sent to the State on September 4, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

133. The petitioner claims to have been arrested on October 6, 1992 by DINCOTE and jailed for 30 days, during which he was subjected to various forms of torture. The petitioner states that he suffers from different physical and psychological aftereffects stemming from the alleged torture he experienced. He was later taken to a military base, where he remained for several months. He claims that he was subsequently tried before a military criminal tribunal that sentenced him to life in prison for high treason, which he unsuccessfully appealed. The petitioner states that he was imprisoned at the Yanamayo prison, where he continued to be tortured.

134. According to the files provided by the parties, the petitioner was sentenced to life imprisonment by a military court on November 16, 1992. The sentence was upheld on April 15, 1993 by the Special Tribunal of the Supreme Council of Military Justice for Matters of High Treason. Following the Constitutional Court's 2003 ruling, he was retried in a civilian court, where he was sentenced to 15 years in prison by the National Criminal Court on January 4, 2006. The ruling was automatically sent to the Supreme Court of Justice for review, along with a request from the Public Prosecutor's Office of the Ministry of the Interior for a partial vacatur of the decision. On July 23, 2007, the Second Temporary Criminal Chamber of the Supreme Court of Justice upheld the ruling. Finally, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The file provided indicates that the petitioner alleged during the trial before the First Specialized Tribunal of the Supreme Court of Justice that the evidence, upon which his conviction was based, was obtained under coercion.

Marco Antonio Meneses Mendo (P-369-05)

135. The petition was filed by Marco Antonio Meneses Mendo on his own behalf and received by the IACHR on February 18, 2005. It was sent to the State on September 8, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

136. The petitioner claims to have been arrested on July 14, 1989 by members of DINCOTE because he had a falsified identification document among his documents. He was then jailed for 15 days,

during which he was subjected to several beatings. He states that he was later subjected to four criminal proceedings that were repeatedly closed and reopened, including before the National Terrorism Court, where he was acquitted in December 1990.

137. According to the files provided by the parties, the petitioner was acquitted on December 27, 1990 by the Second Criminal Court of the Superior Court of the Constitutional Province of Callao. This ruling was overturned by the Supreme Court of Justice on May 26, 1992 and a new oral trial was ordered. On June 2, 1997, the Criminal Court of Terrorism also acquitted him. This ruling was again overturned by the Supreme Court of Justice on May 7, 1998 and another new oral trial was ordered. On April 6, 2000, the criminal proceedings against the petitioner were dismissed. Following the Constitutional Court's 2003 ruling, he was retried in the National Terrorism Court, which eventually acquitted him on October 10, 2003. Given the rulings against the State, the decision was elevated for consultation to the Supreme Court of Justice, which declared on December 1, 2004 that the appealed judgment would not be vacated.

138. According to the file, the petitioner was arrested October 24, 1996, to be tried on the same charges, but based on other acts for which he was being accused. The case was heard before the National Terrorism Court, which on May 23, 1997 sentenced him to 25 years in prison. The petitioner appealed and the Supreme Court of Justice overturned the ruling on May 13, 1998. Following the Constitutional Court's 2003 ruling, a new criminal trial was held, in which he was sentenced to nine years in prison on October 17, 2003 by the National Terrorism Court. The Prosecutor's Office appealed to abolish the sentence reduction and on June 22, 2004, the Permanent Criminal Chamber overturned the new sentence and handed down a 20-year prison sentence.

139. Moreover, the petitioner was subject to a new trial on terrorism charges that ended in a November 30, 2006 ruling upholding the application of double jeopardy. The petitioner filed an appeal to vacate the judgment and requested he be found innocent. However, on November 7, 2007, the First Temporary Criminal Chamber upheld the double jeopardy decision.

140. The petitioner stated that in 1997, the Terrorism Court sentenced him to 20 years in prison for alleged acts of terrorism carried out between 1992 and 1996. The ruling was upheld by the Supreme Court. He further states that, following the Constitutional Court's 2003 ruling, a new trial was held, during which he was acquitted by the National Terrorism Court in 2004. The Public Ministry appealed this ruling.

141. The petitioner also alleges that Act 29423 of 2009 was retroactively applied, which abolished the reduced sentence for work and studies for all persons convicted of terrorism, excluding those who have already benefited from or filed a request for sentence reduction. In the opinion of the petitioner, this law violated his right to equality before the law. Lastly, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The file provided indicates that the petitioner alleged during the trial before the National Criminal Court that the evidence submitted, upon which his conviction was based, was obtained through coercion.

Rafaél Jara Macedo (P-657-05)

142. The petition was filed by Rafaél Jara Macedo on his own behalf and by counsel Pedro A. Jara Aguirre and received by the IACHR on June 8, 2005. It was sent to the State on September 15, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

143. The alleged victim claims to have been arrested without a warrant on June 21, 1994 in the city of Arequipa by members of the Counter-Terrorism Division of the Peruvian National Police as he returned from the university. He was then transferred to a National Police jail, where he was physically and psychologically tortured and held incommunicado and without food for several days.

144. According to the information in the files provided by the parties, on January 13, 1994, the petitioner was sentenced by a faceless court to 20 years in prison for terrorism. The grounds for the sentence

were that the petitioner had posted signs on walls around his city in support of the armed actions of a subversive group. Following the Constitutional Court's 2003, the trial was voided and the petitioner was again subjected to a criminal trial for terrorism. He appealed claiming that the statute of limitations (10 years, according to the provisions of the Criminal Code) for the acts had expired, since he was a minor when the acts for which he was being charged were committed. The appeal was rejected on November 26, 2004. The petitioner then filed an appeal to vacate the judgment. On April 11, 2005, the Permanent Criminal Chamber upheld the decision made by the first instance. On August 26, 2005, the National Criminal Court sentenced the petitioner to 11 years, one month, and six days in prison. Given that the petitioner had been imprisoned since July 21, 1994 and had completed that sentence, his immediate release was ordered. Furthermore, the file contains a document in which the Supreme Court of Justice ruled on September 27, 2006 that the Prosecutor's case against the petitioner was groundless.

145. The petitioner also alleges that he was arbitrarily transferred to the Socabayo and Yanamayo prisons, which seriously worsened a heart problem he had and made it harder for his family to visit him. The petitioner alleges that his mother filed a writ of habeas corpus on his behalf, claiming that the transfer served no objective purpose and affected his fundamental rights. The petition was denied by the Constitutional Court. Lastly, the petitioner claims that he was subjected to mistreatment and acts of torture carried out by DINCOTE and that he notified the authorities of these acts. Although this information is not contained in the files from the criminal proceeding provided by the parties, the State does not refute that the petitioner did notify the authorities of said acts.

Emilio Gerónimo Capatinta Sullcarani (P-846-05)

146. The petition was filed by Emilio Gerónimo Capatinta Sullcarani on his own behalf and received by the IACHR on July 26, 2005. It was sent to the State on September 16, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

147. The petitioner claims to have been arrested by DINCOTE officials at his home on June 13, 1993 in the Paucarpata Arequipa area, without the presence of a prosecutor or an arrest warrant. He was later taken to jail, where he claims he was held incommunicado for approximately 20 days, during which time he was subjected to acts of torture. He then states he was brought before the press in a striped suit and later taken to the Yanamayo prison, then transferred to the Socabaya prison in Arequipa.

148. According to the information in the files provided by the parties, the petitioner was sentenced to life imprisonment by the Supreme Court of Military Justice on July 15, 1993. The petitioner filed a writ of habeas corpus, alleging that the evidence was illegal as it had been obtained through torture, as well as other alleged human rights violations committed during the trial before the military criminal tribunal. On August 23, 2002, his petition was granted and upheld on September 10, 2002 by the Special Tribunal of the Supreme Council of Military Justice when it upheld the decision of the Court of First Instance and overturned all actions before said jurisdiction and ordered a retrial in a civilian jurisdiction for acts of terrorism against the State. On May 31, 2004, the Third Criminal Chamber of the Arequipa Superior Court sentenced him to 25 years in prison. The petitioner filed an appeal to vacate the judgment. On November 4, 2004, the Second Temporary Criminal Chamber of the Supreme Court of Arequipa upheld the sentence.

149. Lastly, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The file provided indicates that the petitioner alleged during the trial before the Superior Court of Arequipa that the evidence submitted, upon which his conviction was based, was obtained under coercion.

Miguel Ángel Talavera Estupiñán (P-897-05)

150. The petition was filed by Miguel Ángel Talavera Estupiñán on his own behalf and received by the IACHR on July 26, 2005. It was sent to the State on September 16, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

151. The petitioner claims he was arrested at his home on January 5, 1993 by members of the national police as they searched his home without a warrant. He states that he was subsequently taken to a DINCOTE jail, where he was held for 26 days, during which he was subjected to torture to force him to confess to committing acts of terrorism. He alleges that proceedings were brought against him before a military criminal tribunal, where he was sentenced to life imprisonment. He was sent to the Miguel Castro Castro Prison and held in inhumane detention conditions. He is still being held in that same prison. The petitioner claims that his years in prison have caused his health to deteriorate, to the point of contracting enteroperitoneal tuberculosis, and has had to have surgery twice.

152. According to the information in the files provided by the parties, the petitioner was acquitted of the terrorism charges on November 9, 1985. This ruling was overturned by the Supreme Court of Justice on September 8, 1989, at which point it ordered a new oral trial, which did not take place as the petitioner was declared an absent defendant.

153. The petitioner was later convicted of high treason by the military court. He then filed a writ of habeas corpus against the Supreme Council of Military Justice, requesting that all actions taken in said jurisdiction be voided. On October 22, 2002, the Constitutional Tribunal ruled that the petition was well-founded and ordered new criminal proceedings in a civilian jurisdiction. The files provided by the parties include copies of three criminal proceedings brought against him in a civilian jurisdiction for the crime of terrorism. The first proceeding was closed on May 25, 2004, when the National Terrorism Court ruled in favor of the statute of limitations in criminal proceedings claimed by the petitioner, given that the crimes for which he was accused in the proceedings occurred between 1984 and 1986; the Court ruled that the statute of limitations was 15 years. The petitioner was subjected to a second trial and sentenced to 25 years in prison by the National Criminal Court on May 12, 2005. On December 1, 2005, the Supreme Court of Justice upheld this sentence. Lastly, there are copies of a third criminal trial, in which the petitioner was sentenced to 15 years in prison by the National Criminal Court on March 10, 2006. On August 28, 2006, the Second Temporary Criminal Chamber of the Supreme Court of Justice ruled in favor of the petition filed by the civil party requesting an increase in the amount of reparations included in the sentence.

154. Lastly, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The file provided indicates that the petitioner alleged during both trials before the National Criminal Court rendering sentences on May 12, 2005 and March 10, 2006, that the evidence submitted, upon which his conviction was based, was obtained under coercion.

Miguel Cuno Choquehuanca (P-1108-05)

155. The petition was filed by Miguel Cuno Choquehuanca on his own behalf and received by the IACHR on October 4, 2005. It was sent to the State on April 30, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

156. The petitioner claims to have been arrested on March 7, 1995 by members of the Peruvian National Police as he was on his way to his home. He was taken to a DINCOTE jail, where he was held for 45 days and subjected to acts of torture. He indicates that he was subsequently jailed at the Miguel Castro Castro prison and then transferred on several occasions to various prisons before arriving at the Piedras Gordas de Lima prison, where he was held under inhumane detention conditions. He alleges that he was diagnosed with prostate adenoma while detained and that his health deteriorated due to his detention conditions. On February 11, 2005, the Commission received a petition for precautionary measures on behalf of the petitioner, of which the State was notified on August 3, 2005 and the Commission requested additional updated information on the situation. The request for precautionary measures is still under observation by the Commission.

157. The petitioner states that, following his arrest, criminal proceedings were brought against him in a military court on charges of high treason. He was sentenced to 25 years of prison. According to the information in the files provided by the parties, on June 13, 1995, the Navy Special Judge convicted the petitioner for high treason and sentenced him to 25 years of prison. The ruling was referred to the Special

Navy War Council, which upheld the conviction and increased the sentence to 30 years in prison. This ruling was appealed; on April 11, 1996, the Military Supreme Court reduced the sentence down to 25 years. Following the Constitutional Court's 2003 ruling, the petitioner's trial and conviction in the military criminal court were overturned and a new trial for the crime of terrorism was held in a civilian court. On August 10, 2004, the National Terrorism Court sentenced the petitioner to 20 years in prison, which he appealed to vacate. Though the Supreme Court of Justice upheld the conviction on February 10, 2005, it did reduce the sentence to 15 years in prison.

158. Lastly, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The Commission notes that the petitioner is also the alleged victim in another petition already submitted through Report 12/04, which addresses, *inter alia*, alleged acts of torture perpetrated by State actors while he was held in different Peruvian prisons.

Walter Sayas Baca (P-1236-05)

159. The petition was filed by Walter Sayas Baca on his own behalf and received by the IACHR on October 25, 2005. It was sent to the State on September 15, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

160. The petitioner claims he was arrested on July 13, 1992 as part of a mass arrest allegedly carried out on the streets of Lima, an operation that ended in shots being fired by the police. According to the petitioner, the operation was so massive that even though he had run to distance himself, he was hit by a bullet fired by the police. He states that, despite being wounded, the police continued to beat him until he passed out. He woke up in the hospital, accused of having participated in acts of terrorism.

161. According to the information in the files provided by the parties, on January 13, 1994, the petitioner was convicted of terrorism, a ruling that was upheld by a Supreme Court ruling on May 30, 1995, issued by the Supreme Court of Callao. Following the Constitutional Court's 2003 ruling, he was retried before the National Criminal Court, in which he was sentenced to 25 years in prison on January 4, 2005. The petitioner filed an appeal to vacate the judgment, but on April 28, 2005, the Permanent Criminal Chamber upheld the sentence.

162. The petitioner also invokes the non-retroactivity of Legislative Decree 985 of 2007, which requires the payment in full of the civil reparations to obtain parole. Furthermore, he claims that the application of Act 29423 of 2009 to his case was a violation of his rights; this act abolished the reduced sentence for work and studies for all persons convicted of terrorism, excluding those who have already benefited from or filed a request for sentence reduction. In the opinion of the petitioner, this law violated his right to equality before the law. Additionally, the petitioner claims that requiring payment of civil reparations as a condition for obtaining a reduced sentence is tantamount to imprisonment for debt, in violation of Article 7 of the Convention.

163. Lastly, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. The file provided indicates that the petitioner alleged during both the trial leading to the January 13, 1994 sentence and the hearing held before the Superior Court of Arequipa, that the evidence submitted, upon which his conviction was based, was obtained through physical and psychological abuse.

Mauro David Álvaro Velásquez (P-1278-05)

164. The petition was filed by Mauro David Álvaro Velásquez on his own behalf and received by the IACHR on November 8, 2005. It was sent to the State on September 15, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

165. The petitioner claims to have been arbitrarily detained on February 4, 1993. He was later taken to the "El Porvenir" police station, where he was subjected to torture. He states that he was later transferred to a DINCOTE jail, where he remained for 33 days, during which he was again subjected to torture

to coerce him to confess to having committed terrorist acts. According to petitioner allegations, proceedings were subsequently brought against him in a military criminal tribunal, where he was eventually sentenced to life imprisonment for high treason. He states that he was held at the Miguel Castro Castro prison, where he was kept in inhumane detention conditions.

166. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, he was retried in a civilian jurisdiction before the National Criminal Court, which sentenced the petitioner to 30 years in prison on March 16, 2005. The petitioner filed an appeal to vacate this judgment. On July 22, 2005, the Second Temporary Criminal Chamber of the Supreme Court of Justice upheld the sentence.

167. Lastly, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. According to the files provided, specifically in the March 16, 2005 conviction, the petitioner alleged during said criminal proceedings that his statements to the police in February 1993 during his detention were invalid because they had been obtained through beatings, threats, and having been placed in a cylinder of dirty water.

Zulma Peña Melgarejo y Otros (P-242-06)

168. The petition was filed by Zulma Peña Melgarejo on her own behalf and on behalf of her sons, César Abel Peña Melgarejo and José Alexander Peña Melgarejo. It was received by the IACHR on March 14, 2006. It was sent to the State on December 8, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

169. The petitioner states that she was arrested on May 18, 1996 by approximately 60 members of the Peruvian military, who entered her home – a rural home in the Tocache province – in the middle of the night. She claims that once the military contingent entered her home, she was raped by 15 soldiers, after which she was warned that if she did not sign the search warrant and seizure report for the actions already carried out by the agents, she would be raped by all of the agents present. Following this, she alleges that she was forced to spend the night tied to a tree outside her house. She was then taken to a military base along with her three-month old baby, where she was tortured again, this time using electric shock. The petitioner states that she signed a series of incriminating documents when they threatened to torture and kill her baby. After one month of allegedly being held incommunicado, the petitioner was moved to Lima, where she was held in a DINCOTE jail, then referred to a military court and sentenced to life imprisonment for high treason.

170. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, he was retried in a civilian jurisdiction before the Superior Court of Huanuco-Pasco, which sentenced her to 25 years in prison on May 31, 2004 for the crime of terrorism. The petitioner appealed to vacate the judgment. On January 11, 2005, the First Temporary Criminal Chamber of the Supreme Court of Justice upheld the sentence.

171. Lastly, regarding the petitioner's allegations that she was subjected to mistreatment and acts of torture by the military and DINCOTE, according to the files provided, she alleged during both the trial before the Superior Court of Huanuco-Pasco and the appeal to vacate the judgment, that her statements to the military and DINCOTE were invalid because they had been obtained through various forms of physical and psychological torture.

Luis Raúl Ruiz Escurra (P-244-06)

172. The petition was filed by Maximiliano Ruiz Escurra on behalf of Luis Raúl Ruiz Escurra and received by the IACHR between March 10 and 14, 2006 (first electronically, then in hard copy). It was sent to the State on December 8, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

173. The petitioner claims that the alleged victim was arrested on November 24, 1995 by DINCOTE and subjected to alleged acts of torture to force him to confess to the acts of terrorism of which he was accused. The petitioner states that the alleged victim was tortured so much that he suffered a cerebral vascular injury that physically disabled him. The alleged victim was held for 30 days in a DINCOTE jail, after which proceedings were brought against him in a military court, where he was sentenced to life imprisonment for high treason.

174. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, he was retried in a civilian jurisdiction before the National Criminal Court. On November 22, 2004, this court sentenced him to 15 years in prison for the crime of terrorism. The alleged victim then filed an appeal to vacate the judgment. On July 11, 2005, the Temporary Criminal Chamber of the Supreme Court of Justice upheld the ruling of criminal liability for the crime of terrorism; although it did reduce the sentence from 15 to nine years. It ordered his immediate release as he had already served that time on his sentence.

175. Lastly, regarding the petitioner's allegations that the alleged victim was subjected to mistreatment and acts of torture by DINCOTE, according to the files provided, the alleged victim claimed during both the trial before the National Criminal Court and the appeal to vacate the judgment, that his statements to DINCOTE were invalid because they had been obtained through various forms of physical and psychological torture.

Rufo León Ccala (P-248-06)

176. The petition was filed by Roxana Fabiola Dueñas Ramos on behalf of Rufo León Ccala and received by the IACHR on March 15, 2006. It was sent to the State on December 8, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

177. The petition reports that the alleged victim was arbitrarily detained on May 18, 1992 by DINCOTE agents in the city of Cuzco. He was then subjected to physical and psychological torture to force him to incriminate himself for having had ties to the Sendero Luminoso group, for which criminal charges were brought against him. It states that when he was finally assigned an attorney, the latter was also accused of belonging to said organization and his defense was terminated. As a result, allegedly no other private attorney would take on his defense. According to the petition, the alleged victim was sentenced to 15 years of prison on June 25, 1996.

178. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, the alleged victim was retried in a civilian jurisdiction before the First Criminal Chamber of the Superior Court of Cuzco. In the first proceedings, the alleged victim was sentenced to 10 years in prison on December 28, 2004 for complicity in terrorism acts. In the second, he was sentenced to 17 years in prison on December 30, 2004 for the crime of terrorism. The alleged victim filed an appeal to vacate both sentences. On July 14, 2005 and July 8, 2005, the Supreme Court of Justice upheld the respective rulings, finding no grounds for vacatur.

179. Lastly, regarding the petitioner's allegations that the alleged victim was subjected to mistreatment and acts of torture by DINCOTE, she did not provide information to the IACHR as to whether the Peruvian authorities had been informed of such acts. However, the petitioner did provide a forensic issued dated August 8, 2001 that makes note of several injuries that it reports were caused by Peruvian police agents.

Rómulo Lagos Anahue (P-252-06)

180. The petition was filed by Roxana Fabiola Dueñas Ramos on behalf of Rómulo Lagos Anahue and received by the IACHR on March 16, 2006. It was sent to the State on July 29, 2011. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

181. The petition claims that the alleged victim worked as a news correspondent for the Human Rights Committee in the city of Sucuani, Cuzco Department, where he reported on human rights violations committed by police and military forces. He alleges that he was accused of having ties to terrorist organizations because of his work. In 1988, the alleged victim had moved to Arequipa, where he held the position of President of the Housing Association of San Juan el Alto, until September 23, 1997, when members of DINCOTE burst into his workplace to arrest him. He was allegedly subjected to several days of torture. The petitioner claims that the alleged victim was later sentenced by faceless judges to 20 years in prison. She further alleges that one of the pieces of evidence used to convict him was a seizure report issued by the police that he had not signed. He states the warrant was executed at a residence located in the Province of El Espinar-Cusco at a time when the alleged victim resided in Arequipa.

182. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, he was retried in a civilian jurisdiction before the First Criminal Chamber of the Superior Court of Cuzco. As a result of this trial, the alleged victim was sentenced to seven years of prison on June 28, 2004 for collaborating in terrorist acts. This ruling was contested by the Public Ministry. On January 26, 2005, the Permanent Criminal Chamber upheld the ruling and increased the sentence from seven to 20 years. On November 10, 2005, the alleged victim filed a writ of habeas corpus, alleging that his right to a defense had been violated by the Supreme Court of Justice having changed the sentence, as well as his degree of participation (it changed the type of complicity to perpetrator) without his prior notification of said accusation. The Constitutional Court ultimately ruled on April 12, 2007 that the writ of habeas corpus was unfounded.

183. Lastly, the petitioner claims that the alleged victim was subjected to mistreatment and acts of torture by DINCOTE.

Rosalinda Emma Rojas Miguel (P-263-06)

184. The petition was filed by Rosalinda Emma Rojas Miguel on her own behalf and received by the IACHR on March 20, 2006. It was sent to the State on December 8, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

185. The petitioner alleges that she was arbitrarily detained by DINCOTE agents on November 18, 1994 as she was on her way to her brother's home. Said agents allegedly beat her and kept her hooded for many hours, repeatedly threatening to rape her. She claims that she was later taken to a DINCOTE jail, where she was held incommunicado for 40 days. She alleges that she was paraded before to the press as a terrorist in a striped suit and that her home was searched without a warrant. She claims that items on the resulting seizure report were planted by DINCOTE agents. According to the petitioner, proceedings were subsequently brought against her in a military criminal tribunal, where she was eventually sentenced to 25 years in prison for high treason. This ruling was upheld by the Supreme Military Court on July 17, 1995. She states that she was held at the Chorrillos women's prison in inhumane detention conditions.

186. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, the alleged victim was retried in a civilian jurisdiction. On May 17, 2005, the Constitutional Court ruled as unfounded the writ of habeas corpus filed by the petitioner, in which she requested her release, on the consideration that she had spent an excessive amount of time under pre-trial detention. The Constitutional Court denied the writ based on DL 922, which states that the maximum period for pre-trial detention in cases like the petitioner's begins counting from the date of the "order to initiate investigation proceedings," which in this case was issued on May 23, 2003; as such the 36-month period established by law had not yet expired at that time. The new trial against the petitioner was heard before the National Criminal Court, which, on February 28, 2005, sentenced her to 20 years in prison for the crime of terrorism. The petitioner filed an appeal to vacate the judgment. On July 8, 2005, the Second Temporary Criminal Chamber of the Supreme Court of Justice upheld the ruling.

187. Lastly, the petitioner alleges that she was subjected to mistreatment and acts of torture by DINCOTE. According to the files provided, she alleged during both the trial before the National Criminal Court

and the appeal to vacate the judgment, that her statements to DINCOTE were invalid because they had been obtained through various forms of abuse.

Lyly Ruth Conislla Monroy (P-391-06)

188. The petition was filed by Lyly Ruth Conislla Monroy on her own behalf and received by the IACHR on April 26, 2006. It was sent to the State on April 21, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

189. The petitioner alleges that she was arbitrarily detained by DINCOTE agents on September 2, 1993 as she was on her way to her cousin's home. Said agents allegedly beat her and kept her hooded for many hours. She claims that she was later taken to a DINCOTE jail, where she was held incommunicado for 37 days, after which she was taken to a military base. She alleges that she was paraded before to the press as a terrorist in a striped suit and that her home was searched without a warrant. She claims that items on the resulting seizure report were planted by DINCOTE agents. According to the petitioner, proceedings were subsequently brought against her in a military criminal tribunal, where she was eventually sentenced to 25 years in prison for high treason. She states that she was held at the Chorrillos women's prison in inhumane detention conditions.

190. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, the alleged victim was retried in a civilian jurisdiction before the National Criminal Court, which sentenced her to 16 years in prison on March 9, 2005 for acts of terrorism. The petitioner filed an appeal to void the sentence. On August 10, 2005, the Permanent Criminal Chamber upheld the ruling.

191. The petitioner claims that the application of Act 29423 of 2009 to her case was a violation of her rights. This act abolished the reduced sentence for work and studies for all persons convicted of terrorism and excludes those who have already benefited from or filed a request for a sentence reduction. Lastly, the petitioner claims she was subjected to mistreatment and acts of torture carried out by DINCOTE. According to the files provided, the alleged victim claimed during the trial before the National Criminal Court that she had been subjected to beatings and other forms of physical and mental abuse by the police and military.

Juan Carlos Quispe Gutierrez (P-889-06)

192. The petition was filed by postal mail by Juan Carlos Quispe Gutierrez on his own behalf and received by the IACHR on August 21, 2006. It was sent to the State on November 4, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

193. According to the petitioner, he was arrested by DINCOTE agents on August 14, 1992 and was allegedly hooded and severely beaten until he repeatedly passed out. The petitioner claims that he demanded to see a medical examiner, until they finally took him to see a member of the police force who was a doctor on August 15, 1992. The doctor issued a report detailing abrasions and bruising, but omitting, for example, that he had several broken ribs. According to the petitioner, he was again tortured in a DINCOTE jail. He maintains that he was subsequently tried and sentenced to life imprisonment by the Council of Military Justice on October 10, 1992. The petitioner states that he filed a writ of habeas corpus against the ruling. On July 8, 2002, the Constitutional Court voided the trial in the military court and ordered a new trial in a civilian jurisdiction. However, the petitioner states that the Constitutional Court, in its ruling, declared that he would not be released. The petitioner reports that he was held at the Yanamayo prison under inhumane detention conditions.

194. According to the information in the files provided by the parties, the petitioner was sentenced to life imprisonment by the Military Court on September 22, 1992. The Supreme Military Court upheld the ruling on October 10, 1992. After the Constitutional Court vacated the judgment, the petitioner was tried again for terrorism, this time before the National Criminal Court, which sentenced him to 20 years in prison on May 10, 2005. The petitioner filed an appeal to void the sentence. On October 20, 2005, the

Temporary Criminal Chamber of the Supreme Court of Justice upheld the conviction, but lowered the sentence to 13 years, six months.

195. Lastly, the petitioner claims he was subjected to mistreatment and acts of torture carried out by DINCOTE. According to the file provided, the National Peruvian Police issued a forensic report on August 15 and 26, 1992, in which it noted that the petitioner presented abrasions, hematoma, and other recent wounds.

Maruja Arango Chávez (P-1101-06)

196. The petition was filed by Maruja Arango Chávez on her own behalf and received by the IACHR on October 16, 2006. It was sent to the State on May 12, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

197. The petitioner alleges that she was arbitrarily detained in the city of Trujillo on August 23, 1995 by GEIN agents (Special National Intelligence Group). According to the petitioner, these agents blindfolded her, bound her hands, undressed her, and beat and groped her for many hours. They forced her to sign a seizure report that she could not even read. The petitioner claims that she was later flown to Lima, where she was held in GEIN facilities and continued to be beaten and subjected to violent vaginal inspections that caused bleeding and infection. According to the petitioner, she was taken to her home on August 26 for a search. Once they were inside, they reportedly took her nine-year old niece away for two hours, after which she returned crying and severely traumatized. The petitioner states that the police arrested her brother and sister-in-law. She states that she was held for a total of 42 days at GEIN facilities, after which she was transferred to a military base. The petitioner alleges that she was tried by a military court and sentenced to life imprisonment for high treason. According to the petitioner, this sentence was vacated and a new criminal trial was carried out, resulting in a life imprisonment sentence.

198. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, the alleged victim was retried in a civilian jurisdiction before the National Criminal Court, which sentenced her on April 26, 2005 to 20 years in prison for acts of terrorism. The petitioner filed an appeal to vacate the judgment. On August 10, 2005, the Temporary Criminal Chamber of the Supreme Court of Justice upheld the conviction and increased the sentence to life imprisonment.

199. Lastly, the petitioner alleges that she was subjected to mistreatment and acts of torture by DINCOTE. According to the files provided, the alleged victim claimed during the trial before the National Criminal Court that she had been subjected to beatings and other forms of physical and mental abuse by the police and military to force her to accept the charges and confess. Based on this, she requested that the police report be disqualified as valid evidence against her.

Miriam Beatriz Espino Salas y Familia (P-1141-06)

200. The petition was filed by Miriam Beatriz Salinas on her own behalf and received by the IACHR on October 23, 2006. It was sent to the State on May 22, 2008. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

201. The petitioner alleges that her 17-year old sister, Aqchi Wiñay Espino Bravo, was murdered by members of the police on a public street in Lima on December 26, 1992. According to the petitioner, her demands and those of her family to receive justice for her sister led State agents to accuse her of being a terrorist as a form of intimidation to keep her from looking for the perpetrators of the crime. Against this backdrop, the petitioner alleges that she was arbitrarily detained on August 23, 1995 by security agents as she was about to leave for a trip from the Trujillo airport. She states that she was severely beaten and "groped" while she was held in a dark room. She claims that she was then forced to sign a seizure document that she could not read and subsequently transferred to a DINCOTE jail, where she was again subjected to physical torture and threats against the physical and sexual integrity of her daughter. The petitioner states that she was tried by a military court, which sentenced her to 20 years in prison for high treason. She

appealed the ruling. However, according to petitioner allegations, this sentence was increased to 30 years by the appeals court.

202. According to the information in the files provided by the parties, following the Constitutional Court's 2003 ruling, the alleged victim was retried in a civilian jurisdiction before the National Criminal Court, which sentenced her on April 26, 2005 to 18 years in prison for the crime of terrorism. The petitioner filed an appeal to vacate the judgment. On August 10, 2005, the Permanent Criminal Chamber of the Supreme Court of Justice upheld the conviction and increased the sentence to 25 years in prison.

203. Lastly, the petitioner alleges that she was subjected to mistreatment and acts of torture by DINCOTE. According to the files provided, the alleged victim claimed during the trial before the National Criminal Court that she had been subjected to beatings and other forms of physical and mental abuse by the police and military to force her to accept the charges and confess. Based on this, she requested that the police report be disqualified as valid evidence against her.

Mirtha Ymelda Simón Santiago y Familia (P-1147-06)

204. The petition was filed by Mirtha Ymelda Simón Santiago on her own behalf and received by the IACHR on October 23, 2006. It was sent to the State on April 21, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

205. The petitioner alleges that she was arbitrarily detained at her home during the night of April 24, 1993 by DINCOTE agents. She was then taken to the facilities of the intelligence agency, where she was severely beaten, undressed, "groped", and subjected to other alleged acts of torture. According to the petitioner, she was sentenced to 20 years in prison by a faceless court in November 1993. This trial was voided and she was retried in a civilian court, which also sentenced her to 20 years in prison.

206. According to the information in the files provided by the parties, the petitioner was sentenced to 20 years in prison for the crime of aggravated terrorism by a faceless judge on November 3, 1993. Following the Constitutional Court's 2003 ruling, this trial was voided and the alleged victim was retried in a civilian jurisdiction before the National Criminal Court, which sentenced the petitioner to 16 years in prison for terrorism on March 16, 2005. The petitioner filed an appeal to vacate the judgment. On September 21, 2005, the Permanent Criminal Chamber upheld the conviction and increased the sentence to 20 years in prison. The prisoner filed a writ of habeas corpus, alleging violations to her personal freedom. On April 17, 2006, the Constitutional Court declared the writ unfounded.

207. Lastly, the petitioner alleges that she was subjected to mistreatment and acts of torture by DINCOTE. According to the files provided, the alleged victim claimed during the trial before the National Criminal Court that she had been subjected to beatings and other forms of physical and mental abuse by the police and military to force her to accept the charges and confess. Based on this, she requested that the police report be disqualified as valid evidence against her.

Aurelio Sernaque Silva (P-1387-06)

208. The petition was filed by Aurelio Sernaque Silva on his own behalf and received by the IACHR on December 12, 2006. It was sent to the State on April 26, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

209. The petitioner alleges that he was arbitrarily detained on November 21, 1992 in the city of Piura and taken to the Counter-Terrorism Police jail, where he was held incommunicado for 15 days and was allegedly the victim of various forms of torture. He states that he was transferred to several different prisons, including the Piura prison, Chiclayo prison, Castro Castro prison, and Yanamayo prison. The petitioner alleges that he was tried before a military court, which sentenced him to life imprisonment for high treason. He filed a writ of habeas corpus, which resulted in the voiding of the military trial and a new trial was ordered to be held in a civilian court. The petitioner alleges that he was tried and convicted by the First Criminal Chamber

of Piura. The sentence was upheld by the Supreme Court of Justice on April 20, 2006. The petitioner states that he was notified of the ruling on July 10, 2006.

210. According to the information in the files provided by the parties, the petitioner was sentenced to life imprisonment for high treason. This sentence was upheld by the Supreme Council of Military Justice on July 14, 1993. After this trial was voided for having been carried out in a military jurisdiction, the petitioner was tried again, this time in a civilian court. The second trial led to a 15 year prison sentence on December 7, 2004. He filed an appeal to vacate the judgment. On April 20, 2006, the sentence was upheld. According to the petitioner, he was notified of the ruling on July 10, 2006. The petitioner was released on parole on February 7, 2007.

211. Lastly, the petitioner alleges that he was subjected to mistreatment and acts of torture by DINCOTE. According to the files provided, the alleged victim claimed during the trial before the military court that he had been subjected to beatings and other forms of physical and mental abuse by the police to force him to accept the charges and confess. Based on this, he requested that the police report be disqualified as valid evidence against him.

Nancy Benavente Hinostriza y Otros (P-1506-06)

212. The petition was filed by Nancy Benavente Hinostriza on her own behalf and received by the IACHR on September 30, 2006. It was sent to the State on April 27, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

213. The petitioner claims that she was arbitrarily detained on January 20, 1993 by DINCOTE agents, who reportedly beat her and kept her hooded for long hours and subjected her to acts of sexual violence. She states that she was later transferred to a DINCOTE jail, where she was held incommunicado for five days, during which she was subjected to various forms of abuse. According to the petitioner, security agents forced her to sign a document that she later understood was self-incriminatory. She was illiterate at the time of signing and did not understand the content. She was later tried before a military criminal tribunal, which sentenced her to life imprisonment for high treason. She claims that she was held at the Chorrillo's women's prison under inhumane detention conditions. According to the petitioner, the trial was voided in 2003 and she was retried in a civilian jurisdiction, where she was sentenced to 16 years in prison. The petitioner also alleged that she was denied access to early release and parole, in violation of her human rights, although she does not provide any further information on that allegation.

214. According to the information in the files provided by the parties, on December 19, 2002, the Appeals Chamber for Summary Proceedings for Defendants on Pre-Trial Release declared as unfounded the writ of habeas corpus filed by the petitioner against the Supreme Council of Military Justice and voided the trial carried out in that jurisdiction. She was retried in a civilian jurisdiction before the National Criminal Court, which sentenced the petitioner to 16 years in prison on December 17, 2004 for the crime of associating with a terrorist organization. The judgment was sent to the Supreme Court of Justice for review and the petitioner asked to be released after having served half of her sentence. The Supreme Court ruled that the request was inadmissible on June 16, 2005. On September 8, 2005, the National Criminal Court ordered the petitioner to be informed of the sentence and ruling. The file reflects that the judgment was reported on November 4, 2005. The petitioner was released on parole on December 16, 2006.

215. Lastly, the petitioner alleges that she was subjected to mistreatment and acts of torture by DINCOTE. According to the files provided, the alleged victim claimed during the trial before the military court that she had been subjected to beatings and other forms of physical and mental abuse by the police to force her to accept the charges and confess. Based on this, she requested that the police report be disqualified as valid evidence against her. According to the files provided by the parties, the forensic doctors that examined the alleged victim testified in the trial and confirmed that she had been subjected to physical violence.

Jacinto Antonio Huayanay González (P-71-07)

216. The petition was filed by Jacinto Antonio Huayanay González on his own behalf and received by the IACHR on January 22, 2007. It was sent to the State on April 21, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

217. The petitioner alleges that he was arbitrarily detained by police agents on January 28, 1993 and taken to JECOTE facilities (Counter-Terrorism Command) in the city of Callao, where he was held in solitary confinement for 105 days, during which he was subjected to various forms of torture to force him to confess or incriminate others of having committed terrorist acts or collaborated with illegal armed groups. The petitioner reports that he was subsequently taken to the Las Palmas military base, where he was tried by a military court for high treason and sentenced to life imprisonment. The petitioner states that this trial was voided following the Constitutional Court's January 3, 2006 ruling and he was subjected to a new trial in a civilian court, which sentenced him to 25 years in prison. This ruling was upheld on May 10, 2006 by the Second Temporary Criminal Chamber of the Supreme Court of Justice, which denied the petitioner's appeal to vacate.

218. According to the information in the files provided by the parties, the petitioner was sentenced to 25 years in prison by the National Criminal Court for terrorism. He then filed to appeal to vacate the judgment. On May 10, 2006, the Second Temporary Criminal Chamber of the Supreme Court of Justice denied the petitioner's appeal.

219. Lastly, the petitioner alleges that he was subjected to mistreatment and acts of torture by the police. According to the files provided, the alleged victim claimed during the trial before the civilian court that he had been subjected to beatings and other forms of physical and mental abuse by the police to force him to accept the charges and confess. Based on this, he requested that the police report be disqualified as valid evidence against him.

María Beatriz Azcárate Vidalón (P-112-07)

220. The petition was filed by Edgar Vidalon Vidalón in representation of María Beatriz Azcárate Vidalón. It was received by the IACHR on January 30, 2007. It was sent to the State on April 27, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

221. The petitioner claims that the alleged victim was arbitrarily detained on a street in Lima on June 30, 1995 by DINCOTE agents. These agents reportedly beat her to place her in a car, where she was handcuffed and hooded. She was then taken to a room where she was doused in gasoline, beaten, and threatened. Later, she was taken to her house, at which point they searched her home and abused her in front of her two and four-year old children. They forced her to sign a series of documents that she could not read. The petitioner states that the alleged victim spent one month in solitary confinement in a DINCOTE jail, before being taken to a military base, where she was tried by a faceless tribunal and sentenced to 25 years in prison. This sentence was increased to life imprisonment in the Court of Second Instance. According to the petitioner, following the Constitutional Court's 2003 ruling, this trial was voided and she was retried in a civilian court, which sentenced her to 20 years in prison.

222. According to the information in the files provided by the parties, the alleged victim was sentenced to 20 years in prison by the National Criminal Court on June 17, 2005 for terrorism. She filed an appeal to vacate the judgment. On June 14, 2006, the Second Temporary Criminal Chamber of the Supreme Court of Justice upheld this sentence.

223. Lastly, the petitioner claims that the alleged victim was subjected to mistreatment and acts of torture by the police. According to the files provided, the alleged victim claimed during the trial before the civilian court that she had been subjected to beatings and other forms of physical and mental abuse by the police to force her to sign the seizure report resulting from the search of her home. This was reflected in the

legal medical examination, which stated the various injuries inflicted. Based on this, she requested that the evidence against her be disqualified.

Maritza Yolanda Garrido-Lecca Risco (P-351-07)

224. The petition was filed by postal mail by Maritza Yolanda Garrido-Lecca Risco on her own behalf and received by the IACHR on March 23, 2007. It was sent to the State on September 7, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

225. The petitioner alleges that she was arbitrarily detained at her home during the night of September 12, 1993 by DINCOTE agents. She says that she was beaten and “groped”, then transferred a DINCOTE jail, where she was held in solitary confinement and abused for 15 days. She was subsequently taken to an air force base in Arequipa, where she was again subjected to various forms of abuse. The petitioner alleges that she was tried by a military court, which sentenced her to life imprisonment for high treason, although a copy of the sentence was not provided until 2002. In July 2002, the petitioner reportedly filed a writ of habeas corpus. The Constitutional Court eventually ruled in favor of the writ and ordered a new trial in a civilian jurisdiction. The petitioner states that she was then sentenced to 20 years in prison on October 4, 2005. The Supreme Court of Justice later increased the prison sentence to 25 years. The petitioner claims that she was notified of the sentence on October 4, 2006.

226. According to the information in the files provided by the parties, on June 30, 2010, the petitioner and 38 other female prisoners held at the Chorrillos women’s prison reported to the Public Ministry that on June 24, 2010, some 200 DINCOTE agents had entered their cellblock and subjected the petitioner to repeated vaginal inspections, even though they had found nothing, and confiscated her books and personal belongings. Additionally, the petitioner requested on October 12, 2009 that she be released on parole. The request was denied by the National Penitentiary Institute on March 7, 2011. The petitioner appealed the decision on November 30, 2011 before the First Supra-Provincial Criminal Court. On February 2, 2012, the First Supra-Provincial Court declared the petitioner’s request for parole inadmissible. The petitioner then filed a writ of habeas corpus. On June 20, 2012, the Lima Superior Court of Justice ruled in favor of the request and ordered the Technical Penitentiary Council of the National Penitentiary Institute to draw up a file for parole to be processed by the pertinent court. However, according to the petition, the petitioner still remains incarcerated.

227. Lastly, regarding the petitioner’s allegations of mistreatment and acts of torture by the State agents, the file provided indicates that she filed an appeal to remedy a constitutional wrong, denouncing said acts.

Jorge Antonio Carrillo Román (P-411-07)

228. The petition was filed by Jorge Antonio Carrillo Román and was received by the IACHR on April 3, 2007. It was sent to the State on April 27, 2010. The comments and additional information submitted by the parties were duly sent to the respective parties by the Commission.

229. The petitioner alleges that he was arbitrarily detained on September 1, 1992 as he was passing by a police check-point in the Sachaca District in the Arequipa Department. He was reportedly immediately taken to a DINCOTE jail, where he was severely beaten and subjected to other types of physical abuse, which was made known to the authorities when he was taken to the hospital and given a forensic examination. The petitioner was then taken to the Socabaya prison, where he was subjected to further abuses. He states that, on October 16, 1992, the Special Military Investigating Court sentenced him to life imprisonment for terrorism. The Special Tribunal of the Military Council upheld this sentence on November 28, 1992. Following the Constitutional Court’s 2003 ruling, a new trial was held, sentencing him to 25 years in prison.

230. According to the information in the files provided by the parties, following the Constitutional Court's ruling on January 2006, the petitioner was tried in criminal proceedings before the National Criminal Court and sentenced to 14 years of prison on June 2, 2006 for his participation in subversive indoctrination schools. This sentence was contested by the Criminal Prosecutor General via an appeal to vacate the judgment. On October 25, 2007, the First Temporary Criminal Chamber upholding the conviction and sentence of the petitioner. Furthermore, the files note that on August 26, 2005, the National Criminal Court sentenced the petitioner to 25 years in prison for aggravated terrorism. The petitioner appealed to vacate the sentence. On July 12, 2006, the Second Temporary Criminal Chamber of the Supreme Court of Justice upheld both the conviction and the sentence.

231. Lastly, the petitioner alleges that the alleged victim was subjected to mistreatment and acts of torture by DINCOTE.

Isidro Lucho Dávila Torres Samuel Roberto Dávila Torres and Félix Daniel Dávila Torres (P-498-07)

232. The petition presented by EDAC [Legal Defense and Counsel Team representing peasant farmers] on behalf of Isidro Lucho Dávila Torres, Samuel Roberto Dávila Torres, and Félix Daniel Dávila Torres was received by the IACHR on April 23, 2007, and forwarded to the State on April 29, 2010. The additional information and observations presented by the parties were duly forwarded to the other party by the Commission.

233. The petitioners allege that the alleged victims were convicted by faceless judges to 20 years in prison by the National Criminal Chamber [*Sala Penal Nacional*]. The alleged victims filed an appeal to vacate judgment [*recurso de nulidad*] that was heard by the Second Transitory Criminal Chamber of the Supreme Court of Justice, which not only upheld the conviction, but increased the prison term. According to the petitioners, the alleged victims had filed a habeas corpus petition against that judgment, which was ruled inadmissible by both the Second High Criminal Chamber for Detained Inmates and the Constitutional Court.

234. According to the case files provided by the parties, Isidro Lucho Dávila Torres, Samuel Roberto Dávila Torres, and Félix Daniel Dávila Torres were convicted of the crime of terrorism; this judgment became final on November 13, 2000, when Criminal Chamber "C" ruled that the judgment was not null and void. According to the petitioners, this judgment was vacated, and the case file indicates that a new legal action was initiated against the alleged victims by the National Criminal Chamber, which on October 18, 2004 convicted the alleged victims to 20 years in prison. Both the Prosecutor and the alleged victims filed an appeal to vacate that judgment with the Second Transitory Criminal Chamber, which on March 16, 2005 upheld the judgment, and increased the sentence to a 25 year term.

235. The alleged victims filed a habeas corpus petition alleging that the enhanced sentence was a violation of their constitutional rights. This petition was ruled inadmissible by the Forty-Eighth Criminal Court of Lima on March 15, 2006, a decision that was appealed by the alleged victims. On June 16, 2006 the Superior Court of Justice of Lima confirmed the lower court decision, and the alleged victims were notified of this judgment on July 7, 2006. However, the alleged victims appealed to the Constitutional Court, which on February 19, 2007, rejected their appeal. The alleged victims were notified of that decision on April 10, 2007.

236. Finally, the petitioners provided the IACHR with information indicating that during the trial in the National Criminal Chamber, they had allegedly been beaten by DINCOTE agents.

Luis Guillermo Nevado Rojas and Moisés Chipana Huarcaya (P-558-07)

237. The petition, presented by EDAC on behalf of Luis Guillermo Nevado Rojas and Moisés Chipana Huarcaya, was received by the IACHR on May 7, 2007, and forwarded to the State on October 12, 2010. Additional information and observations presented by the parties were duly forwarded to the other side by the Commission.

238. According to the petitioners, the alleged victims were arrested on June 4, 1993 by State agents. They were subsequently put on trial in a military criminal court and convicted by both lower and higher courts. Their case was subsequently sent to the ordinary jurisdiction by the Special Court of the Supreme Military Justice Council, where they were again judged and convicted by faceless judges to 20 years in prison. According to the petitioners, the alleged victims filed a *res judicata* appeal, on the grounds that a court in the ordinary jurisdiction was trying them for crimes of which they had been acquitted by a military court, and later they filed a habeas corpus petition; the Constitutional Tribunal denied their motions and declared them without merit in a final ruling. Luis Guillermo Nevado Rojas himself presented an appeal to nullify the proceeding, which was upheld by the Supreme Criminal Chamber in a final judgment. The two alleged victims were convicted to 17 years in prison.

239. According to the case records presented by the parties, on June 28, 2004, the National Terrorism Chamber ruled that the *res judicata* motion filed by Moisés Chipana Huarcaya had merit, and ordered his immediate release. The Public Prosecution filed an appeal to vacate that judgment with the Superior Court of Lima, which set aside the lower court judgment, and declared the *res judicata* motion to be without merit. The alleged victim filed a habeas corpus petition, which was ultimately ruled unfounded in a final decision by the Constitutional Court on November 24, 2006.

240. On February 2, 2006, the National Criminal Chamber convicted Mr. Nevado Rojas and Mr. Chipana Huarcaya to 17 years in prison for the crime of terrorism. An appeal to vacate judgment was filed by the alleged victims, and was resolved by a ruling of the Supreme Court of Justice on October 12, 2006 upholding the lower court conviction. On January 22, 2007, the Supreme Court amended an error in its October 12, 2006 judgment, in which it had incorrectly cited several articles of the penal code; on April 16, 2007, the alleged victims were notified of the Supreme Court's decision of January 22, 2007.

241. Finally, although the petitioners did not allege that the alleged victims had been abused and tortured by DINCOTE, they provided information indicating that Moisés Chipana Huarcaya testified during the proceeding in the National Criminal Chamber that he had been blindfolded and beaten by DINCOTE agents, and questioned some of the evidence being used to prosecute him, on the grounds that it was allegedly obtained by force.

Margot Cecilia Domínguez Berrospi (P-47-08)

242. The petition presented by Margot Cecilia Domínguez Berrospi on her own behalf was received by the IACHR on January 14, 2008, and forwarded to the State on August 29, 2012. The additional information and observations presented by the petitioner were duly forwarded by the IACHR to the State. However, on the date of adoption of this report, the State has not sent any further observations.

243. The petitioners alleges that she was detained on March 2, 1993 on a street in Lima, was severely beaten, stripped of her clothing, hooded, sexually abused in a variety of ways, and subjected to other types of physical and psychological abuse. According to the petitioner, she reported this mistreatment to the forensic medical officer who examined her while she was in detention. The petitioner alleges that she was subsequently tried in a military criminal court, where she was convicted. However, that conviction was annulled in a January 2003 judgment of the Constitutional Court, after which she was tried in a new proceeding in an ordinary court, which convicted her to 30 years in prison. The petitioner said that she was sent to prisons in Chorrillos and Cajamarca, where she was subjected to inhumane detention conditions.

244. According to the case records provided by the parties, on March 7, 2006, the the National Criminal Chamber convicted the petitioner to 30 years in prison for the crime of terrorism. That judgment was challenged by both the *Procuraduría* and the petitioner in an appeal to vacate judgment. The Transitory Criminal Chamber of the Supreme Court of Justice heard that appeal, and did not rule the judgment null and void, but declared that the decision stating that there was no merit in opening an oral proceeding against the petitioner for the crime of terrorism against the State was null and void.

245. Finally, the petitioner states that the alleged victim was subject to abuse and torture by the police; according to the case files provided, during the trial in the ordinary court, the alleged victim contended that she was subjected to beating and other forms of physical and mental mistreatment by the police, which, according to the petitioner, is recorded in forensic medical certificates provided to the trial court. On this basis, the alleged victim contends that she requested that the evidence used against her be invalidated.

Mario Germán Vasquez Rojas (P-236-08)

246. The petition presented by Mario Germán Vásquez Rojas on his own behalf was received in the mail by the IACHR on February 21, 2008, and forwarded to the State on August 7, 2012. The additional information and observations presented by the parties were duly transferred to the other party by the Commission.

247. The petitioner alleges that he was arrested on June 17, 1994 by members of the police, and taken to a police station and then to the facilities of DINCOTE, where a police report against him was prepared. After that, the petitioner states that he was subjected to a proceeding in a military criminal court, and ultimately convicted on September 6, 1994 by the Marine Special Military Court to 30 years in prison, a judgment that was upheld by the Marine Special War Council on December 13, 1994. Following the Constitutional Court judgment of January 3, 2003, he was tried in a court of the ordinary jurisdiction, and convicted by the National Criminal Chamber to 14 years in prison for the crime of terrorism on May 19, 2006. This conviction was reviewed by the Supreme Court in an appeal to nullify judgment; the Supreme Court upheld it, but increased the sentence to 20 years. The petitioner reports that he was notified of that decision on August 16, 2007.

Rosa María Contreras Serrano and family (P-963-08)

248. The petition, lodged by Rosa María Contreras Serrano on her own behalf, was received in the mail by the IACHR on February 21, 2008, and forwarded to the State on August 7, 2012. The additional information and observations presented by the parties were duly forwarded to the other side by the Commission.

249. The petitioner alleges that she was detained arbitrarily on November 30, 1993 by DINCOTE agents, who subjected her to physical and psychological abuse, and threatened that she, who was a student at La Cantuta, would suffer the same fate as the students who had been massacred in 1992.³¹ She was then taken to the Callao Naval Base, where she remained incommunicado for 28 days. She alleges that she was subsequently taken to a military criminal court, where, on November 10, 1994 she was convicted in a final judgment by the Supreme Military Justice Council to 25 years of prison for the crime of high treason. The petitioner alleges that following the Constitutional Court judgment of January 3, 2003, she was submitted to a new proceeding in a court of the ordinary jurisdiction, and was convicted in a final judgment by the Supreme Court of Justice to 19 years in prison for the crime of terrorism.

250. The case records provided by the parties show that after the proceedings in the military courts were voided, on September 13, 2004 the petitioner filed a habeas corpus petition requesting her release from prison, alleging that because she had been in detention since 1993, the maximum detention term had been violated. Said habeas corpus was considered in a final appeal by the Constitutional Court, which on June 3, 2005 found said appeal to be without merit, on the grounds that the maximum term would be calculated as of the time that, after the proceedings in the criminal courts were voided, a new detention order was issued. Since the maximum legal term in terrorism proceedings is 36 months and the detention order was issued on April 21, 2003, the Court determined that said maximum term had not lapsed in the case of the petitioner.

³¹ The Inter-American Court of Human Rights ruled that the State of Peru had international responsibility for that massacre. See the Inter-American Court, Case of La Cantuta vs. Peru, judgment of November 29, 2006 (Merits, Reparations and Costs).

251. On February 2, 2006, the National Criminal Chamber convicted the petitioner to 19 years in prison. On July 5, 2007, the Transitory Criminal Chamber decided an appeal to vacate filed by the petitioner by confirming her earlier conviction. On January 18, 2008, the National Criminal Chamber ordered that the petitioner be notified with two certified copies of the final judgment and sentence.

252. Finally, the petitioner contends that the alleged victim was subject to abuse and torture by DINCOTE.

Nancy Lourdes Mejía Ramos (P-1048-08)

253. The petition presented by Nancy Lourdes Mejía Ramos on her own behalf was received by the IACHR on September 9, 2008, and was forwarded to the State on September 19, 2012. The additional information and observations presented by the parties were duly forwarded to the other party by the Commission. Together with the petition, Mrs. Mejía Ramos also requested a precautionary measure. The Commission did not grant this request for a precautionary measure, and on April 16, 2009, the petitioner was informed of the decision to close this matter.

254. The petitioner alleges that she was arrested arbitrarily on November 30, 1993, after which she was taken to the facilities of DINCOTE, where she was held for 30 days. During this time she was subjected to various types of physical mistreatment, some of which were recorded in a forensic medical examination she underwent later on. The petitioner alleges that she was subsequently subjected to a criminal proceeding in a military court, which convicted her of high treason and sentenced her to 30 years in prison. The petitioner states that she filed a habeas corpus petition which was finally considered by the First Corporate Criminal Chamber. On September 30, 2002, that court voided all of the military court proceedings, and ordered a new trial to be initiated in the ordinary jurisdiction. In that trial, the petitioner says that she was convicted to 30 years in prison in a final decision by the Supreme Court.

255. According to the information provided by the parties, the petitioner was convicted by the military criminal court for high treason, after which she filed a habeas corpus petition which was decided in her favor, thereby voiding all proceedings in that jurisdiction, and ordering a new trial in the ordinary jurisdiction. This new proceeding took place in the National Criminal Chamber, which on February 2, 2006 convicted her to 25 years in prison. Both the petitioner and the Prosecution filed appeals to nullify that judgment, which were decided on July 5, 2007 by the Transitory Criminal Chamber of the Supreme Court, which rejected the decision to nullify and upheld the conviction, but increased the term to 30 years in prison. The petitioner was notified of this judgment on December 19, 2007.

256. Finally, the petitioner claims that she was subject to abuse and torture by DINCOTE.

Clara Inés Montoya Benita's (P-1071-08)

257. The petition, presented by Clara Inés Montoya Benita's on her own behalf, was received by the IACHR on September 9, 2008, and forwarded to the State on July 11, 2012. The additional information and observations presented by the parties were duly forwarded to the other party by the Commission.

258. The petitioner alleges that she was arrested arbitrarily on January 28, 1994 by DINCOTE agents, who took her to their facilities, where she was beaten and subjected to death threats for several days, to pressure her to sign self-incriminating documents, which she ultimately did. The petitioner remained in isolation for 15 days in DINCOTE cells, after which she was taken to a prison. The petitioner claims that faceless military criminal court judges tried the case and sentenced her to 20 years in prison; this judgment was set aside by a decision of the Constitutional Court on January 3, 2003. The petitioner was then given a new trial, in which she was convicted to 16 years in prison.

259. According to the case records submitted by the parties, after the Constitutional Court ruling in January 2003, the criminal proceeding in the military court in which the petitioner was convicted was voided, and a new trial was initiated in an ordinary court, in which the petitioner was accused of various acts

of publicity (posters, graffiti, and flyers) for the subversive group Shining Path. This trial was held in the National Criminal Chamber which, on February 2, 2006, convicted her of terrorism and sentenced her to 16 years in prison. The petitioner filed an appeal to vacate that ruling, which was decided on November 26, 2007 by the Transitory Criminal Chamber, which declared the appeal without merit, and thus confirmed the conviction. The petitioner alleged that she was not notified of that decision until March 10, 2008.

260. Finally, the petitioner contends that the alleged victim was subject to abuse and torture by DINCOTE agents.

Cerila Silvia González Olarte (P-771-09)

261. The petition, presented by Cerila Silvia González Olarte on her own behalf, was received by the IACHR on June 19, 2009, and forwarded to the State on March 4, 2013. On May 8, 2013, the State requested an extension, which the Commission granted, to June 7, 2013. However, as of the date of publication of this report, the State has not presented observations on the case.

262. The petitioner alleged that she was arbitrarily arrested on June 1, 1995 by DINCOTE agents in the city of Trujillo, where she was severely beaten, and subsequently transferred to the city of Lima, where she continued to be beaten and subjected to other types of physical and psychological abuse. She claims that she was held incommunicado for 47 days in DINCOTE facilities. On July 17 of that year, the petitioner was transferred to Callao Naval Base, where she put put on trial in a military criminal court, which convicted her of high treason and sentenced her to life imprisonment. The petitioner alleges that she was imprisoned in Chorrillos Maximum Security Prison, in Yanamayo Prison, and Huacariz Prison in Cajamarca, where she was subjected to inhumane detention conditions. After the Constitutional Court judgment in January 2003, the petitioner states that the military criminal proceeding was annulled, and a new trial was opened in the II Terrorism Court of Lima, which convicted the petitioner to 26 years of prison for the crime of terrorism. According to the petitioner, that decision was upheld on October 29, 2008, although she was not notified of that decision until December 17 of that year.

263. Finally, the petitioner claims that the alleged victim was subject to mistreatment and torture by DINCOTE agents.

B. Position of the State

1. Common Allegations

264. The State argued that the court proceedings for the alleged victims were conducted in accordance with provisions already established in Peruvian legislation, that the victims were assisted by freely selected or officially appointed attorneys, and that they could file any petitions or appeals provided for in Peruvian legislation, without any limits. It stated that the criminal proceedings were judged by independent and impartial judges, who based their decisions on the evidence produced during the different stages of the criminal proceeding. It further stated that it was not the position of the IACHR to replace the domestic courts by evaluating the evidence produced in trial and by determining the criminal liability of the alleged victims, especially when said courts acted in accordance with the guarantees of due process.

265. On the other hand, the State alleged that the petitions did not meet the requirement of exhaustion of domestic remedies, since even after the final judgment handed down by the Supreme Court of Justice, in practice convicted persons may file a petition for a writ of habeas corpus if they believe that their fundamental rights have been violated. For the State, even though the Constitutional Court judgment of January 3, 2003 established that it did not provide for release from detention, that would not prevent the petitioners from filing motions or petitions to that effect, thereby giving the Constitutional Court the opportunity to determine whether or not that would be appropriate in their specific case. In addition, the State alleged that the petitioners could have filed a motion or appeal for review. In view of the foregoing, and the fact that the petitioners did not file these motions after the final judgment of the Supreme Court, the

petitions included in this report should be rejected, since they do not meet the requirement established in Article 46.2 of the American Convention.

266. The State indicated that between January and February 2003, legislative reform pertaining to the criminal investigation, procedures, and sentencing for the crime of terrorism was enacted; this meant that trials held in the decade of the 1990s with military or civilian judges with concealed identities were voided. The State maintains that this new legislative framework is adapted to the standards of the inter-American human rights system and the Political Constitution of Peru. As regards the use of evidence which served as the basis for convictions handed down prior to the 2003 Constitutional Court judgment in the civilian court proceeding initiated after that, the State points out that states can exclude tainted evidence or evaluate its content independently of the punishment that may be imposed on the offender. In the view of the State, only evidence obtained directly as a result of human rights violations should be excluded, but that does not mean that voiding of a proceeding would automatically invalidate the evidence gathered to initiate it. In its opinion, the Constitutional Tribunal upheld the police affidavits on the understanding that they do not constitute conclusive proof, and the State further contends that since the petitioners had an opportunity to present unrestricted evidence they deemed useful, the proceedings opened after the legislative change produced by the Constitutional Court judgment in 2003 could not be invalidated.

267. On the issue of continuing the preventive detention of the persons prosecuted for terrorism after voiding the proceedings brought against them prior to 2003, the State alleged that this restriction did not violate the right to personal liberty, because the law (D.L. 922) stipulated specifically that it was for persons prosecuted for terrorism; in the opinion of the State, this meets the requirement that no person be detained except “for causes and conditions established previously in the law.” Finally, the State pointed out that the Peruvian Constitutional Court had already pronounced judgment on the constitutionality of said provisions.³² More specifically, the State cited a paragraph from the decision of the Constitutional Court in which it establishes that the purpose of maintaining preventive detention in these cases was to prevent “a new outbreak of subversive practices and/or to avoid thwarting the *ius puniendi* of the State over persons who were found to have committed terrorism, although they were prosecuted by an incompetent judge and without the guarantees underlying due process of law.”

268. On the question of violation of the guarantee of a judge competent to prosecute in courts specializing in terrorism, the State alleged that this guarantee is limited to the definition of a jurisdictional power and a generic definition of the scope of knowledge of litigation, and that it does not prevent the Judiciary from establishing sub-specializations within each jurisdictional assignment, as set forth in the Organic Law of the Judicial Branch, which permits the creation and elimination of courts “to ensure the prompt and effective administration of justice.”

269. With regard to allegations regarding prohibition of *non bis in idem*, the State contended that since the proceedings conducted by judges with a concealed identity were invalidated, there is no violation of the right not to be tried twice for the same offense, since the mere existence of two trials is not enough, as they must both be valid. The State argued that all of the alleged victims had their own technical defense, and in cases in which the defender was not contracted by them, the State offered them full access to a public defender. It further contended that the petitions contain unfounded allegations that rejection of constitutional remedies violated the right of judicial protection of the alleged victims. To counter this point, the State cited the Inter-American Court of Human Rights, which established in its case law that the fact that a remedy should prove to be unfavorable on a national level does not imply a violation of the rights recognized in the American Convention.

270. The State did not present information on any investigations opened into the alleged torture and inhumane detention conditions of the alleged victims. It held that the facts alleged in the complaints do not tend to characterize violations of rights protected in the American Convention, and requested the IACHR

³² Judgment of May 17, 2005 (File No. 2053-2005-PHC/TC).

to declare the petitions inadmissible by virtue of Article 47(b) of that instrument. Finally, the State attached a copy of the judicial decisions handed down in the proceedings against the alleged victims.

271. Finally, in the case of all the petitions examined in this report, the State alleged that in proceedings initiated following the 2003 Constitutional Court judgment, all of the procedural violations that may have occurred in the earlier trials of the alleged victims have been rectified, and that the Peruvian Constitutional Court established that legislative decrees 921, 922, 923, 924, 925, 926, and 927 were constitutional and compatible with respect for and protection of human rights.³³

2. Specific Allegations

Gloria Beatriz Jorge López (P-1413-04)

272. The State alleges that the petitioner was not the only appellant in the proceeding that ruled to increase her prison term, thus the *no reformatio in pejus* was not violated in her case. The State also maintains that this petition is inadmissible because it was presented after the six-month deadline, since notification of the March 30, 2004 judgment handed down by the Permanent Chamber of the Supreme Court of Justice was served on June 7, 2004, and the petition was received by the Commission on December 27 of that year.

Juan Cancio García Robles (P-808-04), Juan Alonso Aranda Company (P-804-04), Álvaro espejo Sebastián (P-806-04), Wilfredo Patricio Guzmán Moya (P-778-04), Rodolfo Palmi García (P-983-04), José Manuel Mattos Palacios (P-949-04), Eloy Nelson Ramírez Falero (P-1016-04), Roberto Lorenzo Rodríguez Arévalo (P-1195-04), Fortunato Felix Utrilla Aguirre (P-1204-04), David Alcides Gutierrez Cueva (P-1280-04), Felipe Tenorio Barbarán (1244-04), Ayde Sebastiana Chumpitaz Luyo (P-1305-04), Marco Antonio Meneses Mendo (P-369-05), Walter Sayas Baca (P-1236-05), Lyly Ruth Conislla Monroy (P-391-06)

273. The State alleges that restriction of prison benefits is not a violation of the rehabilitative purposes of punishment or of the American Convention. In the opinion of the State, prison benefits are subjective rights or entitlements which the judge grants according to their value; hence they are not automatically enjoyed rights. Finally, on this point, the State alleges that legislators have total freedom to regulate criminal policy. The State further contends that restrictions on access to prison benefits do not violate the right to equality, since “life and democracy have more value than equality,” and in any event under Peruvian law, persons tried for terrorism are not the only ones who cannot obtain prison benefits, as persons convicted for drug trafficking, trafficking in persons, etc. are also in the same category.

Isaac Quispe Gonzáles (P-905-04)

274. With regard to the alleged torture of the petitioner by DINCOTE, the State maintains that the fact that the petitioner did not file a formal complaint on the subject prevented the State from having specific facts to investigate, thereby nullifying the effect of that accusation.

Alex Manuel Puente Cárdenas (P-1012-04)

275. The State alleges that the petitioner was released from prison on March 23, 2010; hence there is no longer cause to consider the case.

Eloy Nelson Ramírez Falero (P-1016-04)

276. The State argues that the allegations of extinction of the legal action were invalid, since the petitioner was prosecuted and judged only for the acts that occurred subsequent to the entry into force in 1991 of the provisions that expanded the term for extinction from 10 to 15 years.

³³ Constitutional Court judgment of August 9, 2006.

Javier Luis Quevedo Yauremucha (P-1188-04)

277. The State alleges that there was no longer cause to consider the case, since the petitioner was released on September 26, 2008, after having agreed to the benefit of probation. The State further claimed that the petitioner was provided with all the medical treatments he needed from 1996 to 2007.

David Alcides Gutierrez Cueva (P-1280-04)

278. The State alleges that the detention of the petitioner occurred during a declared state of emergency “that suspended the right to physical liberty and the inviolability of domicile at the time of the acts.” In the view of the State, this is compatible with the American Convention.

Felipe Tenorio Barbarán (1244-04)

279. The State alleges that the petitioner was not subject to torture, and has provided a forensic medical examination conducted on May 25, 1994 to demonstrate that the petitioner showed no physical wounds. The State further argued that the same petitioner had indicated in his statement to the police that he had not been mistreated, and this was reflected in the conviction handed down on December 5, 2005.

Hernán Ismael Dipas Vargas and Miguel Angel Dipas Vargas (P-663-98)

280. The State alleges that Hernán Ismael Dipas Vargas did not pursue any domestic remedies that would have allowed him to demand compensation from the State for human rights violations against him which were in his opinion caused by the State.

Rafaél Jara Macedo (P-657-05)

281. The State alleges that the petitioner had an opportunity to challenge the conviction obtained after 2003, and that the fact that he obtained a conviction does not imply that his human rights were violated.

Miguel Ángel Talavera Estupiñán (P-897-05)

282. The State argues that domestic remedies were not exhausted, since Talavera Estupiñán was prosecuted together with other co-defendants in another terrorism trial being held in the Second Supraprovincial Criminal Court, under No. 108-2006.

Miguel Cuno Choquehuanca (P-1108-05)

283. The State alleged that the petitioner was released after a decision on August 28, 2006 to the effect that the prison benefit of probation was appropriate; hence there is no longer cause to examine this case.

Luis Raul Ruiz Ecurra (P-244-06)

284. The State contends that with regard to the alleged torture to which the petitioner was subjected by DINCOTE agents, the fact that the petitioner did not present a formal complaint on the subject prevented the State from obtaining concrete facts to investigate. Moreover, these allegations were nullified by the forensic medical certificate produced the day following the arrest of the alleged victim, which stated that the petitioner had no recent physical injuries. The State further contends that said petition is inadmissible because it was presented after the six-month period had lapsed, since the July 11, 2005 judgment issued by the Transitory Criminal Chamber of the Supreme Court of Justice was “received by the petitioner on September 11, 2005,” and so the six-month term would have lapsed on March 11, 2006. In the view of the State, the fact that the petition was received on March 14, 2006 puts it beyond the term established in the Convention.

Rufo León Ccala (P-248-06)

285. The State argues that with regard to the alleged torture to which the petitioner was subjected by DINCOTE agents, the fact that the petitioner did not present a formal complaint on the subject prevented the State from obtaining concrete facts to investigate. As for the forensic medical certificate provided by the petitioner that recorded the presence of abrasions and scratches, the State alleges that said certificate dated back to 9 years after his arrest, and that said certificate did not report injuries of any magnitude that would indicate torture.

Juan Carlos Quispe Gutierrez (P-889-06)

286. The State alleges that with regard to the alleged torture to which the petitioner was subjected by DINCOTE agents, the fact that the petitioner did not present a formal complaint on the subject prevented the State from obtaining concrete facts to investigate. The State further alleges that the petitioner failed to present the petition within the six months of notification of the final domestic court judgment .

Maruja Arango Chávez (P-1101-06)

287. The State contends that the allegations of torture by the petitioner were not upheld by the forensic medical examination conducted on October 9, 1995, which states that at that time the alleged victim had no recent injuries.

Miriam Beatriz Espino Salas and family (P-1141-06)

288. The State also alleges that the petitioner presented the petition more than six months from the date on which she was notified of the final domestic court judgment. According to the State, the final decision in the domestic courts was issued on August 10, 2005, and the petition was presented on October 14, 2006, 14 months later. According to the State, "since the petitioner has not indicated a specific date of notification of the final judgment, this procedural act is understood to have been performed in less time than what was indicated."

Mirtha Ymelda Simón Santiago and family (P-1147-06)

289. The State also alleges that the petitioner presented the petition more than six months from the date on which she was notified of the final domestic court judgment. According to the State, the final decision in domestic court was handed down on September 21, 2005, and the petition was presented on October 27, 2006, 13 months later. According to the State, is is "impossible that this judgment was notified in April 2006."

Aurelio Sernaque Silva (P-1387-06)

290. The State alleges that the petitioner did not exhaust domestic remedies, since it is of the opinion that they would be exhausted only in the event that the Supreme Court would deliver judgment on an extraordinary appeal for review or if the Constitutional Court should decide a habeas corpus petition filed by the petitioner.

Nancy Benavente Hinojosa et al (P-1506-06)

291. The State objects on the grounds that the six month period had lapsed, since the final court decision was issued on September 8, 2005, and the petition was not received by the IACHR until September 30, 2006, over a year later.

Jacinto Antonio Huayanay González (P-71-07)

292. The State alleges that the petitioner did not exhaust domestic remedies, as he did not file a petition for a habeas corpus writ against the judgment that upheld his conviction and sentence to 25 years' imprisonment.

María Beatriz Azcárate Vidalón (P-112-07)

293. The State argues that the allegations of torture were nullified by a medical certificate in the file that indicated that the alleged victim had not been subject to torture.

Nancy Lourdes Mejía Ramos (P-1048-08)

294. The State alleges that the petitioner filed her petition after the six-month period stipulated in the Convention.

Mario Germán Vasquez Rojas (P-236-08)

295. The State alleges that the petitioner filed his petition after the six-month period stipulated in the Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

296. The petitioners are entitled, under Article 44 of the Convention, to file complaints. The alleged victims were under the jurisdiction of the State of Peru on the date of the acts reported. As for Peru, it ratified the American Convention on July 28, 1978. Consequently, the Commission has *ratione personae* to examine the petitions.

297. The Commission is competent *ratione loci* to examine the petitions, inasmuch as they allege violations of rights protected by the American Convention that are said to have taken place within the territory of a state party to the Convention.

298. The Commission is also competent *ratione temporis*, since the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date that the acts alleged in the petitions are said to have occurred.

299. Finally, the Commission is competent *ratione materiae*, because as explained in the above section on characterization, the petitions considered in this report allege acts that could ultimately characterize violations of the rights protected by the American Convention and the Inter-American Convention to Prevent and Punish Torture, in respect of which Peru deposited its instrument of ratification on March 28, 1991.

300. With respect to the Commission's competence to address violations of the Inter-American Convention to Prevent and Punish Torture, the Commission notes that Peru has been a state party to that instrument since March 28, 1991, when it deposited its ratification. In view of the fact that the alleged torture described in this report was said to have occurred between July 1989 and December 1998, the IACHR is competent *ratione temporis* to review the allegations of torture and cruel, inhumane, and degrading treatment made by the petitioners between July 1989 and March 27, 1991, using the American Convention as the source of applicable law. In relation to allegations of torture alleged to have occurred after March 28, 1991, and allegations of failure to investigate and punish alleged acts of torture regardless of the date on which they occurred, the Inter-American Commission is competent *ratione temporis* to examine petitions

included in this report under the American Convention and the Inter-American Convention to Prevent and Punish Torture.

301. Concerning the Commission's competence to examine violations of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, the Commission notes that Peru has been a state party to that instrument since April 6, 1996, when it deposited its instrument of ratification. Inasmuch as the allegations that could be violations of that convention are said to have occurred between September 1992 and June 2010, the IACHR is competent *ratione temporis* to review the allegations of gender violence against the alleged victims between September 1992 and April 6, 1996, using the American Convention as the applicable legal source. As for the alleged acts that occurred after April 6, 1996, as well as the alleged failure to investigate and punish the alleged acts of gender violence regardless of the date on which they occurred, the Inter-American Commission is competent *ratione temporis* to examine the petitions included in this report under the American Convention and the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women.

B. Exhaustion of domestic remedies

302. Article 46.1(a) of the American Convention provides that for a petition presented to the Commission to be admissible in accordance with Article 44 of the Convention, it is necessary that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to investigate an alleged violation of a protected right and, if appropriate, to have the opportunity to resolve it before it is brought before an international body. Article 46.2 establishes that this requirement shall not be applicable when: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. Both the Commission and the International Court have held that only the remedies that are adequate to rectify the violations allegedly committed need to be exhausted.³⁴

303. The State maintained that the petitions examined in this report were filed with this international body at a time when a final judgment was pending in the Peruvian courts in the criminal proceedings involving the alleged victims. It stated accordingly that the referenced petitions do not meet the requirement of prior exhaustion of domestic remedies. In response to these arguments, the IACHR reiterates its doctrine to the effect that the requirements set forth in Articles 46 and 47 of the American Convention must be considered in light of the situation prevailing at the time that the decision on the admissibility or inadmissibility of the petition is made.³⁵

304. The petitions considered in this report center around common allegations referring to human rights violations that are said to have occurred as part of the investigation and criminal proceedings the alleged victims were subjected to, as well as the conditions in which they lived during that time. On the other hand, the State focuses its defense on the contention that the alleged violations of rights protected by the Convention during criminal proceedings in military courts or by faceless judges were rectified or corrected in new trials in ordinary civilian courts that began in 2003.

305. In the case of petitions 777-04, 778-04, 1220-04, 1413-04, 804-04, 808-04, 806-04, 905-04, 983-04, 949-04, 1012-04, 1188-04, 1195-04, 1204-04, 1280-04, 1244-04, 1305-04, 1314-04, 663-98, 34-05, 38-05, 369-05, 846-05, 897-05, 1108-05, P-1236-05, 1278-05, 263-06, 242-06, 244-06, 248-06, 391-06, 889-

³⁴ The Inter-American Court of Human Rights has ruled that an adequate remedy is suitable for protecting the violated legal situation, so that remedies that would not have that effect or that are manifestly absurd or unreasonable do not need to be exhausted. Inter-American Court, Case of *Velásquez Rodríguez vs. Honduras*; Merits; Judgment of July 29, 1988, Series C No. 4, para. 64.

³⁵ IACHR, Report No. 108/10, Petition 744-98 et al.; *Orestes Auberto Urriola Gonzáles et al* (Peru), August 26, 2010, para. 54, Report No. 2/08, Petition 506-05, *José Rodríguez Dañín* (Bolivia), March 6, 2008, para. 56; and, Report No. 20/05, Petition 714-00, *Rafael Correa Díaz* (Peru), February 25, 2005, para. 32.

06, 1101-06, 1141-06, 1147-06, 1387-06, 71-07, 112-07, 411-07, 498-07, 558-07, 47-08, 236-08, 963-08, 1048-08 and 1071-08 contained in the case records provided by the parties, the alleged victims challenged the convictions they received in the trials initiated as a consequence of the voiding of the proceedings that occurred prior to the Constitutional Court judgment of January 3, 2003, and exhausted all ordinary remedies available under domestic law. In the case of the petition by Mr. Eloy Nelson Ramírez Falero P-1016-04, he alleges that he challenged the conviction of April 3, 2006, and the State did not contest that claim. Thus, the Commission considers that all suitable available remedies were exhausted in the case of that petition. Along the same lines, in the petitions in favor of Edilberto Macarlupu García P-685-98, Miguel Cornelio Sánchez Calderón P-1348-04, and Maritza Garrido Lecca P-351-07, and in the petition of Cerila Silvia González Olarte P-771-09, the petitioners claim that the alleged victims challenged all the criminal convictions against them, and the State did not contest that claim; hence the Commission considers that domestic remedies were exhausted by these petitioners as well.

306. As regards petitions 1230-04, 691-98, and 252-06, from the case records provided by the parties, it is clear that after the proceedings in the military criminal courts or before “faceless” judges in regular courts were voided, and new proceedings were opened in the ordinary jurisdiction, the petitioners were convicted or ultimately acquitted, and these judgments were final after being challenged by the *Ministerio Público*, by a co-defendant, and even in the case of petitions 691-98, 82-05, and 369-05, because the appeal to nullify or consult was automatically included in the same judgment that acquitted or convicted, respectively, the petitioners. It is therefore clear that the judgments convicting the petitioners became *res judicata*, giving the State, through the judicial branch, the opportunity to rectify errors and violations of due process that may have occurred in the lower court of review. As the IACHR has repeatedly held in its case law, the purpose of the requirement of exhaustion of domestic remedies is to enable national authorities to examine an alleged violation of a protected right and, if appropriate, to have an opportunity to resolve it before it is examined by an international body. Thus, whether or not the petitioners availed themselves of the remedies that led to final judicial decisions, what is relevant is that the domestic remedies that were pursued made it possible for the administration of justice to correct the alleged errors, particularly with regard to the validity of evidence used against them, which was an allegation made by the alleged victims from the outset.

307. In conjunction with petition 935-03, the alleged victim was prosecuted for the crimes of high treason and terrorism, and the final judgments were handed down in 1992 and 1996. After these proceedings were voided, the alleged victim was again convicted in a judgment delivered on June 2, 2006, which was not challenged. However, the case records show at the same time that from the very outset of the three criminal proceedings on this matter, the alleged victim argued that the evidence on which the judgments were made was invalid. On this point, the IACHR considers that the alleged victim exhausted all remedies available to him at the time to challenge the convictions resulting in his detention since 1992. Further, with regard to the proceeding opened after the judgment was voided, he complied with the requirement stipulated in Article 46.1(a) regarding the central allegation of violation gleaned from this criminal proceeding, related to the use of illegally obtained evidence. With regard to petition 657-05, after voiding the criminal proceeding in which the alleged victim was convicted and sentenced to 20 years in prison, the petitioner filed appeals challenging those judgments on the grounds that the same evidence being used again was illegal; petitioner also filed an appeal based on the statute of limitations, and, after it was denied, challenged that decision. However, when he was again convicted, he did not challenge that decision, since despite the fact that it was not in his favor, it also meant he would be released due to completion of his sentence. Thus the IACHR considers that, insofar as the trial opened after the conviction issued by the faceless judges was voided is concerned, the petitioner met the requirement stipulated in Article 46.1(a), regarding the central allegation of violation in that criminal proceeding, related to the use of illegally obtained evidence.

308. As regards petition 1506-06, once the proceeding in military court was voided, the petitioner was again tried by the National Criminal Chamber and convicted to 16 years in prison on December 17, 2004. That judgment was then sent for expert opinion to the Supreme Court. The petitioner requested his release, as he had served half of the sentence; the Court declared the motion without merit on June 16, 2005. The petition never challenged that judgment. However, the case records show that in the proceeding conducted in the National Criminal Chamber, the alleged victim argued that the evidence on which the

judgment was based was invalid. Consequently, the IACHR considers that the alleged victim exhausted all remedies available to him to dispute the convictions that led to his detention since 1993. As regards the proceeding initiated after the judgment was voided, he complied with the requirement established in Article 46.1(a) insofar as the central allegation of the violation in this criminal trial, related to the use of illegally obtained evidence, is concerned.

309. Based on the foregoing considerations, the IACHR concludes that the 59 petitions included in this report meet the requirement stipulated in Article 46.1(a) of the American Convention, according to the terms set forth in paragraphs 306 to 312 herein.

C. Timeliness of the petition

310. Article 46.1(b) of the Convention establishes that in order for a petition to be admitted, 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.

311. With regard to the criminal proceedings against the alleged victims, in 41 petitions, they were concluded between 2003 and July 2007, after the petitions were lodged with the Commission. In this context, compliance with the requirement established in Article 46.1(b) of the American Convention is intrinsically linked to exhaustion of domestic remedies, thus that requirement has been met.

312. Insofar as the allegation on detention conditions, torture, and other alleged violations of the right to humane treatment, in accordance with the above paragraphs 313 to 316, the supposed acts were said to have been reported to the national authorities in 47 petitions on different occasions. In the absence of allegations by the State and of information in the case files on the opening of criminal investigations prior to adoption of this report, the IACHR considers that the 47 petitions were presented within a reasonable period of time insofar as these matters are concerned.

313. However, in the case of the following 19 petitions, compliance with this requirement must be examined on a case by case basis.

Gloria Beatriz Jorge López (P-1413-04)

314. In this petition, the latest judicial decision was reported to the petitioner on June 7, 2004, while the six-month period for sending the petition to the IACHR lapsed on December 7 of that year. The IACHR notes that said petition was dated November 24, 2004, although the IACHR did not receive it until December 27, 2004. Although there is no certainty regarding the date it was mailed, the Commission notes that the petition was initially sent to an incorrect address, and since the petitioner was in prison when she endeavored to make an international mailing, according to the IACHR's practice in these matters,³⁶ it regards the days that lapsed while the petition was in the mail constitute a reasonable period of time for receipt of the petition, and so the Commission considers that it was presented in a timely manner.

Luis Raúl Ruiz Ecurra (P-244-06)

315. In this petition, the latest judicial decision was reported to the petitioner on September 11, 2005, while the six-month period would have lapsed on March 11, 2006. Although it is true that the full, written text of the petition was received by the IACHR on March 14, 2006, it is also true—and noted in the case file—that the petitioner sent to the Commission the initial version on March 10, 2006 by e-mail. Therefore, it is clear that it was submitted in accordance with the Convention's requirement.

³⁶ See IACHR, Admissibility Report No. 69/08, Petition 681-00, Guillermo Patricio Lynn (Argentina), October 16, 2008, paras. 44-46 (In this case, the petition was dated December 12, 2000, and it was sent by the mail and received by the Commission on December 29, 2000. The Commission, presuming the days that the petition was in the mail, considered that the petition had been presented in a timely manner.

Juan Carlos Quispe Gutierrez (P-889-06)

316. In this petition, the latest judicial decision, issued on October 20, 2005 by the Transitory Criminal Chamber of the Supreme Court, notification was not received by the petition until February 19, 2006, and the six-month period would have lapsed on August 19, 2006. The petitioner assures that he sent the petition by mail on August 7, 2006, although the IACHR did not receive it until August 21 of that year. The State for its part alleges that that “it is not likely that the petitioner was notified of the final judgment on the day he was released;” however, it did not provide a copy of the notification document so that it could not be ascertained with certainty that in fact the petitioner had been notified prior to that date.

317. In this case, the petition is dated August 7, 2006, and was recorded as received in the mail at the Commission on August 21 of that year. According to the IACHR’s practice in such matters,³⁷ assuming that the petition was in the mail those days, the Commission considers that the petition was presented in a timely manner.

Maruja Arango Chávez (P-1101-06)

318. In this case the petition was received by the Commission on October 16, 2006, and the latest domestic court decision was on August 10, 2005. Although none of the parties provided a record of the date of notification of that court decision, which would make it possible to establish the precise date of notification and thus the deadline at the end of the six month period, the petitioner provided a document from the National Criminal Chamber dated May 4, 2006, containing an order to notify petitioner of the sentence of life imprisonment issued by the Supreme Court; hence even if notification was given that same day, the petition would have been filed within the term stipulated in the Convention. The State, when informed of this allegation, did not produce any document that would prove that said notification took place on an earlier date. Based on the foregoing, the Commission considers that the petition was presented in a timely manner.

Miriam Beatriz Espino Salinas and family (P-1141-06)

319. In this case, the petition was received by the Commission on October 23, 2006, and the latest court decision is dated August 10, 2005. Although neither of the parties provided a record of the date of notification of this court decision, which would have made it possible to ascertain the precise date of notification, hence the due date at the end of the six-month period, the petitioner provided a document of the National Criminal Chamber dated May 4, 2006, in which it ordered that she be notified of the 25 year prison sentence imposed by the Supreme Court. Therefore, even if said notification occurred that same day, the petition would have been lodged within the period stipulated in the Convention. The State, when informed of this allegation, did not produce any document that would prove that said notification took place earlier. Based on the foregoing, the Commission considers that the petition was presented in a timely manner.

Mirtha Ymelda Simón Santiago and family (P-1147-06)

320. In this case, the petition was received by the Commission on October 23, 2006, and the latest criminal court proceeding against the alleged victim was issued on September 21, 2005. However, on April 17, 2006, the Constitutional Court denied a habeas corpus petition filed by the alleged victim in which she alleged violation of her right to personal liberty, on the grounds of being subjected to a trial that, in her opinion, violated her fundamental rights. The Constitutional Court decision issued in April 2006 was such that it could have altered the decision in the criminal proceeding and thus it must be taken as the reference date in computing the six months stipulated in the Convention. Although neither of the parties provided a copy of the notification of these court decisions, and in view of the fact that the State did not provide any documents that would demonstrate that the date of notification of the referenced court decisions was prior to

³⁷ See IACHR, Admissibility Report No. 69/08, Petition 681-00, Guillermo Patricio Lynn (Argentina), October 16, 2008, paras. 44-46. (In this case, the petition was dated December 12, 2000, and it was sent by mail and received by the Commission on December 29, 2000. The Commission, assuming that the petition was in the mail during those days, considered that the petition was presented in a timely manner).

the six month period, and inasmuch as the decision by the Constitutional Court was issued in April 2006, the Commission considers that there are sufficient elements to determine that the petition was lodged within the required time.

Aurelio Sernaque Silva (P-1387-06)

321. In this case, the Commission received the petition on December 12, 2006, and the latest judgment in the criminal proceedings against the alleged victim was issued on April 20 of that year. The petitioner, however, alleged that he was notified of this latest decision on July 10, 2006, in which case the six-month period would not have lapsed until January 10, 2007, and his petition would be in conformity with the Convention. Neither of the parties provided a copy of the notification of this court decision, and the State did not contest the petitioner's statement or provide any document that would show an earlier notification date. In the final analysis, the Commission takes July 10, 2006 as the notification date, hence the requirement established in Article 46.1(b) was met.

Nancy Benavente Hinostraza (P-1506-06)

322. In this case, the petition was received by the Commission on September 30, 2006, and the latest decision in the criminal proceedings against the alleged victim was issued on June 16, 2005. On September 8, 2005, the National Criminal Chamber ordered that the judgment and sentence be notified, and the case files show that said notification occurred on November 4, 2005. However, the petition was presented 11 months later, on September 30, 2006, so the term established in Article 46.1(b) of the Convention was not met. However, as regards the allegation of torture supposedly reported but not investigated, Article 46.1(b) requires that they be presented within a reasonable period of time. Based on available information, the Commission considers that said requirement was met.

Jacinto Antonio Huayanay González (P-71-07)

323. In this case, the petition was received by the IACHR on January 22, 2007, and the latest decision in the criminal proceeding against the alleged victim was issued on May 10, 2006. Neither of the parties provided a record of notification of said court judgment, which would have made it possible to determine the precise date of notification and thus the end of the required six-month period, nor was there an indication of the date on which said notification occurred. The State did not provide any documents that would show that the notification occurred more than six months prior to the date the petition was presented in January 2007, nor did the State allege that it was presented beyond that term. In view of the foregoing, and the average time between judgments and the respective notifications in the 59 petitions included in this report, the Commission considers that said requirement was met.

María Beatriz Azcárate Vidalón (P-112-07)

324. In this case, the petition was received by the IACHR on January 30, 2007, and the latest decision in criminal proceedings against the alleged victim was issued on June 14, 2006, by the Second Transitory Criminal Chamber of the Supreme Court. Neither of the parties provided a record of the notification of said court decision, which would have made it possible to establish the precise date of termination of the six-month period, nor did either party indicate the date on which said notification occurred. The State did not provide any documents of proof that the notification occurred more than six months prior to the lodging of the petition in January 2007, nor did it allege that said date occurred after that period. In view of the foregoing, and the average lapse between decisions and their respective notification in the 59 petitions included in this report, the Commission considers that said requirement was met.

Maritza Yolanda Garrido-Lecca Risco (P-351-07)

325. In this case, the petition was received by the IACHR on March 23, 2007, and the notification of the latest decision of the criminal proceeding against the alleged victim was issued by the Supreme Court to the petitioner on October 4, 2006, according to the petition. On this basis, the six-month term would not have

lapsed until April 4, 2007. The State did not provide any documents of proof that the notification occurred more than six months prior to the petition presented in March 2007, nor did it allege that the petition was presented after that period of time. In view of these findings, as well as the average lapse between the decisions and respective notifications for the 59 petitions included in this report, the Commission considers that said requirement was met.

Jorge Antonio Carrillo Román (P-411-07)

326. In this case, the petition was received by the IACHR on April 3, 2007. According to the case records provided by the parties, the petitioner was the subject of two criminal trials, one for collaboration in acts of terrorism, and the other for aggravated terrorism. The last court decisions in both criminal proceedings were issued on October 25, 2007 and July 12, 2006, respectively, by the Supreme Court. With regard to the later decision for collaboration with terrorism issued on October 25, 2007, the decision was issued after the petition was lodged with the Commission, hence the six month requirement is considered as met. With regard to the earlier of the two decisions issued on July 12, 2006 for aggravated terrorism, even though neither of the parties provided the record of notification of that court decision to pinpoint the precise end of the six-month period, nor did either party indicate the date of that notification, in view of the fact that the State did not provide any documents of proof that the petition was presented after the deadline, and in view of the average period of time between decisions and the respective notifications in the 59 petitions included in this report, the Commission considers this requirement as fulfilled.

Isidro Lucho Dávila Torres Samuel Roberto Dávila Torres and Félix Daniel Dávila Torres (P-498-07)

327. In this case the petition was received by the IACHR on April 23, 2007, and the latest court decision affecting the criminal proceedings against the assumed victims was issued by the Constitutional Court on February 19, 2007, while the alleged victims were notified of it on April 10, 2007. Therefore, since the petition was presented 13 days later, it is clear that it is within the time period established by the Convention.

Luis Guillermo Nevado Rojas and Moisés Chipana Huarcaya (P-558-07)

328. In this case, the IACHR received the petition on May 7, 2007, and the latest decision in the criminal proceedings against the alleged victims was delivered by the Supreme Court on January 22, 2007, and notification occurred on April 16, 2007. In other words, the petition was lodged less than a month after notification of the final court decision, making it obvious that it was within the period of time established by the Convention.

Margot Cecilia Domínguez Berrospi (P-47-08)

329. In this case, the petition was received by the IACHR on January 14, 2008, and the latest decision in the criminal proceedings against the alleged victim was handed down by the Supreme Court on March 21, 2007. However, the case file contains a record to the effect that on July 2 of that year, the National Criminal Chamber issued an order for the personal notification of the final judgment and sentence and that the petitioner was notified. Taking into account that the State did not question the time of filing of the petition, and the average lapse between decisions and the respective notifications for the 59 petitions included in this report, the Commission considers that the requirement in question was met.

Mario Germán Vasquez Rojas (P-236-08)

330. In this case, the petition was received by the IACHR by mail on February 21, 2008, and the petitioner was notified of the latest decision in the criminal proceedings against the alleged victim handed down by the Supreme Court on August 16, 2007. The State alleges that it was presented five days after the deadline required under the Convention. In view of the fact that the petitioner was imprisoned at the time he endeavored to use the international mail, the IACHR concludes that five days is a reasonable delay for lodging the petition, given the possible delays involved in the postal system. The Commission, citing the Inter-

American Court, has on various occasions stated that it is a commonly accepted principle that the procedural system is a means to achieve justice and that justice cannot be sacrificed for the sake of mere formalities.

Nancy Lourdes Mejía Ramos (P-1048-08)

331. In this case, the petition was received by the IACHR on September 9, 2008, and the latest ruling in the criminal proceeding against the alleged victim was handed down by the Supreme Court on July 5, 2007, and notified on December 19 of that year. However, the petitioner alleges that on December 19, she was notified by receiving copies of dissenting votes on that judgment, but not the judgment itself. The petitioner provided a copy of a document dated January 18, 2008 in which the National Criminal Chamber ordered that the petitioner be notified with two certified copies of the final judgment and sentence, as well as a document dated March 24 of that year, which stated that on February 13, 2008, the petitioner requested a “reading of the principal case records,” according to the petitioner, since she had not yet been notified of the Supreme Court judgment. The petitioner claims that she was not able to see the contents of the judgments convicting her until April 2008.

332. The Commission takes note of the document of service of notification received by the petitioner on December 19, 2007, in which it states that she was notified of both the dissenting votes and of the final Supreme Court judgment and sentence of July 5, 2007, together with copies of the same. It further takes note of the document dated January 18, 2008, in which the National Criminal Chamber orders that certified copies of all proceedings be sent to the petitioner. Based on the foregoing, the Commission considers that the petitioner was notified of the final decision of her criminal trial on December 19, 2007, the date on which a copy of that proceeding was delivered to her, and the fact that the petitioner requested certified copies and later requested a reading of those copies does not change that date. Therefore, in view of the fact that the petition was submitted on September 9, 2008, it does not meet the requirements set forth in Article 46.1(b) of the Convention.

333. However, noting that the alleged acts of torture suffered by the petitioner had been made known to the State authorities, on this basis there is an assumption of a continued violation to be examined by the Commission, namely the failure of the authorities to investigate and punish the alleged acts. Thus, on this matter, the petition meets the admissibility requirements stipulated in Articles 46 and 47 of the American Convention, and is therefore admissible.

Clara Inés Montoya Benita's (P-1071-08)

334. In this case, the IACHR received the petition on September 9, 2008, and the latest decision in the criminal proceeding against the alleged victim was handed down by the Supreme Court on November 26, 2007, and notified on March 10, 2008, according to the petitioner. In that case, the six-month term specified by the Convention would not lapse until September 10, 2008. Since the State neither provided any documents that would prove that the notification occurred more than six months before the petition was lodged nor alleged that the petition was presented beyond the specified term, and in view of the average period of time between decisions and their respective notifications in the case of the 59 petitions included in this report, the Commission considers that this requirement was met.

Cerila Silvia González Olarte (P-771-09)

335. In this case, the petition was received by the IACHR in the mail on June 19, 2009, and the latest decision in the criminal proceedings against the alleged victim was handed down on October 29, 2008, with notification to the petitioner occurring on December 17, 2008. Consequently, the six months specified in the convention would have lapsed on June 17, 2009. However, the postal stamp on the envelope shows that the petitioner mailed the petition on June 13, 2009, so a two-day delay, between June 17 and 19, 2009, is reasonable. The State did not provide any documents to show that the notification occurred over six months prior to the lodging of the petition in June 2009, nor did it allege that the petition was received beyond the stipulated deadline. In view of the foregoing, and of the average lapse between decisions and the respective

notifications in the 59 petitions included in this report, the Commission considers that the requirement was met.

D. Duplication of proceedings and international *res judicata*

336. Article 46.1(c) of the Convention establishes that that admission of petitions is subject to the requirement that the matter “is not pending in another international proceeding for settlement” and Article 47(d) of the Convention stipulates that the Commission shall consider inadmissible any petition that is substantially the same as a petition or communication previously studied by the Commission or by another international organization. In the case of the petitions considered in this report, the parties have not argued the existence of either of these two circumstances, nor can they be inferred from the case records.

E. Characterization of the alleged facts

337. For the purposes of admissibility, the Commission must decide whether the petitions set forth facts that tend to establish a violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or is “obviously out of order,” as stipulated in paragraph (c) of that article. The standard for evaluation of these points of law is different from that required to decide on the merits of a petition. The Commission must conduct a *prima facie* evaluation to determine whether the petition establishes a basis for the apparent or potential violation of a right guaranteed by the Convention, and not to establish the existence of a violation. This examination is a summary analysis that does not imply a prejudgment or advance opinion on the merits.

338. Moreover, neither the American Convention nor the Rules of Procedure of the IACHR require the petition to identify the specific rights that were allegedly violated by the State in the matter submitted to the Commission, although the petitioners may do so. It is the responsibility of the Commission, based on the jurisprudence of the system, to determine in its admissibility reports the specific provisions of the relevant inter-American instruments that are applicable, and violation of said provisions could be established if the alleged facts are proven on the basis of adequate evidence.

339. The IACHR takes note of the context in which the alleged violations occurred, including the prison system established by law for persons tried and convicted for crimes of terrorism and high treason. In light of this, and of the information provided by the parties, it considers that the circumstances in which the detention of the alleged victims was said to have occurred and the alleged acts of torture and detention conditions at DINCOTE facilities and in prisons and detention centers could characterize a violation of the rights enshrined in Articles 5 and 7 of the American Convention, considered in conjunction with Articles 1.1 and 2 of that instrument, as well as the rights set forth in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victims. In the same vein, it is considered that the allegations of sexual abuse by some of the petitioners could characterize a violation of Articles 5 and 11 of the American Convention, and of the rights set forth in Article 7 of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, to the detriment of the alleged victims. Moreover, the IACHR considers that the effects of the facts referred to in this paragraph, as well as the alleged isolation of the alleged victims for long periods of time and the restrictions on the right to receive visits could characterize violations of the right established in Article 5.1 of the Convention, to the detriment of the family members of the alleged victims.

340. With regard to the allegations related to the criminal proceedings conducted in military and ordinary courts, as well as the cited incompatibility between the legal framework in which the acts took place and the American Convention, as well as the validation of evidence allegedly obtained in ways that are incompatible with respect for human rights, the IACHR considers that these acts could characterize violations of the rights established in Articles 9, 8, and 25, considered in conjunction with Articles 1.1 and 2 of the Convention, all to the detriment of the alleged victims. In the stage on the merits, the Commission will analyze the allegations of the Peruvian State that the legislation on terrorism adopted in January 2003 and the criminal proceedings based on it corrected the presumed violations of the previously cited provisions of the Convention.

341. Based on the available information, the Commission considers that application of Legislative Decree 895, as well as Law 29423, could characterize a violation of the principle of non-retroactivity of the less favorable law established in Article 9 of the Convention. Moreover, in view of the fact that these laws established more severe criminal and prison systems for persons tried and convicted for crimes of terrorism, the Commission will examine in the stage on merits if this legal framework violated the right to equality before the law established in Article 24 of the Convention.

342. As for specific allegations regarding the supposed searches without a court order of the residences of some of the alleged victims, and their exhibition on the media under the label of terrorists on the part of the authorities, in the merits stage the Commission will examine in depth whether these alleged facts entail a violation of the right established in Article 11 of the American Convention. In addition, the Commission considers that *prima facie*, the detention, trial, and conviction of the alleged victims for the crime of terrorism, based on the opinions expressed in written and published documents, and on the dissemination of supposedly political and/or subversive ideas using graffiti and pamphlets, could constitute a violation of Article 13 of the American Convention.

343. Finally, since the lack of grounds for or the inappropriateness of the petitions considered in this report are not evident, the Commission concludes that they meet the requirements established in Articles 49(b) and (c) of the American Convention.

V. CONCLUSIONS

344. Based on the aforesaid considerations of fact and of law, and without prejudging the merits of these matters, the Inter-American Commission concludes that the 59 petitions included in this report meet the requirements for admissibility established in Articles 46 and 47 of the American Convention. Consequently,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. With the exception of petitions 1506-06³⁸ and 1048-08³⁹, to declare that the remaining 57 petitions are admissible, as they relate to violations of Articles 7, 8, 9, 11, 13, 24, and 25 of the American Convention, considered in conjunction with the obligations established in Articles 1.1 and 2 of this instrument. Petitions 935-03 and 657-05 are declared admissible according to the terms established in paragraph 307 of this report.

2. To declare admissible the 59 petitions included in this report in relation to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture according to the terms established in paragraph 300 of this report, and Article 5 of the American Convention, considered in conjunction with the obligations established in Articles 1.1 and 2 of that instrument.

3. To declare admissible petitions 242-06, 1413-04, 263-06, 1101-06, 1141-06, 1147-06, 1506-06, 112-07, 351-07, 1048-08 and 47-08, in relation to Article 7 of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, according to the terms established in paragraph 301 of this report.

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

5. To join the 59 petitions declared admissible in this Admissibility Report and record them as case number 12.988, and to begin its analysis of the merits of the case.

³⁸ *Cfr.* Paragraph 322 of this report.

³⁹ *Cfr.* Paragraphs 331 to 333 of this report.

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

Done and signed in the city of Washington, D.C., on the 29th day of the month of January, 2015. (Signed): Tracy Robinson, President; Felipe González, Second Vice President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.