

REPORT No. 76/11

CASE 11.769 A

MERITS

J.

PERU

July 20, 2011

I. SUMMARY

1. On June 17, 1997, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or the “IACHR”) received a complaint filed by Mr. Curtis Francis Doebbler¹ on behalf of Ms. Jesús Mónica Feria Tinta (hereinafter “the petitioner”, “the alleged victim” or “Ms. Feria Tinta”), alleging that the Republic of Peru (hereinafter “the Peruvian State”, “the State” or “Peru”) had violated various provisions of the American Convention on Human Rights (hereinafter “the American Convention”, “the Convention” or “the ACHR”) by virtue of the detention, house search, abuse, torture and rape, and inhuman conditions at various Peruvian prisons that the alleged victim had endured since April 13, 1992, all as part of a criminal investigation and prosecution for alleged crimes of terrorism. The petitioner’s contention was that due process guarantees were violated in the proceedings and that although the alleged victim had been acquitted, the Supreme Court of Justice, serving as a faceless court, had thereafter nullified her acquittal without explaining the legal grounds for its ruling, and had ordered a new trial which it set for December 1993. By that date, the petitioner had already left the country, so that she is still under indictment in Peru and an international warrant for her arrest still stands.

2. For its part, the State alleged that the police and judicial authorities followed the letter of the law in force at the time of the events and that Ms. Feria Tinta’s right of defense and her right to due process were respected. The State supplied documentary information on the current case against the petitioner in Peru. The State focused its arguments on the detention, house search, and the criminal proceedings, but did not go into detail in responding to the allegations of abuse, torture, rape and inhumane prison conditions.

3. After examining the positions of the parties, the Inter-American Commission concluded that the Peruvian State is responsible for violation of the right to humane treatment, the right to personal liberty, the right to a fair trial, freedom from *ex post facto* laws, the right to have one’s honor, dignity and privacy respected, and the right to judicial protection, recognized in articles 5, 7, 8, 9, 11, and 25 of the American Convention, in conjunction with the obligations undertaken in articles 1(1) and 2 thereof, all to the detriment of Ms. Mónica Feria Tinta. The Commission also concluded that Peru is responsible for violation of the obligations established in articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “the IACPPT”) and in Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “the Convention of Belém do Pará”), to the detriment of Ms. Mónica Feria Tinta. Accordingly, the Commission made the appropriate recommendations.

II. PROCESSING WITH THE IACHR

A. Processing of the case

4. On June 17, 1997, the Commission received the original petition filed by Mr. Curtis Francis Doebbler. Thereafter, Ms. Feria Tinta represented herself. On June 29, 2000, pursuant to

¹ Later, Ms. Mónica Feria Tinta undertook to act *pro se*.

Article 40(1) of its Rules of Procedure, the Commission decided to divide file 11,769 into two new files, which it classified as 11,769-A and 11,769-B. It decided that thenceforth, all claims pertaining exclusively to the detention, trial and other allegations made directly and personally by Ms. Mónica Feria Tinta would come under file 11,769-A. The IACHR also decided that thenceforth, the events denounced in the petition that was the basis of Case No. 11,769 concerning events that occurred in Lima's Castro Castro Prison in May 1992 would come under file No. 11,769-B. Case 11,769-B was joined with case 11,015, to be processed jointly and eventually went to the Inter-American Court of Human Rights on August 13, 2004, which handed down its judgment in the case of the Miguel Castro Castro Prison on November 25, 2006.

5. On January 4, 2008, the Commission acknowledged receipt of a request seeking precautionary measures for Ms. Mónica Feria Tinta, after she was arrested in Germany pursuant to an INTERPOL Lima request seeking her extradition to stand trial in Peru. On January 7 and 9, 2008, the petitioner submitted additional information in connection with this process. Following a request asking the State to provide information –the response to which was received on February 6, 2008- on May 5, 2008 the IACHR informed the petitioner that there were no grounds for it to invoke the mechanism of precautionary measures.

6. The process that unfolded between the time the petition was presented and the date of the decision on the petition's admissibility is explained in detail in the admissibility report issued on March 14, 2008.²

7. In that report the IACHR declared the petition admissible with respect to the possible violation of the rights protected under articles 5, 7, 8, 9, 11 and 25 of the American Convention, in conjunction with the obligations undertaken in articles 1(1) and 2 thereof. The IACHR also indicated that its decision on the alleged violations of articles 1, 6 and 8 of the IACPPPT³ and of Article 7 of the Convention of Belém do Pará⁴ would be delivered during the merits phase. With respect to Article 7 of the Convention of Belém do Pará, in the admissibility report the IACHR wrote that "it has competence *ratione temporis* in the present case by virtue of the time that has elapsed given that the complaint refers to possible incidents of sexual violence for which those responsible have not been investigated, brought to trial or punished, up to the date of the preparation of the present report."⁵

8. On May 5, 2008, the Commission notified the parties of the report and, in accordance with Article 38(1) of its Rules of Procedure then in force, set two months as the deadline by which the petitioner was to present any additional observations she might have regarding the merits.

9. On July 7, 2008, the petitioner sent additional observations on the merits, which were forwarded to Peru on July 30, 2008, with the request that submit its response, pursuant to Article 38(1) of the Rules of Procedure then in force. On October 8, 2008, the State requested an extension, which the IACHR agreed to in a communication dated October 27, 2008. The State submitted its observations on December 4, 2008.

² IACHR, Report No. 27/08 (Admissibility), Case 11.769-A, *Jesús Mónica Feria Tinta*, Peru, March 14, 2008, paragraphs 5-18. Available at the following link: <http://www.cidh.oas.org/annualrep/2008eng/Peru11769eng.htm>.

³ Peru ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991.

⁴ Peru ratified the Convention of Belém do Pará on June 4, 1996.

⁵ IACHR, Report No. 27/08 (Admissibility), Case 11.769-A, *Jesús Mónica Feria Tinta*, Peru, March 14, 2008, paragraph 52. Available at the following link: <http://www.cidh.oas.org/annualrep/2008eng/Peru11769eng.htm>.

10. The petitioner sent additional communications on February 10 and 17, June 9 and December 16, 2009, and again on January 22, May 25 and September 28, 2010.

III. POSITIONS OF THE PARTIES

A. The petitioner

11. In the merits phase of the case, the petitioner continued to allege that the Peruvian State had violated the rights protected by articles 5, 7, 8, 9, 11 and 25 of the American Convention, in relation to the general obligation to respect and ensure, set forth in Article 1(1) of that instrument, by virtue of the acts the State had committed since April 1992, in connection with her detention and criminal prosecution for crimes of terrorism,

12. According to the petitioner, on April 13, 1992, while she was showing a property belonging to her parents to a potential tenant, she was taken into custody by the Special Intelligence Group attached to the National Counter-Terrorism Bureau (hereinafter the "GEIN" and "the DINCOTE"). She alleges that she was incarcerated in DINCOTE facilities and then transferred to the "Miguel Castro Castro" Maximum Security Prison (hereinafter "Castro Castro prison"). The petitioner alleges that in all these facilities, she was subjected to torture, cruel, inhuman and degrading treatment and sexual violence. She asserts that she was acquitted on June 18, 1993, by the Lima Superior Court. When the State appealed that decision, it was overturned on December 27, 1993, by the Supreme Court of Justice, in a ruling delivered by a faceless chamber, which ordered a new trial in her case. Ms. Feria Tinta was deprived of her liberty for a total of 14 months.

13. The petitioner described the backdrop against which the facts that prompted her petition unfolded. Specifically, she pointed out that the Commission had occasion to examine the situation in Peru in April 1992, and had established that under the administration of then President Alberto Fujimori, the application of the Constitution had been suspended, the Senate and House of Deputies had been dissolved, the judiciary, the National Judiciary Council and the Court of Constitutional Guarantees were declared to be in recess. She also observed that the case law by the Inter-American Court of Human Rights in cases involving Peru established that human rights violations were systematic practice.

14. The description of the facts alleged and the judicial proceedings will be discussed in the Commission's analysis of the merits, based on the information supplied by both parties. This section contains a summary of the main arguments made by the petitioner regarding the rights that were included in the admissibility report.

15. As for the ***right to humane treatment recognized in Article 5 of the American Convention***, the petitioner outlined the inter-American system's jurisprudence to the effect that the State becomes the guarantor of any person in its custody. She highlighted the fact that the State has not investigated her complaints of violations of the right to humane treatment, which is why it has been unable to refute those complaints with evidence or proof. Specifically, the petitioner alleged the following:

- During the search and arrest on April 13, 1992, police subjected her to sexual violence and abuse.
- While in the custody of DINCOTE and during her confinement in the Castro Castro prison, she was again the victim of torture, threats and sexual abuse. She recalled that the Truth Commission in Peru acknowledged that women in DINCOTE's custody were tortured and raped; in its judgment on the Miguel Castro Castro Prison

case, the Inter-American Court took as proven the fact that agents of the Peruvian State engaged in torture as a systematic practice.

- She was threatened that her sister, Rubeth Feria, would be killed; her sister had been detained and was released 17 days later. She said that the only reason why her sister was detained was to inflict psychological torture on the petitioner to force her into a "confession" precisely because the two were sisters.
- She was subjected to inhuman and degrading detention conditions at all the prisons where she was held. Furthermore, during her time in detention, she contracted tuberculosis.
- Once freed, she was subjected to police harassment and threats of torture and death, a situation that ultimately forced her to leave the country in 1993.
- The situations described above, specifically the treatment she received at the hands of the Peruvian authorities, left her with post traumatic disorders in the form of hypertension.
- The extradition process she endured in Germany starting in 2008 caused a recurrence of these disorders, "which became chronic conditions when the petitioner suffered a re-traumatization as a result of having to again confront, both cognitively and emotionally, her new arrest and the threat of the danger that *refoulement* to Peru posed."

16. As for the ***violation of the right to personal liberty, established in Article 7 of the American Convention***, the petitioner observed that the State's claim that it had complied with all the guarantees while the petitioner was in custody, is without basis in fact or in law, inasmuch as:

- She was detained without a court order and was not caught *in flagrante*; the proceeding conducted followed neither the law nor the Constitution. The Prosecutor was not present for either the detention or the search, but simply signed the record of a detention the prosecutor had not witnessed. In the petitioner's view, given these circumstances, her detention was unlawful and arbitrary.
- The petitioner was not informed of the reasons for her detention, nor was she given an opportunity to tell anyone that she had been taken into custody. On the contrary, her next of kin were initially told that she had "died in a clash resisting arrest"; subsequently, however, they were repeatedly told that her whereabouts were unknown.
- The petitioner was detained on April 13, 1992, but her detention was not entered into the record until April 15 of that year. For those two days, she had been in the custody of DINCOTE, and was finally brought before the Tenth Examining Judge on April 30, 1992, 17 days after her detention. The petitioner emphasizes that she was not brought before a competent judge immediately after her detention. She added that the date that appears in the "police blotter" as the "date of release" is inaccurate, and not corroborated by the record of persons logged into the Castro Castro Prison.
- She was unable to challenge the lawfulness of her detention, as she was denied the right to file a petition of *habeas corpus*.

17. As to the violation of the ***right to judicial guarantees established in Article 8 of the American Convention***, the prosecution of the crime of terrorism in Peru does not observe the guarantees of due process, particularly in the following respects:

- On April 5, 1992, then President Alberto Fujimori removed the magistrates within the judicial branch and replaced them with *ad hoc* judges who proceeded to hear the cases before the courts; in so doing, the State violated the guarantee of a competent judge.

- As the judicial branch was subordinate to the political authority at that time, the *ad hoc* judges appointed did not have the necessary independence to perform their function, which violated the guarantee of judicial independence.
- The Supreme Court, which had overturned the June 18, 1993 verdict of acquittal, was composed of faceless judges, and was thus an unlawful body that concealed the identity of the judges. Furthermore, by the time the Supreme Court delivered its ruling, the legal deadline for delivering that ruling had already expired. In the view of the petitioner, these circumstances are evidence of the court's lack of impartiality.
- The Peruvian authorities violated the principle of presumption of innocence as the Ministry of the Interior introduced her to the print and televised media as a "terrorist" even though she had not yet been brought to trial.
- A number of the interrogations to which she was subjected were conducted in DINCOTE facilities, without her attorney or the Public Prosecutor being present. While she had access to an attorney, she could not meet with him in private, which violated her right of defense.
- All the charges against her are based on evidence unlawfully obtained during the search conducted on the day of her detention.
- The Supreme Court acted in violation of the guarantee of *non bis in idem*, inasmuch as it ordered a new trial for the same facts of which the petitioner had already been acquitted. She added that the German Court which dealt with Peru's extradition request found the request to be inadmissible as it represented a violation of the very core of the guarantee prohibiting retrial for the same facts. The German court therefore refused to extradite the petitioner to Peru to stand trial for the crime of terrorism for which her extradition was sought.

18. As for the principle of legality and non-retroactivity recognized in Article 9 of the Convention, the petitioner observed that *ex post facto* laws were invoked against her, particularly Decree Law 25475 of May 5, 1992, even though the acts attributed to her predated that law. She asserted that the charges against her were based on provisions of the Penal Code that had been amended by that Decree Law.

19. As for the right to have one's honor and dignity respected, recognized in Article 11 of the Convention, the petitioner observed that "through repeated statements made by its highest ranking authorities (...) the Peruvian State waged a media campaign designed to brand [the petitioner] as a terrorist, inciting hatred [of her] within Peruvian society and inflicting irreparable damage on her honor and good name, thereby harming her as well as all [her] next of kin." She asserted that she has become the "public face of terrorism, the embodiment of all the crimes of the *Sendero Luminoso* and the target of national hatred."

20. As for the right to judicial protection recognized in Article 25 of the American Convention, the petitioner pointed out that because Decree Law 25659 was in effect, the petition of *habeas corpus* was suspended within Peru's system of justice, which is why that remedy was not available to her.

B. The State

21. The State asserted that a representative from the Public Prosecutor's Office was present when the police authorities took the petitioner into custody and that when she stood trial for the crime of terrorism she enjoyed all the appropriate guarantees and was originally acquitted. It said that the Supreme Court later overturned the verdict of acquittal and ordered that a new trial be held. That second trial, the State asserted, is still pending to this day.

22. Concerning the violation of Article 7 alleged to have occurred by virtue of Ms. FERIA Tinta's detention, the State asserted that the police authorities detained her on April 13, 1992, while she was in the company of her sister. Its contention is that weapons, munitions and subversive documents were found at the place where she was taken into custody. It added that the Public Prosecutor's Office and her defense counsel were present when she made her statement to the police.

23. Regarding the alleged delay in bringing the petitioner before a judicial authority, the State maintained that the petitioner's detention occurred on April 13, 1992, and that the Criminal Prosecutor's Office brought her before the judge on April 28, 1992. In the State's view, she was held without a court order for 15 days, which is allowed under Article 12(c) of Decree Law 25475 and the Constitution. The State contends that DINCOTE acted by the laws in force for combating terrorism because she was accused of a crime of terrorism.

24. As for the judicial guarantees, the State argued that the petitioner had access to an attorney regarding the charges against her; her right of defense was thus protected. The State went on to assert that because the petitioner left the country in August 1993, a judicial proceeding is still pending, which she appears to be avoiding; hence, "she has to set herself right with the Peruvian justice system and appear for trial; Peru has due process laws, so that her rights will be duly protected."

25. The State provided information on the most recent decisions delivered regarding her status as a defendant *in absentia*. It pointed out that on May 26, 2006, the National Criminal Chamber ruled that the charge against the petitioner as a defendant *in absentia* was for two crimes: membership in a terrorist organization because of her role in drafting, editing, coordinating or disseminating the underground newspaper "El Diario" and the crime of defense of terrorism. The State has her trial on hold until she is physically present and brought before the competent judicial authority.

26. The State added that on January 21, 2008, the Second Transitory Criminal Chamber of the Supreme Court declared admissible the application for extradition for the crime of disturbing the peace – terrorism, and asked Germany to extradite the petitioner. However, the German court ruled that the application was inadmissible as it would constitute a violation of the principle of *non bis in idem* and because the evidence had allegedly been obtained unlawfully. The Peruvian State argued that the German court's ruling "does not constitute (...) a ruling on the case being prosecuted in the Peruvian national courts and cannot effect any change in the arrest warrant issued by the Peruvian court."

27. The State did not present specific arguments concerning the alleged violations of the right to humane treatment or of the rights recognized in articles 9 and 11 of the American Convention. Nor did it express any opinion regarding the possible violation of the obligations set forth in articles 1, 6 and 8 of the IACPPT and Article 7 of the Convention of Belem do Pará.

IV. PROVEN FACTS

28. In accordance with Article 43.1 of its Rules of Procedure,⁶ the Commission will examine the facts alleged by the parties and the evidence submitted during the processing of the

⁶ Article 43.1 of the IACHR's Rules of Procedure provides as follows:

The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during

Continúa...

case at hand. In addition, it will take into account knowledge in the public domain, including resolutions by the committees of the universal human rights system, its own reports on petitions and cases and on the general human rights situation in Peru, publications from nongovernmental organizations, and laws, decrees, and other regulations in force at the time of the facts alleged by the parties.

29. The IACHR will include, in the evidence for this case, the Final Report of the Truth and Reconciliation Commission (hereinafter “the CVR”), published on August 27, 2003, in the city of Lima.⁷ This document was placed before the three branches of government of the Peruvian State, the Attorney General’s office, and other agencies of the public administration, in compliance with the mandate given by the President of the Republic in Supreme Decrees 065-2001-PCM and 101-2001-PCM.⁸

30. In the following paragraphs, the IACHR will address the general context surrounding the incidents in the case at hand, the facts already established, and the consequent responsibility of the Peruvian State. Prior to that analysis, the IACHR will speak of the historical background to several of the parties’ contentions and the actions of the main players in the armed conflict that took place in Peru between 1980 and 2000.

A. Context

31. The chapter on “Armed Groups” in the CVR’s Final Report states that in May 1980 the leadership of the group that styled itself the Communist Party of Peru – Shining Path embarked on a plan to overthrow the system of democratic and representative government and to impose its own form of political and social organization in Peru.⁹ Some of the tactics chosen by Shining Path in the construction of its “new state” were: the annihilation of community leaders and local authorities; the personality cult surrounding its founder, Abimael Guzmán Reinoso; the extermination of rural communities that did not support it; and the deliberate use of terror and other actions in violation of international humanitarian law.¹⁰ According to the CVR, the acts of violence claimed by or attributed to this group caused more than 31,000 deaths (54% of the total fatalities

...continuación

hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

⁷ The CVR’s Final Report has been used by the Commission in a series of cases, as well as by the Inter-American Court of Human Rights in ruling on facts and the international responsibility of the Peruvian State in the following matters: *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202; *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167; *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162; *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160; *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147; *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136; and *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115.

⁸ According to Supreme Decrees 065-2001-PCM and 101-2001-PCM, the CVR’s purpose was to establish the facts and responsibilities of the terrorist violence and human rights violations that were carried out between May 1980 and November 2000 by both the terrorist organizations and the agencies of the State, and to propose initiatives intended to ensure peace and harmony among the people of Peru.

⁹ Final Report of the CVR, 2003, Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, pp. 29 and 30, available at: www.cverdad.org.pe/ifinal/index.php.

¹⁰ Final Report of the CVR, 2003, Vol. I, Chapter 1, *The Periods of the Violence*, p. 54; Chapter 3, *The Faces and Profiles of the Violence*, pp. 168 and 169; Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, pp. 127 to 130; and Vol. VI, 1.1 *Killings and Massacres*, p. 16, available at: www.cverdad.org.pe/ifinal/index.php.

of the armed conflict), tens of thousands of displaced persons, vast economic losses, and a lasting dejection among Peru's population.¹¹

32. By unleashing its "people's revolutionary war" in 1984, the Túpac Amaru Revolutionary Movement (MRTA) contributed to the insecurity that prevailed in Peru for several years and to the violations of the basic rights of the Peruvian people. The criminal actions claimed by or attributed to this group included attacks on commercial premises, police stations, and the homes of members of the government; targeted killings of ranking public officials; abductions of business owners and diplomats; executions of indigenous leaders; and some deaths on account of the victims' sexual orientation or gender identity.¹²

33. In its Second Report on the Situation of Human Rights in Peru, the IACHR noted that the acts of violence carried out by Shining Path and the MRTA "led to the loss of life and property... in addition to the pain and suffering caused by the permanent state of anxiety to which Peruvian society, in general, was subjected."¹³

34. In its reports on individual cases and on the general human rights situation in Peru, the IACHR noted that during the struggle against Shining Path and the MRTA, the police and the military committed illegal acts that involved serious human rights violations.¹⁴ In addition, it indicated that the security forces carried out arbitrary arrests, torture, rapes, extrajudicial killings, and disappearances, in many cases against people who had no ties to the irregular armed groups.¹⁵

35. The Inter-American Court of Human Rights has established that for several years, governmental policy in Peru favored the commission of targeted killings, forced disappearances, and torture of people suspected of belonging to the insurgent groups.¹⁶ Finally, the Inter-American Court¹⁷ and the CVR¹⁸ have spoken of the excessive and lethal use of force at detention centers holding people facing trial for terrorism or treason against the fatherland.

¹¹ Final Report of the CVR, 2003, Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, p. 13, available at: www.cverdad.org.pe/ifinal/index.php.

¹² Final Report of the CVR, 2003, Vol. II, 1.4 *The Túpac Amaru Revolutionary Movement*, pp. 387, 389, 392, and 431 to 433; Vol. VII, 2.30 *The Disappearance of the Ashaninka Chief Alejandro Calderón (1989)*, 2.39 *Killing of Nine Inhabitants of Yumbatos, San Martín (1989)*, 2.54 *Abduction and Murder of David Ballón Vera (1992)*, available at: www.cverdad.org.pe/ifinal/index.php.

¹³ IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Introduction, B. Frame of Reference, para. 7, available at: www.cidh.oas.org/countryrep/Peru2000sp/indice.htm.

¹⁴ IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Introduction, B. Reference Framework, para. 9, available at: www.cidh.oas.org/countryrep/Peru2000sp/indice.htm.

¹⁵ IACHR, Report No. 101/01, Case 10.247 and others, *Extrajudicial Executions and Forced Disappearances*, Peru, October 11, 2001, paras. 163 to 179; Report No. 57/99, Case 10.827, *Romer Morales Zegarra and others*; Case 10.984, *Carlos Vega Pizango*, Peru, April 13, 1999, paras. 28 to 44; Report No. 1/96, Case 10.559, *Julio Apfata Tañire Otabire and others*, Peru, March 1, 1996, section I, Background; and Report No. 37/93, Case 10.563, *Guadalupe Ccallocunto Olano*, Peru, October 7, 1993, section I, Background.

¹⁶ I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, paras. 83 and 84; *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136, para. 54.1; and *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005, Series C No. 21, para. 60.9.

¹⁷ I/A Court H. R., *Case of Neira Alegría et al. v. Peru*, Judgment of January 19, 1995, Series C No. 20, para. 69; *Durand and Ugarte Case*, Judgment of August 16, 2000, Series C No. 68, paras. 59.i and 59.j; and *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 197, Nos. 18 to 40.

¹⁸ Final Report of the CVR, 2003, Vol. VII, 2.67 *The Extrajudicial Killings at El Frontón and Lurigancho Prisons (1986)* and 2.68 *The Extrajudicial Killings at Canto Grande Prison (1992)*, available at: www.cverdad.org.pe/ifinal/index.php.

1. The anti-terrorist legislation adopted starting in 1992 and how it served to institutionalize human rights violations in the fight against terrorism

36. On April 5, 1992, President of the Republic Alberto Fujimori Fujimori announced a series of measures intended to “streamline the process of [...] national reconstruction,” “modernize the public administration,” “reorganize the judiciary as a whole,” and “bring peace to the country, within a legal framework that severely punishes terrorists.”¹⁹ One of the elements used to justify the breakdown in legality was the alleged over-indulgent attitude of the judiciary in terrorism trials which, in the words of the President, caused “the mass release of convicted and confessed terrorists, through the misuse of the so-called conscience criterion.”²⁰

37. By means of Decree Law No. 25418 of April 6, 1992, Alberto Fujimori established the “Emergency and National Reconstruction Government,” temporarily dissolved Congress, and intervened in the judiciary, the Public Prosecution Service, and the office of the Comptroller General of the Republic. The intervention in those state agencies was carried out by sending the armed forces to occupy their installations and by placing opposition members of Congress and ranking officials opposed to the breakdown in the constitutional order under house arrest.²¹

38. In this context, the Emergency and National Reconstruction Government enacted a series of decree laws that established, within the Peruvian legal system, special procedures for investigating, bringing charges against, and prosecuting people accused of terrorism or treason against the fatherland.

39. On May 5, 1992, Decree Law No. 25475 was enacted, which defined the different forms the crime of terrorism could take.²² On August 7 of that year, Decree Law No. 25659 was enacted, defining the offense of treason against the fatherland and awarding competence over crimes of that type to the military justice system.²³ These decrees, along with Nos. 25708, 25744, 25880, and other additional provisions, made up what was known as the antiterrorist legislation.

1.1 Procedural issues raised by the anti-terrorist laws

40. Among other aspects, those decrees established conditions of total incommunicado detention for arrestees, prohibited them from receiving the assistance of counsel prior to giving their first statements to a representative of the Public Prosecution Service, allowed judges and prosecutors to keep their identities secret (“faceless judges”),²⁴ and prevented the summoning of officers named in the police arrest report to appear as witnesses. These laws placed great weight on statements made by detainees during the pretrial phase and prevented the filing of habeas corpus suits on behalf of those facing charges of terrorism or treason against the fatherland.

¹⁹ Museum of the Congress of the Republic of Peru, *Message to the Nation by the President of Peru, H.E. Alberto Fujimori Fujimori, April 5, 1992*, available at: www.congreso.gob.pe/museo/mensajes/Mensaje-1992-1.pdf.

²⁰ Museum of the Congress of the Republic of Peru, *Message to the Nation by the President of Peru, H.E. Alberto Fujimori Fujimori, April 5, 1992*, available at: www.congreso.gob.pe/museo/mensajes/Mensaje-1992-1.pdf.

²¹ IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section III, The Situation Since April 5, 1992, para. 54, available at: www.cidh.oas.org/countryrep/Peru93sp/indice.htm.

²² Decree Law No. 25475 of May 5, 1992, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/25475.pdf.

²³ Decree Law No. 25659 of August 7, 1992, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/25659.pdf.

²⁴ With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

41. Regarding the role of the National Police in those investigations, the conditions of incommunicado detention, and the denial of consultations with counsel, Decree Law No. 25475 provided as follows:

Article 12. In investigating terrorism crimes, the National Police of Peru shall strictly abide by the applicable legal provisions and, specifically, the following:

- a. To take charge of investigations of terrorism crimes at the national level, deploying its personnel without any restriction set out in its institutional regulations. [...]
- b. Seek the defense of legality, respect for human rights, and for international treaties and agreements. In that sense, the presence of a representative of the Public Prosecutor's Office will be requested during this stage of the investigation.
- c. To hold suspects for no more than fifteen calendar days, giving notice in writing thereof to the Public Prosecution Service and to the corresponding criminal judge.
- d. When the circumstances and the complexity of the investigations so require, in order to cast additional light on the facts under investigation, the detainee may be ordered to be placed in incommunicado detention for up to the maximum period allowed by law, with the knowledge of the Public Prosecution Service and of the corresponding judicial authority. [...]
- f. Accused persons shall be entitled to select defense counsel, who may only intervene after the detainee has given his statement to the representative of the Public Prosecution Service. If the detainee does not select defense counsel, the police authority shall assign a public defender, to be provided by the Ministry of Justice.²⁵

42. Articles 13 and 15 of that Decree Law regulated a number of restrictions on the right of defense during the pre-trial and trial phases. The following are the main provisions of those articles, which were in force at the time of the criminal case prosecuted against Ms. Feria Tinta between 1992 and 1993.

Article 13.- Rules governing the pre-trial and trial proceedings.

The following rules shall be observed for the investigation and trial of the crimes of terrorism to which the present Decree Law refers:

- a. Once the charge has been formalized by the Public Prosecutor's Office, the detainees shall be brought before the criminal judge, who shall give the order to commence the preliminary proceedings with an arrest warrant issued within 24 hours, after the necessary security measures have been taken. During the investigation, no form of release may be envisaged; there shall be no exceptions. Preliminary questions, prejudicial questions, objections and any other motion will be decided at trial with the verdict.
- b. The pretrial or investigative phase shall be completed within thirty calendar days, which may be extended by another twenty calendar days when the number of accused necessitates an extension or when the Public Prosecutor's Office has been unable to perform the investigative measures that it deems essential.
- c. Anyone who, because of his functions, had a hand in preparing the police report may not be called as a witness in the pretrial phase and at trial.

²⁵ Decree Law No. 25475 of May 5, 1992, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/25475.pdf.

- d. Once the pre-trial phase has been concluded, the case will be sent up to the President of the respective court, who shall forward the proceedings to the Chief Superior Prosecutor, who in turn shall appoint the Superior Court Prosecutor who will have to prepare the articles of indictment within three days.

[...]

- f. Once the trial is underway, the proceedings shall be in private hearings conducted on a consecutive daily basis until the conclusion of trial. The trial shall last no more than 15 calendar days, during which the verdict shall be delivered according to the rules set forth in Book Three of the Code of Criminal Procedure, insofar as they apply.
- g. If a motion to nullify the proceedings is accepted, the files shall be sent to the Chief Criminal Court Prosecutor, who shall in turn appoint a Deputy Supreme Court Prosecutor, who shall issue an opinion within no more than three days. The case files and the Prosecutorial Opinion shall be forwarded to the Chief Justice of the Supreme Court, who shall designate the members of the Specialized Chamber, who will decide the matter within a maximum of fifteen days. The motion for nullification is decided by four affirmative votes.
- h. In terrorism cases, disqualification of presiding magistrates or justice auxiliaries shall not be permitted.

Article 15.- The confidentiality of the identity of the magistrates and other officers of the court.

The identity of the judges and members of the Public Prosecutor's Office and of the justice auxiliaries who play some role in trying crimes of terrorism, shall be secret, and measures will be taken to guarantee that secrecy. The court rulings shall not bear signatures or seals of the judges participating, nor of the justice auxiliaries. For this purpose, codes and keys will be used, which shall also be kept secret.²⁶

43. With the adoption of Law 26671 in October 1997, Article 15 of Decree Law 25475 was struck down, thereby eliminating the system of faceless judges and prosecutors.

44. As for the rule prohibiting the filing of petitions of *habeas corpus*, Article 6 of Decree Law No. 25659 of August 1992 provided that “[a]t no stage in criminal proceedings shall applications for guarantees, *habeas corpus* and *amparo* be allowed in the case of persons detained, on trial or convicted of the crimes of terrorism covered in Decree law No. 25474, or to challenge the provisions of this Decree-Law.”²⁷ While the right to file petitions of *habeas corpus* was re-established with the adoption of Law 26248 of November 25, 1993, its Article 4 provided that a petition of *habeas corpus* based on the same facts or grounds that are being litigated or have already been decided shall be impermissible.”²⁸

45. In its chapter on the political and institutional actors, the Final Report of the Truth and Reconciliation Commission asserted that the following were among the measures adopted under the government of Alberto Fujimori whose effect was to weaken the autonomy of the organs for the administration of justice: i) massive terminations and the naming of replacement judges with temporary appointments; ii) the creation of evaluation committees within the Judicial Branch and

²⁶ Decree Law No. 25475 of May 5, 1992, articles 13 and 15, available online [in Spanish] at the web portal of the Peruvian Congress at: www.congreso.gob.pe/ntley/Imagenes/Leyes/25475.pdf.

²⁷ Decree Law No. 25659 of August 7, 1992, available online [in Spanish] at the web portal of the Peruvian Congress at: www.congreso.gob.pe/ntley/Imagenes/Leyes/25659.pdf.

²⁸ Law 26428 of November 12, 1993, which entered into force on November 25 of that year. Available online [in Spanish] at the web portal of the Peruvian Congress at: www.congreso.gob.pe/ntley/Imagenes/Leyes/26248.pdf.

the Public Prosecutor's Office, charged with evaluating and confirming judges and prosecutors in their posts; and iii) the creation of special bodies with management functions inside the Judicial Branch and the Public Prosecutor's Office.²⁹

46. After reviewing many cases prosecuted under Decree Law No. 25475 between 1992 and 1996, the organization Human Rights Watch observed that DINCOTE members frequently conducted interrogations, searches and other legal formalities without the Public Prosecutor's Office exercising any type of oversight.³⁰ Human Rights Watch also pointed out that many faceless judges prosecuting terrorism cases did not have experience in assessing evidence in criminal proceedings, as they were drawn from courts specializing in civil cases or even agrarian law. Human Rights Watch asserted that the absence of proper training and the increasingly provisional nature of the judicial appointments were among the reasons why so many convictions relied on police reports.³¹

1.2 Substantive issues about the anti-terrorist legislation

47. With regard to the provisions of substantive law, Decree Law No. 25475 of May 1992 amended parts of the 1991 Penal Code³² by defining various punishable behaviors related to the basic crime of terrorism set forth in Article 2, and establishing minimum sentences of imprisonment for each of the punishable behaviors, but without setting the maximum penalty.³³ The relevant parts of Decree Law 25475 for purposes of this document are the following:

Article 2.- Description of the crime.

Anyone who provokes, creates or maintains a state of anxiety, alarm or fear in the population or a sector thereof. who commits acts against the life, physical person, health, freedom and personal security or property, the safety of public buildings, roadways or means of communication or transportation of any kind, electric towers, transmission towers, power plants or any other good or service by using arms, explosive materials or devices or any other means capable of wreaking havoc or severely disturbing the peace or affecting international relations or the security of society and the State, shall face a penalty of imprisonment of no less than twenty years.

(...)

Article 5 – Membership in terrorist organizations.

Anyone who is a member of a terrorist organization shall face a sentence of twenty years in prison for merely belonging to the organization; subsequent to release, such a person shall be disqualified from office for the period of time determined in his or her sentence.

(...)

Article 7.- Defense of terrorism.

²⁹ Final Report of the TRC, 2003, Volume III, 2.6 The Judicial Branch, pp. 265 to 268, available online [in Spanish] at: www.cverdad.org.pe/ifinal/index.php.

³⁰ Human Rights Watch, *Peru – Presumption of Guilt, Human Rights Violation and Faceless Courts in Peru*, section II.A Reforms in 1995-1996, available at www.unhcr.org/refworld/type.COUNTRYREP,HRW,PER,3ae6a7dd0_0.html.

³¹ Human Rights Watch, *Peru – Presumption of Guilt, Human Rights Violation and Faceless Courts in Peru*, section II.B Continuing Due Process Limitations, available at www.unhcr.org/refworld/type.COUNTRYREP,HRW,PER,3ae6a7dd0_0.html.

³² The 1991 Penal Code is available online [in Spanish] at the following link: http://www.unifr.ch/ddp1/derechopenal/legislacion/l_20080616_75.pdf.

³³ Decree Law No. 25475 of May 5, 1992, articles 3, 4, 5 and 7, available [in Spanish] at the web portal of the Peruvian Congress at: www.congreso.gob.pe/ntley/lmagenes/Leyes/25475.pdf.

Anyone who, by whatever means, publicly defends terrorism or someone who has engaged in terrorism, shall face imprisonment for no less than six years but no more than twelve. Anyone who commits this crime outside the territory of the Republic shall face imprisonment as well as loss of Peruvian citizenship.

48. This system was in force until January 3, 2003, when Peru's Constitutional Court declared unconstitutional a number of the provisions of the decrees-laws on the subject of terrorism adopted under the government of Alberto Fujimori.³⁴ This decision struck down the provisions of Decree Law No. 25475 that had prohibited disqualification or recusal of judges (Article 13.h) and the obligation to institute an inquiry once the Public Prosecutor's Office filed a complaint (Article 13.a).

49. As for the provision making it unlawful to offer as witnesses any police officers who had had a hand in drafting a police report (Article 13.c), the Constitutional Court held that in view of "the abundant documentary evidence that exists concerning members of the National Police murdered by terrorist criminals," that prohibition is justified. However, it pointed out that "no conviction can rely entirely on the police report; instead, it must be corroborated by other types and means of evidence."

50. As for the classification of the crime of terrorism, the Constitutional Court upheld Article 2 of Decree Law No. 25475 (see, *supra*, paragraph 47), but made its application subject to the presence of malicious intent and stated that the description of the crime should read as follows: "Anyone who intentionally provokes, creates or maintains a state of anxiety, alarm or fear in the population or a sector thereof (...)." ³⁵ The Constitutional Court also established some standards of interpretation to follow when trying to determine whether a given behavior fits the description of a crime.

51. The Constitutional Court held that statements, arrest reports, technical and expert reports made for faceless officers of the court are not automatically vitiated and that every judge in the regular justice system who hears new accusations must assess their evidentiary value in combination with other standards of proof and standards of equity set forth in the procedural law governing the regular justice system.³⁶

52. Between January and February 2003, Peru's Executive Branch³⁷ issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926 and 927³⁸ in order to adjust domestic law to conform to the Constitutional Court's January 3, 2003 ruling. Generally speaking, these decrees established that all verdicts and proceedings in the military justice system or heard by faceless officers of the court were null and void. Consequently, the proceedings were ordered sent to the National Terrorism Chamber.

³⁴ January 3, 2003 Ruling of the Constitutional Court, File No. 010-2002-AI/TC, constitutionality challenge filed by Marcelino Tineo Silva and other citizens.

³⁵ January 3, 2003 ruling of the Constitutional Court, File No. 010-2002-AI/TC, constitutionality challenge filed by Marcelino Tineo Silva and other citizens. Grounds, No. 65.

³⁶ January 3, 2003 Ruling of the Constitutional Court, File No. 010-2002-AI/TC, constitutionality challenge filed by Marcelino Tineo Silva and other citizens, Grounds, No. 159.

³⁷ On January 8, 2003, the Peruvian Congress enacted Law 27913 by which it delegated to the Executive Branch the power to legislate in matters of terrorism..

³⁸ Legislative Decree 927 regulated criminal law enforcement in matters of terrorism. That decree was abolished on October 14, 2009, with enactment of Law 29423, which eliminated any possibility that persons convicted of terrorism might get their prison sentence reduced, be granted partial liberty or conditional parole.

53. Legislative Decree No. 926 of February 19, 2003, established the regulations governing the National Terrorism Chamber's *ex officio* nullification of verdicts and oral proceedings, and unsubstantiated prosecutorial indictments in terrorism cases litigated by faceless prosecutors before faceless judges.³⁹ Article 8 of Legislative Decree No. 922 establishes the rules of evidence in trials resulting from the nullification of proceedings for treason and terrorism litigated by faceless prosecutors before faceless judges.⁴⁰ The pertinent part of that provision reads as follows:

Notwithstanding the right of the parties to contest the evidence, the latter shall be assessed according to standards of equity, in accordance with Article 283 of the Code of Criminal Procedure. That evidence includes the following:

1. The technical or expert opinions or reports, and documents and reports requested from public and private entities.
2. The records of the statements made by the repentants, done in accordance with Decree Law No. 25499 and its Regulations.
3. The documented records of verification included in the Police Report, such as seizure records, discovery records, records of detective work, and so on.
4. The statements made to the police, pursuant to articles 62 and 72 of the Code of Criminal Procedure.

54. This legislation has been used as the basis for overturning many convictions delivered on the basis of laws that were declared unconstitutional. The result was that the cases were retried, this time according to the decrees issued between January and February 2003. As will be shown, the information available indicates that the case now against Ms. FERIA TINTA is not among these overturned convictions; instead, it is based on the faceless Supreme Court's December 27, 1993 judgment in which it overturned her acquittal.

2. Torture and cruel, inhuman and degrading treatment in the investigations into terrorism crimes

55. The outright banning and later restriction of habeas corpus relief, the legal authorization to keep a person incommunicado, and preventing access by counsel until the detainee had given his first statement contributed significantly to the widespread use of torture at police facilities.⁴¹ According to the CVR's Final Report, massive use was made of confessions and other kinds of self-incrimination to substantiate charges and secure convictions for terrorism and treason against the fatherland.⁴² In addition to the absence of control over the actions of the police during pretrial investigations, the CVR noted a number of administrative practices that encouraged the institutionalization of torture as of 1992, such as awarding promotions to police officers who obtained a given number of adherences to the Repentance Law by detainees,⁴³ self-incriminations, and accusations against third parties.⁴⁴

³⁹ Legislative Decree No. 926 of February 19, 1993, Article 2, available [in Spanish] at the web portal of the Peruvian Congress at: www.congreso.gob.pe/ntley/Imagenes/DecretosLegislativos/00926.pdf.

⁴⁰ Legislative Decree No. 926 of February 19, 1993, third complementary provision, available [in Spanish] at the web portal of the Peruvian Congress at: www.congreso.gob.pe/ntley/Imagenes/DecretosLegislativos/00926.pdf.

⁴¹ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, p. 221, available at: www.cverdad.org.pe/ifinal/index.php. Similarly, see: Human Rights Watch, *Peru: The Two Faces of Justice*, July 1, 1995, Prosecution of Terrorism and Treason Cases, Interrogation and Torture, available at: www.unhcr.org/refworld/docid/3ae6a7ed4.html. See also: Amnesty International, *Human rights in a Time of Impunity*, May 1996, Section 2, *The Anti-terrorism Laws: A Violation of International Standards – Widespread Torture*, available at: <http://asiapacific.amnesty.org/library/Index/ESLAMR460011996?open&of=ESL-325>.

⁴² Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, p. 215, available at: www.cverdad.org.pe/ifinal/index.php.

⁴³ On May 12, 1992, the Emergency and National Reconstruction Government enacted Decree Law No. 25499, also known as the Repentance Law, which regulated the reduction, exemption, or remission of sentences for terrorism

56. After conducting investigations in Peru between April 1995 and May 1999, the CAT noted the systematic practice of torture as a police investigative method and said that the existence of laws that treated such abuses permissively “leads the Committee members to conclude that torture has been occurring with the authorities’ acquiescence.”⁴⁵

57. In the reports from its on-site visits and its monitoring of the human rights situation in Peru, the IACHR has stated that during the internal armed conflict, the police and the military used torture against individuals suspected of belonging to or collaborating with the insurgent groups.⁴⁶ The IACHR has said that at this time, a number of criminal proceedings for terrorism and treason against the fatherland were brought on the basis of police statements obtained through torture and coercion.⁴⁷ Similarly, the Inter-American Court has established that in 1993, it was common in Peru for police investigations into the crimes of treason against the fatherland and terrorism to be carried out using torture and cruel, inhuman, and degrading treatment.⁴⁸

58. In July 1995, the United Nations Committee against Torture (hereinafter also “the CAT”) publicly noted its concern at “the large number of complaints from both non-governmental organizations and international agencies or commissions indicating that torture is being used extensively in connection with the investigation of acts of terrorism and that those responsible are going unpunished.”⁴⁹ In September 1998, the CAT reiterated its concern at the frequent reports of torture in Peru and stated that the eradication of the practice was hampered by the involvement of military and civilian judicial officials whose identities were kept secret in proceedings for the crimes of terrorism and treason against the fatherland.⁵⁰

59. According to the CVR’s Final Report, 75% of the 6,443 cases of torture and cruel, inhuman, or degrading treatment reported between 1980 and 2000 were attributed to officials of the State or to individuals acting with its acquiescence.⁵¹ The report indicates that between 1983

...continuación

suspects or convicts who provided information intended to help capture the leaders, heads or main members of terrorist organizations.

⁴⁴ Final Report of the CVR, 2003, Vol. II, 1.2 *The Police Forces*, p. 232, available at www.cverdad.org.pe/ifinal/index.php.

⁴⁵ United Nations Committee against Torture, *Inquiry Under Article 20: Peru, 05/2001.A/56/44*, para. 164, available at: [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44.paras.144-193.Sp?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/A.56.44.paras.144-193.Sp?Opendocument).

⁴⁶ IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section I, Background, C. Human Rights Problems Identified by the Commission, paras. 18 and 19, available at: www.cidh.oas.org/countryrep/Peru93sp/indice.htm.

⁴⁷ IACHR, *Annual Report of the Inter-American Commission on Human Rights 1996*, Chapter V, Human Rights Developments in the Region, Peru, Section II, The State of Emergency, para. 7, and Section VIII, Recommendations, para. 1.b, available at: www.cidh.oas.org/annualrep/96span/IA1996CapV4.htm.

⁴⁸ I/A Court H. R., *Loayza Tamayo Case*, Judgment of September 17, 1997, Series C No. 33, para. 46; and *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, para. 63.

⁴⁹ Office of the United Nations High Commissioner for Human Rights, Compilation of Concluding Comments of the Committee against Torture on countries of Latin America and the Caribbean (1988-2005), Chapter 14, Peru, *Report on the 40th Session, Supplement No. 44 (A/50/44)*, July 26, 1995, para. 67, available at: www2.ohchr.org/english/bodies/cat/docs/CATLibro.pdf.

⁵⁰ Office of the United Nations High Commissioner for Human Rights, Compilation of Concluding Comments of the Committee against Torture on countries of Latin America and the Caribbean (1988-2005), Chapter 14, Peru, *Report on the 53rd Session, Supplement No. 44 (A/53/44)*, September 16, 1998, paras. 202 (a), (b), (c), and (e). Available at www2.ohchr.org/english/bodies/cat/docs/CATLibro.pdf.

⁵¹ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, p. 183, available at: www.cverdad.org.pe/ifinal/index.php.

and 1997, state agents engaged in the systematic and generalized use of torture, which thus became a crime against humanity.⁵²

While the use of torture in interrogations or undue arrests had been frequent in combating common crime, the practice grew to massive levels as part of the counterinsurgency effort. Against a backdrop of widespread violence and permanent tension, police officers resorted to torture as one of the most effective tools for obtaining information and evidence in interrogations.⁵³

60. Based on testimony from victims of torture at police facilities during the period in question, the CVR identified the following *modus operandi*: (i) violent arrest, followed by a raid on the detainee's home, (ii) transfer of the detainee to a detention center, with violence during the journey, (iii) either the detainee or was blindfolded, or his assailants would keep their faces covered and use assumed names to avoid identification, (iv) division of roles among the assailants, with some carrying out the arrest and others in charge of the interrogation and torture, and (v) the assailants were frequently under the influence of alcohol or drugs.⁵⁴

61. The CVR reported that police torture followed a pattern consisting of: (i) physically weakening the victims, forcing them to remain standing or in uncomfortable positions for several hours; (ii) covering their sight, making them lose their sense of place and time; (iii) insults and threats against the victims, their families, or other people close to them, and (iv) forced nakedness.⁵⁵ According to the CVR, the most common forms of physical torture at the police facilities were punching and blows with blunt instruments to the abdomen, face, and genitals; plunging the victim into a tank filled with a mixture of water, chemicals, excrement, and urine; making victims hang with their arms above their heads or behind their backs for lengthy periods; and electric shocks to sensitive parts of the body.⁵⁶

62. The CVR explained that one of the main objectives of the torture and cruel, inhuman, and degrading treatment used in the counterinsurgency effort was to “extract information from people detained on suspicion of belonging to a subversive organization, either to plan operations against the organization or to secure information for criminal proceedings in the form of self-incriminatory statements or accusations against others.”⁵⁷ Several of the CVR's informants claimed they had been tortured by police officers and forced to sign blank sheets of paper or self-incriminatory statements in the presence of representatives of the Public Prosecution Service, who did nothing to intervene.⁵⁸

⁵² Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 212 and 258, available at: www.cverdad.org.pe/ifinal/index.php.

⁵³ Final Report of the CVR, 2003, Vol. II, 1.2 *The Police Forces*, p. 234, available at www.cverdad.org.pe/ifinal/index.php.

⁵⁴ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 239 to 241, available at: www.cverdad.org.pe/ifinal/index.php.

⁵⁵ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 242 and 243, available at: www.cverdad.org.pe/ifinal/index.php.

⁵⁶ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 244 and 245, available at: www.cverdad.org.pe/ifinal/index.php. Similarly, see: Human Rights Watch, *Peru: The Two Faces of Justice*, July 1, 1995, Prosecution of Terrorism and Treason Cases, Interrogation and Torture, available at: www.unhcr.org/refworld/docid/3ae6a7ed4.html.

⁵⁷ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, p. 214, available at: www.cverdad.org.pe/ifinal/index.php.

⁵⁸ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 224, 251, and 252, available at: www.cverdad.org.pe/ifinal/index.php.

63. The CVR noted that during the Fujimori administration, the Public Prosecution Service deferred completely to the executive branch, and that public prosecutors refrained from making charges against members of the police and military, conducting forensic examinations, or investigating state agents involved in human rights violations.⁵⁹

64. The organization Human Rights Watch said that this situation of impunity was due to a range of factors, including: (i) obstruction by officials of the military justice system in complaints against police officers, (ii) the fragility of judicial independence after April 1992, with increased numbers of temporary judges and prosecutors subject to pressure from the executive branch, and (iii) the enactment of the amnesty laws (Nos. 26479 and 26492), which voided all investigations and criminal prosecutions against members of the police or armed forces for actions between May 1980 and June 1995.⁶⁰

65. According to the CVR, the use of sexual violence in Peru's counterinsurgency effort was part of "a broader context of discrimination against women, who are considered vulnerable and whose bodies are used by the perpetrators with no apparent motive or any strict connection to the internal armed conflict."⁶¹

66. A considerable proportion of the testimonies involving sexual violence given to the CVR were from women who reported having been attacked, raped, and humiliated at police facilities, particularly at the DINCOTE's headquarters in the city of Lima:

The premises in Lima of the National Antiterrorism Directorate (DINCOTE) are worthy of particular note. It has been identified by a large number of the CVR's informants as a place where repeated sexual violence took place. The mistreatment began when the detainees were taken into custody, with the perpetrators identifying themselves as members of the DINCOTE, according to the testimony. Mistreatment continued as they were taken to that facility.⁶²

67. The CVR reported that several women interrogated at DINCOTE premises were stripped naked, insulted, groped, subjected to penile penetration, and, in some cases, to vaginal or anal penetration with inanimate objects.⁶³ It also said that those practices were common during arbitrary arrests by police officers, who generally bound their victims' eyes or wore hoods during the attacks to prevent identification.⁶⁴

68. According to testimony documented by the CVR, several medical examiners who attended to victims of sexual violence at the DINCOTE acted in complicity with the assailants,

⁵⁹ Final Report of the CVR, 2003, Vol. III, 2.6 *The Judiciary*, p. 283, available at www.cverdad.org.pe/ifinal/index.php.

⁶⁰ Human Rights Watch, *Torture and Political Persecution in Peru*, December 1997, Section III, The Institutional Context: Weakened Safeguards against Torture – Military Justice, and Section V, Court Cases, available at: www.hrw.org/legacy/spanish/informes/1997/peru.html.

⁶¹ Final Report of the CVR, 2003, Vol. VI, 1.5 *Sexual Violence against Women*, p. 337, available at: www.cverdad.org.pe/ifinal/index.php.

⁶² Final Report of the CVR, 2003, Vol. VI, 1.5 *Sexual Violence against Women*, p. 322, available at: www.cverdad.org.pe/ifinal/index.php.

⁶³ Final Report of the CVR, 2003, Vol. VI, 1.5 *Sexual Violence against Women*, pp. 308, 309, 328, 329, and 330, available at: www.cverdad.org.pe/ifinal/index.php.

⁶⁴ Final Report of the CVR, 2003, Vol. VI, 1.5 *Sexual Violence against Women*, pp. 348 and 349, available at: www.cverdad.org.pe/ifinal/index.php.

performing superficial examinations and, in many cases, submitting the victims to humiliations and degrading procedures.⁶⁵

The professional misconduct of medical examiners has particularly serious consequences in rape cases, in that they ensure the crime's impunity. In one obvious case of rape, the examiner's report merely stated that "The person of María Magdalena Monteza Benavides shows signs of recent bruising in the region of the left knee."⁶⁶

69. The cases recorded by the CVR include some in which women claim to have suffered sexual violence at the hands of the medical examiners who attended to them after they had been tortured and raped by DINCOTE agents.⁶⁷

70. In its reports on individual cases, the IACHR has said that during the internal armed conflict in Peru, numerous acts of sexual violence were carried out by the security forces, particularly in the emergency zones.⁶⁸ The IACHR notes that the vast majority of these incidents were never punished, either because of the shame felt by the victims or their fear of lodging a complaint, or because of the obstacles and deceptions put in place by the authorities of the military justice system in investigations into serious human rights violations.⁶⁹

71. In a March 1997 publication, Amnesty International said that in the context of the Peruvian internal armed conflict, "rape and sexual abuse of women [were] used by members of the security forces as an instrument of torture."⁷⁰ Similarly, Human Rights Watch noted that in spite of the widespread use of sexual violence in the counterinsurgency effort, only a very small number of members of the National Police and the armed forces were prosecuted.⁷¹

B. The circumstances surrounding the detention of Ms. Mónica Feria Tinta and the house searches

72. In March 1992, Mónica Feria Tinta was hired by Mr. Marc de Beaufort, who was allegedly directing a documentary that was to deal with the subject of the *Sendero Luminoso*.⁷² Ms. Feria Tinta's responsibilities included the job of obtaining permits to visit various sites. The

⁶⁵ Final Report of the CVR, 2003, Vol. VI, 1.5 *Sexual Violence against Women*, pp. 372 to 374, available at: www.cverdad.org.pe/ifinal/index.php.

⁶⁶ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, p. 224, available at: www.cverdad.org.pe/ifinal/index.php.

⁶⁷ Final Report of the CVR, 2003, Vol. VI, 1.5 *Sexual Violence against Women*, p. 373, available at: www.cverdad.org.pe/ifinal/index.php.

⁶⁸ IACHR, Report No. 5/96, Case 10.970, Raquel Martín de Mejía, Peru, March 1, 1996, Section B, Considerations on the Substance of the Case.

⁶⁹ IACHR, Report No. 5/96, Case 10.970, Raquel Martín de Mejía, Peru, March 1, 1996, Section B, Considerations on the Substance of the Case.

⁷⁰ Amnesty International, *Women's Human Rights: In Memory of María Elena Moyano*, March 1997, available at: www.amnesty.org/es/library/asset/AMR46/003/1997/es/847cc62c-eab6-11dd-9f63-e5716d3a1485/amr460031997es.html.

⁷¹ Human Rights Watch, *The Human Rights Watch Global Report on Women's Human Rights*, p. 72, available at: www.hrw.org/urw/golbalrept1.pdf.

⁷² See, Case file with the IACHR, Account given in the original petition received on June 17, 1997; Annex 5. Sworn statement given on July 25, 1994 by Mr. Marc de Beaufort in the context of Mónica Feria Tinta's application seeking asylum. Attached to the original petition received on June 17, 1997, and Annex 11. Production assistant contract concluded between Marc de Beaufort and Mónica Feria on March 1, 1992. Attached to the petitioner's brief of January 5, 2007.

filming was done between March and April 1992. However, after learning about the so-called “self-coup” on April 5, 1992, the dissolution of Congress and the suspension of guarantees, Mr. Marc de Beaufort and his team left the country.⁷³

73. “Operation Moyano” was conducted on April 13 and 14, 1992, and involved raids of various properties after DINCOTE ordered that the newspaper “El Diario” be tracked down, in the belief that it was part of the Sendero Luminoso group. The newspaper was supposedly operating out of the properties that were raided. In addition to conducting searches at the properties, various people were taken into custody, one of whom was Mónica Feria Tinta,⁷⁴ who at the time had a degree in law and was 25 years old.⁷⁵

74. A number of the rulings and opinions delivered in the context of the criminal case state that this operation took place following an investigation ordered by DINCOTE, which had started earlier.⁷⁶

75. As for the searches and detentions relevant to the instant case, on the evening of April 13, 1992, the property located at a site called Las Esmeraldas, No. 585 *Int. 2 – Balconcillo* (hereinafter the “Las Esmeraldas property”) was raided. Mónica Feria Tinta was there at the time.⁷⁷

76. A house search was done at the scene. According to the police report of the house search, which appears in Opinion 118-92 of the Office of Lima Provincial Prosecutor 43, Specializing in Terrorism, and in resolution of the Public Prosecutor’s Office dated January 8, 1993,

⁷³ See, See, Case file with the IACHR, Account given in the original petition received on June 17, 1997; Annex 5. Sworn statement given on July 25, 1994 by Mr. Marc de Beaufort in the context of Mónica Feria Tinta’s application seeking asylum. Attached to the original petition received on June 17, 1997.

⁷⁴ Annex 1. Unnumbered resolution from the Public Prosecutor’s Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible; and Annex 2, Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attached to the original petition received on June 17, 1997. This document is partially illegible.

⁷⁵ Annex 2, Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attached to the original petition received on June 17, 1997. This document is partially illegible.

⁷⁶ Annex 1. Unnumbered resolution from the Public Prosecutor’s Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible; and Annex 2, Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attached to the original petition received on June 17, 1997. This document is partially illegible.

For example, the document in Annex 1 states that “it is true that on the night of April 13 of last year, after conducting a detailed investigation, the interior of the property at (...) Las Esmeraldas (...) was entered and the accused (...) Feria Tinta were found inside.

The document in Annex 2 states that “from the police investigation it appears that (...) DINCOTE ordered that the weekly newspaper “*El Diario*” be tracked as it was found to be part of the group (...) Sendero Luminoso; when the properties where the newspaper was surreptitiously operating were raided, which happened on different dates, some of those implicated were taken into custody (...). Operation “Moyana” was ordered to follow up on the inquiries into that weekly newspaper and involved simultaneous raids of various properties on April 13 and 14, 1992.” Toward the end of that document, a statement appears to the effect that “the investigations conducted thus far have determined that the Anti-Terrorism Police ordered and carried out operations intended to apprehend persons who in one way or another made publication of (...) *El Diario* possible even though it was a prohibited publication, as they believed it was a means to instigate, foster and publicize acts of terrorism which would have the effect of disturbing the public peace; numerous operations of this kind were conducted, which were documented and led the Public Prosecutor’s Office to bring charges in court; the operations conducted on April 13, 14 of this year complement earlier operations, and will not be the last as the investigations continue (...).”

⁷⁷ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible; Annex 25. Judgment of the Lima Superior Court of June 18, 1993. Attached to the brief received from the State on February 6, 2008, and Annex 28. Record of house search. Handwritten. Attached to the brief received from the State on February 6, 2008.

the house search produced “positive” results and “terrorist propaganda, handwritten and typed documents alluding to the CP-Sendero Luminoso” were allegedly seized.”⁷⁸ A record of the operation was made, but not signed by the persons taken into custody.⁷⁹ There are significant discrepancies regarding the date on which the record was made and the names of those who participated in the operation. According to the handwritten police report, the Representative of the Public Prosecutor’s Office, Dr. Magda Victoria Atto Mendives, was present.⁸⁰ However, Ms. Feria Tinta has maintained that when this person arrived the operation was already in progress and she was not shown the record of the house search.⁸¹ An excerpt from the record of the house search states the following: “The present record is made at 9:15 p.m. on April 14 (sic), and is signed below by the officers who participated.”⁸² This was what the record stated, even though the search was allegedly conducted and completed on April 13, 1992.

77. According to Mónica Feria Tinta’s account, until December 1991 the Las Esmeraldas property had been a hair salon. When the property was vacated, an advertisement was run listing the property as either for sale or lease. She went on to say that on the day the police burst into the property and detained her, she had met with a gentleman whose surname was Ruiz, who arrived accompanied by Ms. Mery Morales Palomino. Because he was interested in leasing the property, he put down the sum of \$300 dollars and left to obtain the money needed to complete the \$500 deposit required. He left his companion at the property. Ms. Feria Tinta stated that she had to leave for her karate class and by the time she returned, Mr. Ruiz had still not come back. It was then that the police raided the premises.⁸³

78. Ever since the original petition was filed, Ms. Feria Tinta has given a detailed account of the acts of violence that she alleges were committed against her at the time of her detention. In her narrative, she states that when the police entered the premises, she was thrown to the floor and dragged by the hair across the room for a distance of three meters.⁸⁴ Her account also states that her hands were tied, she was blindfolded and thrown to the floor and warned not to move. She added that when she protested, a man said to her, “Shut up, you terrorist piece of

⁷⁸ Annex 1. Unnumbered resolution from the Public Prosecutor’s Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible; and Annex 2, Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attached to the original petition received on June 17, 1997. This document is partially illegible; Annex 25, Judgment of the Lima Superior Court of June 18, 1993. Attached to the brief received from the State on February 6, 2008, and Annex 28. Record of house search. Handwritten. Attached to the brief received from the State on February 6, 2008.

⁷⁹ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible

⁸⁰ Annex 28. Record of house search. Handwritten. Attached to the brief received from the State on February 6, 2008..

⁸¹ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible.

⁸² Annex 13. Excerpts from the handwritten record of the house search “signed” April 14, 1992. Attached to the brief received from the petitioner on January 5, 2007; and Annex 28. Record of house search. Handwritten. Attached to the brief received from the State on February 6, 2008.

⁸³ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible. The statement that Ms. Mery Morales Palomino, detained under the very same circumstances, made to the police is consistent with the above version of events. She added that “while they were waiting, there was a knocking at the door and when they opened the glass window in the entranceway, those on the outside broke the glass and forced the door open, forcing them to the floor and blindfolding them; the prosecutor arrived later. They were then taken elsewhere. She said that the property was empty and she assumes that the handwritten materials and other information was planted ‘by the soldiers’ since the property was completely vacant.”

⁸⁴ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

shit. Who went to Ayacucho, huh?” She described in detail that, when she was on the floor, men touched her, put their hands inside her clothing and their fingers in her vagina, while others stood on her legs.⁸⁵ When Ms. Feria Tinta protested and tried to get them to stop the sexual violence, she describes how she was beaten and kicked, while they asked her if she had participated in a video and accused her of being a terrorist.⁸⁶

79. A number of these acts were described both in the statement made to police and in the statement made to the examining authority. In the statement made to police, Mónica Feria Tinta stated that during the police raid, police officers “dragged her by the hair, tied her hands behind her back and blindfolded her.”⁸⁷ Then, in the statement she made to the examining authority, Ms. Feria Tinta stated that:

At around six p.m. on the thirteenth of April, I went to the business property located on Avenida Palermo, number five three six, La Victoria, to show it to someone interested in leasing it (...) I heard someone trying to open the door that opened to Las Esmeraldas street. I immediately asked what was going on, and from outside someone answered, “Open up, I’m the owner.” I opened the window to see what was happening, and answered that I was the owner and that there was some mistake. I had not even finished speaking when a hand came through the window pane, grabbed me by the hair and pointed a gun at me. About 15 people in civilian dress entered the premises. They were all carrying weapons. I had been cut by the glass that landed on my back. They threw to the floor, tied my hands behind my back and blindfolded me. They dragged me to the back of the room, threatening me and shouting profanities. When they blindfolded me, one of the men –a dark-skinned person wearing a yellow cap- beat me on the legs; he touched me everywhere, as if he was frisking me. He stole a gold Cartier “slave” bracelet and a gold ring in the shape of a horseshoe. We were there on the floor about a half hour. I heard people coming in and out and talking. I also heard a commotion. They took the telephone and used it to call the prosecutor. They were communicating on their radios, saying that we were going to be disappeared, and that they were going to take us to a military barracks. About a half hour later I heard a woman’s voice. They took us out. We were put in a car that drove around all night until six in the morning, when it stopped in front of DINCOTE. I was blindfolded and tied up the entire time. All I could do was listen.⁸⁸

80. The sister of Mónica Feria Tinta, Rubeth Natalie Feria Tinta, was also detained. According to Opinion 118-92 from the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism, the “search of her person” turned up negative.⁸⁹

81. With the two sisters in custody, that same day, April 13, 1992⁹⁰ and again on April 21, 1992,⁹¹ house searches were conducted of another property, which was apparently the home

⁸⁵ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

⁸⁶ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

⁸⁷ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible.

⁸⁸ Annex 34. Excerpts from the statement that Mónica Feria Tinta made to the examining authority, partially illegible. Transcript of certain sections done by the petitioner. Attached to the brief received from the petitioner on July 7, 2008.

⁸⁹ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible.

⁹⁰ Annex 27. Record of house search. Handwritten, Attached to the brief received from the State on February 6, 2008.

⁹¹ Annex 26. Record of household search. Handwritten. The signatures of those who signed the record cannot be discerned. Annex to the brief received from the State on February 6, 2008..

of Ms. Feria Tinta, located at Casimiro Negrón de la Fuente No. 397 – Santa Catalina (hereinafter “the Casimiro Negrón de la Fuente property”)⁹² where revolvers were allegedly seized, as well as “ammunition, handwritten and typed materials, subversive pamphlets and copies of the “*El Diario*” newspaper.”⁹³

82. The record of the search of this second property, dated April 13, 1992, states that the representative of the Public Prosecutor’s office, Julia Eguía Dávila, was present for this search. The document also includes the name of Ms. Feria Tinta with the observation that “she refused to sign.”⁹⁴

83. Ms. Feria Tinta’s version of how this search happened appears in the original petition, where the petitioner states that a half hour after the Prosecutor arrived at the apartment on Las Esmeraldas, Ms. Feria Tinta was taken –blindfolded and handcuffed- to a vehicle that drove for a while⁹⁵ and then stopped. In her version, she states that because she was able to see beneath the blindfold, she realized that they were in front of her apartment on Casimiro Negrón de la Fuente Street. The petitioner states that she was then driven around various parts of Lima; when she asked where they were taking her, the police answered her with threats, saying that they were taking her “for an outing at the beach,” an expression commonly understood in Peru as being a threat of torture or murder.⁹⁶ This situation went on for a number of hours. When the car finally came to a stop, looking beneath the blindfold she was able to see that the car was on Avenida España, in front of DINCOTE.⁹⁷

84. The State has not contested these movements with any documentary evidence. Thus, for example, Ms. Feria Tinta has emphasized that she was brought into DINCOTE on April 14, 1992, and the State has not provided any records or given any explanation for the fact that the maneuvers that started on the night of April 13 continued until dawn the next day.

C. The detention at DINCOTE between April 14 and 30, 1992

85. The State of Peru has not contested the fact that after the household searches, Ms. Feria Tinta was taken to the National Counter-Terrorism Bureau. While the State has said that the petitioner was held in custody for 15 days before being brought before a judicial authority, the petitioner’s contention is that she was held in custody for 17 days without being brought before a judge. The State has not provided any documents to support its version of the events, such as

⁹² Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible; Annex 25. Judgment of the Lima Superior Court of June 18, 1993. Attached to the brief received from the State on February 6, 2008; Annex 26. Record of house search. Handwritten. The signatures of those who signed the record cannot be discerned. Annex to the brief received from the State on February 6, 2008; and Annex 27. Record of house search. Handwritten, Attached to the brief received from the State on February 6, 2008.

⁹³ Annex 14. Excerpts from the Opinion of the Third National Superior Criminal Court Prosecutor dated September 29, 2005. Attached to the brief received from the petitioner on January 5, 2007. In a communication received on February 6, 2008, the State supplied other excerpts from this opinion. The Commission does not have the complete document, which is apparently 209 pages long; Annex 25. Judgment of the Lima Superior Court of June 18, 1993. Attached to the brief received from the State on February 6, 2008; Annex 26. Record of house search. Handwritten. The signatures of those who signed the record cannot be discerned. Annex to the brief received from the State on February 6, 2008; and Annex 27. Record of house search. Handwritten, Attached to the brief received from the State on February 6, 2008.

⁹⁴ Annex 27. Record of house search. Handwritten, Attached to the brief received from the State on February 6, 2008..

⁹⁵ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

⁹⁶ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

⁹⁷ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

records at the various centers of detention. This is information that the State should have in its possession, yet it was not supplied. The IACHR therefore presumes as true that Ms. Feria Tinta was held in the DINCOTE facilities until April 30, 1992, the date on which she claims she was transferred to Castro Castro prison.

86. In the original petition, Ms. Feria Tinta gave a detailed account of the treatment she received while in DINCOTE custody. Specifically, Ms. Feria Tinta stated that when she was brought into DINCOTE, she was forced to sit on the cement floor and was not permitted to either move or speak. She stated that there were no bathrooms, and detainees had to urinate in their clothes. She described how she had asked to go to the bathroom several times, but the police refused and ordered her to urinate in a can, in the presence of two male police officers. She said that she was given nothing to eat or drink from 6:00 a.m. to 8:00 p.m. on April 14, 1992.⁹⁸

87. According to her narrative, at nightfall Ms. Feria Tinta and other detainees were taken out of the room where they had been held, still handcuffed and blindfolded.⁹⁹ Ms. Feria Tinta observed that she managed to confirm that she was at the offices of DINCOTE, where she also saw her sister.¹⁰⁰ She added that when an officer noticed that she was observing her surroundings, he hit her in the face. The petitioner stated that she was forced to stand, facing the wall, for the rest of the night.¹⁰¹ She also said that she could hear other detainees crying because they were being beaten.¹⁰² Several times, they reportedly told her that if she cooperated, she could ease her sister's suffering.¹⁰³ She also mentioned being threatened with torture, using "the tub" and electric shock.¹⁰⁴

88. According to the original petition, on April 15, 1992 Ms. Feria Tinta and other detainees were taken to the main area of DINCOTE; their handcuffs and blindfolds were removed and they were officially registered.¹⁰⁵ The State has provided no documentary evidence to refute this information.

89. According to Ms. Feria Tinta's account of the events, after being officially registered, she was placed in an empty, damp cell with two other female detainees; the bathroom in the cell had no door, and consisted of nothing but a toilet; the floor was covered with roaches.¹⁰⁶ She observed that she spotted rats on a number of occasions and was threatened that if she didn't behave properly, she would be transferred to a "rat-infested" floor.¹⁰⁷ She observed that at around 1:00 p.m. on April 15, 1992, she received food and water for the first time since her arrest. The only reason she got anything to eat, she said, was because her family brought her the food; the entire time she was in DINCOTE, this was how she was able to eat.¹⁰⁸ Ms. Feria Tinta recounted how she and the other detainees knew that "indiscriminate torture sessions" were held every night;

⁹⁸ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

⁹⁹ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹⁰⁰ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹⁰¹ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹⁰² See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹⁰³ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹⁰⁴ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹⁰⁵ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹⁰⁶ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹⁰⁷ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹⁰⁸ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

the screams were so loud they could be heard no matter how high the police turned up the volume on the music.¹⁰⁹

90. As for the statement she made to the police while in DINCOTE custody, Ms. Feria Tinta pointed out that although her attorney –apparently her private attorney- was present, she never had an opportunity to speak with him in private; nor could her attorney intervene in the course of the questioning. Her statement was based entirely on the questions asked by the police and the representative from the Public Prosecutor’s Office; several days later she was summoned to finish her statement, but was not allowed to have either her attorney or a representative from the Public Prosecutor’s Office present. For that reason, her statement was left incomplete.¹¹⁰

91. During the alleged victim’s time in DINCOTE custody, she was taken out of her cell. According to her narration of events, on one occasion prison officials and other persons unknown to her tried to take her out of her cell at around 11:00 p.m.; when she refused they doused her with a bucket of cold water, whereupon she was forced from her cell and taken to another room¹¹¹ where she was filmed; they made accusations against her and called her a terrorist.¹¹² She stated that on another occasion, a man she did not recognize removed her from her cell at around 8:30 p.m.; she was questioned about her presence in Ayacucho; they told her that unless she cooperated, her sister would be in danger.¹¹³

92. According to the original petition, on April 30, 1992, Ms. Feria Tinta was brought before the Tenth Ad Hoc Examining Judge. While Ms. Tinta Feria’s attorney was present, they were unable to meet to discuss the case prior to the hearing. This judicial authority ordered that an investigation be instituted and indicated that Ms. Feria Tinta should be held in the Castro Castro maximum security prison.¹¹⁴

93. Ms. Feria Tinta remained at Castro Castro prison until May 13, 1992, the date on which she was transferred to the Santa Mónica Prison. She remained there until her acquittal in June 1993. Ms. Feria Tinta alleged that while incarcerated in Castro Castro prison from April 30 to May 13, 1992, she was not segregated from the convicted inmates. The State did not contest her assertion.

94. In her description, Ms. Feria Tinta stated that on April 23, 1992, she was taken to a press conference with journalists and television cameras. The Minister of the Interior, Peruvian Army General Juan Briones Dávila, had organized and staged the press conference. During the press conference, the Minister stated that Ms. Feria Tinta was a “high-ranking leader” of the Sendero Luminoso. By her account, when Ms. Feria Tinta tried to shout that she was innocent, her voice was silenced by the police and she was removed from the room. She added that at the press conference, no mention was made of the fact that Ms. Feria Tinta had not yet stood trial.¹¹⁵ Unlike the other facts narrated in this section, this claim has not been credibly established in the Commission’s proceedings, and no circumstantial or contextual evidence suggests otherwise. Therefore, the IACHR will not issue any finding on this point in its analysis of the law.

¹⁰⁹ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹¹⁰ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹¹¹ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹¹² See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹¹³ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹¹⁴ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹¹⁵ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

95. The Inter-American Commission and the Inter-American Court issued their findings on the violations of the right to humane treatment that Ms. Feria Tinta suffered during her time in both Castro Castro and Santa Mónica prisons when they litigated the case of the *Miguel Castro Castro Prison v. Peru*. That case culminated in a judgment delivered by the Inter-American Court on November 25, 2006 in which the Court ruled on the events that occurred in the context of the so-called “Operative Transfer 1” between May 6 and 9, 1992. The judgment also contains pronouncements on the inhuman detention conditions to which the persons transferred to Santa Mónica prison were subjected.¹¹⁶ Ms. Mónica Feria Tinta is among the victims of those violations, Therefore, the conditions and episodes that she endured while at the Castro Castro prison and the Santa Mónica prison are beyond the scope of the present merits report.

D. The criminal proceedings between April 28, 1992 and December 27, 1993

96. Following the statement that Ms. Feria Tinta gave to police approximately one week after being brought into DINCOTE,¹¹⁷ the Public Prosecutor’s Office filed formal charges against many individuals, all of whom were charged with the crime of disturbing the peace-terrorism. One of those charged was Mónica Feria Tinta, based on Police Report No. 084-DINCOTE, “as well as exhibits.”¹¹⁸ The case was instituted on April 28, 1992¹¹⁹ by Lima’s Tenth Examining Court.¹²⁰ Ms. Feria Tinta gave her statement before the examining authority.¹²¹

97. On an unknown date, the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism, issued opinion 118-92 in which he requested an “exceptional time period” in order to be able to conduct a series of investigative measures with a view to issuing some pronouncement “regarding the actual responsibility of each of the accused.”¹²²

98. In the case of Mónica Feria Tinta, the opinion narrates the version she gave in her statement to the police regarding the circumstances of her detention and the acts of violence committed against her when the police burst into the Las Esmeraldas property. The opinion also states that there is evidence supporting her version, such as the closure of the business previously located at the site and copies of the newspaper *El Comercio* that carried the advertisement for lease of the property. It also mentions testimony given to refute the charges, such as the statements of persons who were discussing the remodeling being done at the property and the fact that it was “completely empty.” Finally, it states that the “visual inspections of the properties at Av. Palermo

¹¹⁶ I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Paragraphs 197.15, 197.44, 197.48, 197.51, 197.56, 210, 319, 321, 322, 323, 324, 331 and 333.

¹¹⁷ See case file with the IACHR. Narration given in the original petition received on June 17, 1997.

¹¹⁸ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible; and Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Attached to the brief received from the State on October 1, 2007..

¹¹⁹ Annex 8. Communication from the President of the Lima Superior Court to the President of the National Prison Council, dated June 18, 1993. Attached to the original petition received on June 17, 1997.

¹²⁰ Annex 36. Order opening the pretrial phase of the proceedings. No date. Partially illegible. Transcript of certain sections done by the petitioner. Attached to the brief received from the petitioner on July 7, 2008.

¹²¹ Annex 34. Excerpts from the statement that Mónica Feria Tinta made to the examining authority, partially illegible. Transcript of certain sections done by the petitioner. Attached to the brief received from the petitioner on July 7, 2008.

¹²² Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible.

and at Casimiro Negrón have been completed and the corresponding reports” were said to be in the case file.¹²³

99. As for the prosecutor’s request for “an exceptional time period” in order to conduct further procedures, the opinion states the following:

This prosecutor’s office believes that as the investigations are just getting underway, the purpose that this phase of the criminal process is intended to serve has not yet been fully accomplished (...) some facts have not yet been fully clarified, and other substantive procedures still have to be conducted to determine the actual degree of involvement of some of the defendants; in other cases, the investigation has to determine whether they had any role at all in the crime of which they are charged, either by participating in the commission of the crime being prosecuted or by engaging in the preparations necessary for consummation of an act that constitutes a crime of terrorism.¹²⁴

100. The Prosecutor also enumerates a series of investigative procedures that still needed to be completed in order to determine the corresponding responsibilities.¹²⁵

101. As for the legal basis for the case, the opinion states that subsequent to the operation and the formalization of the complaint, the Public Prosecutor’s Office

supported it in the belief that the deeds were criminalized and punishable offenses under article (sic) 319 and 320 of the Criminal Code in force and that the procedure followed in the case would be adjusted to conform to Decree Law No. 25475 (...) in strict observance of the fifth transitory provision of that Decree Law, which the complaint tacitly embodies, since the criminal behaviors classified as crimes of terrorism under the aforementioned Substantive Code have not been abolished, which means that under this Decree Law new criminal behaviors are punishable offenses, such as defense of terrorism; the decree law provides that anyone who publicly and by whatever means applauds or praises acts of terrorism, shall have violated that provision.

The adjustment or adaption to which the Decree Law refers has been done to establish the procedure to be followed vis-à-vis an act already consummated. The analysis found that the conduct attributed to the accused would come under Article 322 of the Penal Code and Decree Law 25475, and they would face punishment under that decree law once it is enacted inasmuch as they are said to have defended terrorism; however, the corresponding court is called up to apply, at the appropriate stage in the proceedings, the constitutional provision that is one of the guarantees of the administration of justice, which is that the law applied shall be the one most advantageous to the accused.¹²⁶

102. On January 8, 1993, the official of the Public Prosecutor’s Office code 9288G26Y, issued a finding which held that “there are grounds (...) for moving to oral proceedings” against the 93 persons “accused in custody and being prosecuted for the crime of TERRORISM AND UNLAWFUL TERRORIST ASSOCIATION against the State.”¹²⁷

¹²³ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible.

¹²⁴ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible.

¹²⁵ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible.

¹²⁶ Annex 2. Opinion No. 118-92 of the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism. Attachment to the original petition received on June 17, 1997. This document is partially illegible.

¹²⁷ Annex 1. Unnumbered resolution from the Public Prosecutor’s Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

103. With this charge, the Public Prosecutor's office sought a penalty of imprisonment for 20 years for all the accused, an accessory penalty (illegible) equal to 365 days pursuant to Article 11 of Decree Law (illegible), disqualification upon release for the period of time stipulated in the sentence, and joint and several civil damages payable to the State.¹²⁸

104. The list of persons appears in that same resolution. The eighth entry on the list is Jesús Mónica Feria. Under the heading FACTS, the following appears:

(...) each of the accused is charged with being members of the Sendero Luminoso terrorist organization, which they joined or formed to instigate (illegible) and publicize acts of terrorism in language that constitutes a clear provocation to commit the crime for which they are being prosecuted (...) (illegible). To accomplish these ends, they have an organized structure with executive, planning, organization, support and advisory levels (...) (illegible) all for the purpose of swaying public opinion to their side; the means used for this case was the newspaper "*El Diario*", which is the mouthpiece instigating the barbaric acts that the Sendero Luminoso subversive organization commits.¹²⁹

105. It also states that based on the April 13, 1992 operation and the information obtained, "the conclusion reached was" that a number of the accused were involved in the running of the weekly newspaper "*El Diario*".¹³⁰ What follows is a description of the function that some of these individuals were alleged to have performed on "*El Diario*."¹³¹ The specific function that Mónica Feria Tinta is alleged to have performed on that weekly publication is not indicated.¹³² On the contrary, she appears to be included in a generic reference to the effect that

The other accused, headed by Guzmán Reynoso, also performed functions related to the printing, editing, distribution and circulation of the newspaper "*El Diario*"; others among those accused had the job of drafting some of the articles that appeared in the newspaper, so as to spread the ideology and other plans of the organization.¹³³

106. As for the means of evidence to conclude that "There are grounds" for moving to oral proceedings against the accused, the Public Prosecutor's Office states that,

The investigations performed and the evidence supplied both during the police investigation and the examining phase, appear to confirm the commission of the crime being prosecuted and the criminal culpability of each of the accused.¹³⁴

¹²⁸ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹²⁹ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹³⁰ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹³¹ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹³² Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹³³ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹³⁴ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

107. The Public Prosecutor's Office then summarizes the statements made by the accused regarding their involvement.¹³⁵ In the case of Mónica Feria Tinta, the summary states that she and others among the accused,

did not want to answer for their behavior and wanted to elude the (...) (illegible) justice. And so, they worked undercover that (illegible) of all legal and logical support; they all deny having any ties to the Sendero Luminosos subversive movement and did not acknowledge that *El Diario* was the mouthpiece for that terrorist group. They also claim that (illegible) (...) no propaganda, literature, handwritten materials or emblems associated with the subversive activity afflicting the country were seized from them. Their exculpatory claims have been disproved by the many different pieces of evidence taken throughout the process. They have made repeated denials to the police and to the examining authority, never managing to prove their exculpatory claims; quite the contrary, the evidence has proven, beyond any reasonable doubt, the guilt of each of the accused.¹³⁶

108. The only reference to specific investigative measures to obtain evidence reads as follows:

The Immobilization Record at folios 368-371, the Record of Reconstruction of Handwritten Materials at folios 372 to 380; the Content Verification Record at folios 381 to 385; the Photographic Processing Record at folio 386, and the Handwriting Expert's Report at folio 466, the Bodily Search Record at folios 782, 815, the House Search Record at folios 816 to 904, the Seizure Record at folio 937, the Visual Inspection Record at folios 1464 to 1962, and the conclusion in the Police Report at folio 144, have credibly shown that the crime of terrorism was committed and that the accused bear criminal responsibility.¹³⁷

109. As for the legal grounds for the case, the resolution of the Public Prosecutor's Office points out that the crime is a punishable offense under articles 319, 320 and 322 of the Penal Code, which were replaced by articles 2, 3 and 5 of Decree Law 25475, which must be taken into account at time of sentencing.¹³⁸

110. On February 1, 1993, the Superior Court issued a resolution in which "defense counsels were named" for the list of defendants, one of whom was Ms. Feria Tinta. In that same resolution, March 16, 1993 was set as the date for oral proceedings to commence.¹³⁹

111. On June 18, 1993, following a private hearing at which the "defense attorneys" were heard¹⁴⁰, the faceless Lima Superior Court issued a ruling in which it cleared seven of the defendants of the charges against them for the crime of terrorism and unlawful terrorist association;

¹³⁵ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹³⁶ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹³⁷ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹³⁸ Annex 1. Unnumbered resolution from the Public Prosecutor's Office. Case File No. 88-92. January 8, 1993. Attached to the original petition received on June 17, 1997. This document is partially illegible.

¹³⁹ Annex 4. February 1, 1993 resolution of the Lima Superior Court. Annex to the original petition received June 17, 1997. This document is partially illegible.

¹⁴⁰ Annex 25. Judgment of the Lima Superior Court of June 18, 1993. Attached to the brief received from the State on February 6, 2008.

Ms. Mónica Feria Tinta was one of the seven.¹⁴¹ The ruling orders that the seven persons be immediately released.¹⁴²

112. The ruling states that

The accused denies the charges, which is why she did not sign the seizure records (...) it was done days later, without her being present; the Las Esmeraldas property (...) was up for sale or lease (...), as shown by the copies of “*El Comercio*” (...). There is a contradiction between the record (...) and the statement made by the representative of the Public Prosecutor’s Office in the record of the visual inspection of those properties (...) in the sense that when she showed up on the day of the police inspection “there were only two girls there” (...). There is also a contradiction between that record (...) and the records (...) that show that at the time of the Feria Tinta arrest, with only a few minutes difference in time, the same representative from the Public Prosecutor’s Office appears at multiple arrests made in different places, which is physically impossible; the aforementioned record shows (...) that prosecutor was at the Las Esmeraldas property for more than twenty-five hours. According to the builder’s testimony (...) the Las Esmeraldas property was vacant (...).

That on the matter of the weapons seized at the accused’ residence, as recorded at folios (...) the police report states that Carlos Feria Sánchez, father of Mónica Feria Tinta, purchased the weapons for his own defense, as there had been a number of robberies in the area (...) The shoulder holster shown in the photograph in the record is also his (...), as the accused said in her pretrial statement (...) where she emphatically denied (...) either owing or possessing the compromising documents she was said to have had; she also denied knowing Luis Durand Araujo, whom she has never seen. Defendant Luis Durand Araujo (...) corroborates her story, and explains that he was arrested in Lince Park. (...)

That regarding the handwritten materials recorded at (...) which the Police handwriting expert attributes to her (...) the defense’s handwriting expert, Yolanda Elías de Orihuela, a certified expert (...) concluded that the handwriting is not that of the defendant.

Having examined the evidence offered, the only possible finding is that while the charges are specific and based on seized materials considered to be subversive in nature and intended for distribution, the defense’s exhibits and other means of refuting the charges are cogent and consistent to the point that they weaken the prosecution’s own evidence and charges and create doubt; in the end, the party sitting in judgment has to give the benefit of the doubt in this case to the defendant.¹⁴³

(...)

113. The operative part of this decision reads as follows: The accused (...) Jesús Mónica Feria Tinta (...) are hereby acquitted of the charges brought against them for the crime of Terrorism and Unlawful Terrorist Association against the State, and are to be released immediately.¹⁴⁴

¹⁴¹ Annex 8. Communication from the President of the Lima Superior Court to the President of the National Prison Council, dated June 18, 1993. Attached to the original petition received on June 17, 1997.

¹⁴² Annex 8. Communication from the President of the Lima Superior Court to the President of the National Prison Council, dated June 18, 1993. Attached to the original petition received on June 17, 1997; and Annex 25. Judgment of the Lima Superior Court of June 18, 1993. Attached to the brief received from the State on February 6, 2008.

¹⁴³ Annex 25. Judgment of the Lima Superior Court of June 18, 1993. Attached to the brief received from the State on February 6, 2008 .

¹⁴⁴ Annex 25. Judgment of the Lima Superior Court of June 18, 1993. Attached to the brief received from the State on February 6, 2008.

114. That same day, the President of the Lima Superior Court sent a communication to the President of the National Penitentiary Council to report the acquittal and the order for immediate release.¹⁴⁵

115. On December 27, 1993, the Supreme Court, composed of judges identified by numerical codes, overturned the June 18, 1993 judgment and ordered that the oral proceedings be conducted again by another Criminal Court specializing in the crime of terrorism and other crimes against the State.¹⁴⁶ The only grounds given for this ruling is that “in the verdict under study the facts with which the accused are charged are not properly assessed and the weighing of the evidence offered to establish the accused’ guilt or innocence is inadequate.”¹⁴⁷

E Ms. Feria Tinta’s departure from the country and the proceedings that followed

116. In August 1993, following the decision to acquit but prior to the Supreme Court’s reversal of that ruling, Ms. Feria Tinta left Peru.¹⁴⁸

117. On February 10, 1994, the Lima Superior Court sent a communication to the National Police ordering that Ms. Feria Tinta be located immediately and apprehended.¹⁴⁹

118. On January 23, 1997, the United Kingdom accorded her refugee status, in accordance with the United Nations Convention on the Status of Refugees. In granting her refugee status, the United Kingdom determined that her fear of persecution in Peru was well founded, which entitled her to international protection.¹⁵⁰

119. On January 7, 2004, citing “same cause of action,” the National Criminal Chamber ordered that cases 35-93, 05-93, 212-93, 21-99 and 779-93 be joined to the “lead case”, which is Case 89-03 Manuel Abimael Guzmán Reinoso *et al.*¹⁵¹ On January 30, 2004, cases 215-93 and 258-93 were ordered joined, while on May 31, 2004, case 05-99 was joined.¹⁵² Subsequently, an order was given to separate the cases against the alleged “top leadership” of the Sendero Luminoso from the other joined cases.¹⁵³

¹⁴⁵ Annex 8. Communication from the President of the Lima Superior Court to the President of the National Prison Council, dated June 18, 1993. Attached to the original petition received on June 17, 1997.

¹⁴⁶ Annex 3. December 27, 1993 judgment of Supreme Court, composed of judges identified by codes. Attached to the original petition received June 17, 1997. This document is partially illegible.

¹⁴⁷ Annex 3. December 27, 1993 judgment of Supreme Court, composed of judges identified by codes. Attached to the original petition received June 17, 1997. This document is partially illegible.

¹⁴⁸ See case file with the IACHR. Narration given in the original petition received on June 17, 1997; and narration given in the State’s response of October 10, 1997.

¹⁴⁹ Annex 32. Communication from the Office of the Special Prosecutor for Crimes of Terrorism to the National Human Rights Council, dated January 25, 2008. Attached to the brief received from the State on February 6, 2008.

¹⁵⁰ See case file with the IACHR. Narration given in the petitioners’ brief of May 31, 2000; and Annex 35. Communication from the *Foreign and Commonwealth Office* dated March 28, 2008, confirming that the petitioner had been granted refugee status. Attached to the brief received from the petition on July 7, 2008.

¹⁵¹ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Annex to the State’s brief of October 1, 2007.

¹⁵² Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Annex to the State’s brief of October 1, 2007..

¹⁵³ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Annex to the State’s brief of October 1, 2007.

120. Separation of those cases left four joined cases: case 89-93, which is the lead case; case 35-93; case 258-93 and case 05-99.¹⁵⁴ The case in which Ms. Feria Tinta appears as a defendant is 35-93, known as the “*El Diario Case*.”¹⁵⁵

121. On April 2, 2004, the National Terrorism Chamber issued a decision in which it changed the warrant for arrest of Ms. Monica Feria Tinta issued on May 22, 2003, to an “order to appear for trial”. Its reasoning was as follows: “It is the opinion of this Chamber that since Ms. Feria Tinta’s acquittal was overturned, her status vis-à-vis the legal proceedings in her case is covered under the single provision of Law No. 26590, which is that when the Supreme Court overturns an acquittal, an order can be issued to appear for the new trial. This single provision becomes subparagraph i) of Article 13 of Decree Law 25475.”¹⁵⁶

122. On September 21, 2004, the Permanent Criminal Chamber of the Supreme Court was considering a motion filed by the Public Prosecutor asking that the decision of the National Terrorism Chamber be overturned. It noted that INTERPOL had reported that Ms. Feria Tinta was in London, England. The Permanent Criminal Chamber therefore ordered that a warrant for her recapture be issued.¹⁵⁷

123. In this decision, mention was made of the fact that Mónica Feria Tinta was acquitted on June 18, 1993; it noted that upon a “motion filed by the convicted defendants and the Superior Court Prosecutor seeking to have the acquittal overturned,” the Supreme Court nullified the acquittal and ordered a new trial.¹⁵⁸ It expressly stated that “given the circumstances and in application of the sole article of Law No. 26590, which adds subparagraph i) to Article 13 of Decree Law 25475, the National Terrorism Chamber altered the warrant issued for the arrest of the persons named above.”¹⁵⁹

124. On September 29, 2005, the Office of the Third National Criminal Superior Court Prosecutor issued an opinion in case No. 89-93 against Manuel Rubén Abimael Guzmán Reynoso *et al.* for crimes of disturbing the peace – aggravated terrorism and others. Other cases are apparently joined with this case.¹⁶⁰ Mónica Feria Tinta supplied excerpts from this opinion, in which the following observations are made about her:

(IN JOINED CASE NO. 35-93):

¹⁵⁴ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Annex to the State’s brief of October 1, 2007.

¹⁵⁵ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Annex to the State’s brief of October 1, 2007.

¹⁵⁶ Annex 24. Decision of the National Terrorism Chamber, dated April 2, 2004. Attached to the brief received from the State on February 6, 2008.

¹⁵⁷ Annex 23. Decision of the Permanent Criminal Chamber of the Supreme Court, dated September 21, 2004. Attached to the brief received from the State on February 6, 2008.

¹⁵⁸ Annex 23. Decision of the Permanent Criminal Chamber of the Supreme Court, dated September 21, 2004. Attached to the brief received from the State on February 6, 2008.

¹⁵⁹ Annex 23. Decision of the Permanent Criminal Chamber of the Supreme Court, dated September 21, 2004. Attached to the brief received from the State on February 6, 2008.

¹⁶⁰ Annex 14. Excerpts from the Opinion of the Third National Superior Criminal Court Prosecutor dated September 29, 2005. Attached to the brief received from the petitioner on January 5, 2007. In a communication received on February 6, 2008, the State supplied other excerpts from this opinion. The Commission does not have the complete document, which is apparently 209 pages long.

THERE ARE GROUNDS FOR MOVING TO ORAL PROCEEDINGS for the crime of disturbing the peace – Terrorism- against the Peruvian State. The case is against:

(...)

5.- JESUS MONICA FERIA TINTA, 39, born in Lima on September 6, 1966; a national and international order has been issued for her arrest..

(...)

She is accused of being a member of the “Sendero Luminoso” terrorist group, Communist Party of Peru. Her function was to draft and edit the underground newspaper “El Diario” and to coordinate with foreign journalists. She was arrested on April 13, 1992, at the property located at Jirón las Esmeraldas 585, *interior 2-balconcillo*, together with Jorge Luís Durand Araujo and Mery Palomino Morales. Subversive propaganda, handwritten and typed documents alluding to the subversive group were confiscated. That same day, April 13, 1992, the property located at Casimiro Negrón de la Puente No. 397 Santa Catalina – La Victoria, was searched. That property was the residence of the accused, Jesús Mónica Feria Tinta. Inside that property, a long-rifle, 22 calibre Smith and Wesson handgun, Serial Number 875198, was confiscated along with ammunition, handwritten and typed materials, subversive pamphlets and copies of the newspaper “El Diario”, as the House Search and Seizure record at folios 899/903 attests; on April 21, 1992, a second house search of the same property (room) of Jesús Mónica Tinta was conducted, as confirmed by the report at folios 859/860; color slides and photographic negatives of various subversive activities were confiscated, along with handwritten materials. The seizures were made in the presence of the representative from the Public Prosecutor’s Office, and the confiscated materials were the subject of the Physical Evidence Expert Opinion at folios 1595; the Forensic Ballistics Opinion at folios 1599; the Chemical Properties Expert Opinion at folios 1600; the Opinion of the Handwriting Expert at folios (illegible); the Technical Report on Weaponry at folios 2325; the Forensic Ballistics Expert Opinion (illegible) which confirm her participation in the distribution of the newspaper “*El Diario*.” Another factor to consider is that the “Letter of Allegiance” of (illegible) describes the work being done by the newspaper “El Diario,” which can be inferred from the phrase cited, which is, verbatim, “ON *EL DIARIO*’S MARCH FROM THE BATTLE TRENCHES.” The letter is addressed to the Central Command and was written on January 19, 1992, by defendant Jorge Luís Durand Araujo. It closes with the following statement: “*El Diario* was working in the service of the armed conflict that the Peruvian Communist Party “Sendero Luminoso” unleashed”; JESUS MONICA FERIA TINTA alias “Matilde” was fully cognizant of this fact and collaborated in the drafting of the articles and coordination with domestic and foreign journalists to publicize the terrorist activities of “Sendero Luminoso” in the country, by way of the newspaper “*El Diario*”.

(...)

The conduct of 5.- JESUS MONICA FERIA TINTA, is a punishable crime under articles 316 and 322 of the 1991 Penal Code.

(...)

PROSECUTION, PUNISHMENT AND CIVIL DAMAGES

Having proven the crimes charged and the responsibility of the defendants, the applicable law in this case is as follows: articles 6, 11, 12, 23, 24, 25, 28, 29, 31, 36, 37, 41, 42, 45, 46, 48, 49, 50, 92, 93, 95 and others of the Penal Code. In exercise of its functions and in accordance with subparagraph 4 of Article 92 of Legislative Decree No. 052, this Superior Prosecutor’s Office hereby INDICTS (...) JESUS MONICA FERIA TINTA (...) for the crime of disturbing the peace – TERRORISM – against the Peruvian State.

I hereby also INDICT JESUS MONICA FERIA TINTA, for the crime of public disturbance – crime against the public peace (defense of terrorist) to the detriment of the Peruvian State..

(...)

I am asking the court to sentence the defendants (...) JESUS MONICA FERIA TINTA to (...) imprisonment for a period of TWENTY YEARS.

(...)

The CIVIL DAMAGES are set at THIRTY BILLION NEW SOLES, for which defendants (...) JESUS MONICA FERIA TINTA (...) are jointly and severally liable.

Furthermore, the civil damages that defendant JESUS MONICA FERIA TINTA owes to the Peruvian State for the crime of disturbing the peace – crime of disturbing the public peace (defense of terrorism) are set at ONE HUNDRED THOUSAND NEW SOLES.

(...)

I STATE FURTHER: With respect to the defendants 5.- JESUS MONICA FERIA TINTA (...) for whom an international arrest warrant was issued, that they should be declared defendants in contempt of court if they persist in their refusal to appear before the court in accordance with Article 210 of the Code of Criminal Procedure, an article amended by Legislative Decree No. 125, which prescribes that a hearing cannot be held unless the accused is present; if the accused persists in his or her refusal to appear before the court, he or she shall be declared in contempt of court.¹⁶¹

125. In this opinion the Public Prosecutor's Office recounts the evidence that, in its view, establish the connection between Ms. Feria Tinta and the newspaper "*El Diario*".¹⁶²

126. On January 24, 2006, the National Criminal Chamber issued a decision in the "lead case" and "cases joined thereto" in which it held, *inter alia*, that THERE ARE GROUNDS TO MOVE TO ORAL PROCEEDINGS for the crime of disturbing the peace, disturbing the public peace, defense of terrorism, to the detriment of the State, and for the crime of Terrorism against the State (criminalized under articles 316 and 322 of the 1991 Penal Code) against 40) JESUS MONICA FERIA TINTA."¹⁶³ Furthermore, oral proceedings were set to commence on Friday, February 10, 2006; a court-appointed attorney was named to represent the defendants.¹⁶⁴ As for the "defendants *in absentia*", among them Ms. Feria Tinta, the National Criminal Chamber ordered that the warrants to locate and apprehend them were to be issued anew.¹⁶⁵ "DISCAMEC" [the Interior Ministry's Division for Control of Security Services, and Control of Weapons, Ammunition and Explosives

¹⁶¹ Annex 14. Excerpts from the Opinion of the Third National Superior Criminal Court Prosecutor dated September 29, 2005. Attached to the brief received from the petitioner on January 5, 2007. In a communication received on February 6, 2008, the State supplied other excerpts from this opinion. The Commission does not have the complete document, which is apparently 209 pages long.

¹⁶² Annex 14. Excerpts from the Opinion of the Third National Superior Criminal Court Prosecutor dated September 29, 2005. Attached to the brief received from the petitioner on January 5, 2007. In a communication received on February 6, 2008, the State supplied other excerpts from this opinion. The Commission does not have the complete document, which is apparently 209 pages long.

¹⁶³ Annex 16. Decision 049 of the National Criminal Chamber of January 24, 2006. Attached to the State's brief of October 1, 2007.

¹⁶⁴ Annex 16. Decision 049 of the National Criminal Chamber of January 24, 2006. Attached to the State's brief of October 1, 2007; and Annex 22. Communication from the National Criminal Chamber to the Judicial Branch's Representative to the National Human Rights Council, April 17, 2007. Attached to the brief received from the State on February 6, 2008.

¹⁶⁵ Annex 16. Decision 049 of the National Criminal Chamber of January 24, 2006. Attached to the State's brief of October 1, 2007.

Employed by Civilians] was asked to file a report on the firearms “confiscated from defendant Jesús Mónica Feria Tinta.”¹⁶⁶

127. On May 25, 2006, the National Criminal Chamber convicted a number of the defendants, following a public hearing.¹⁶⁷ The National Criminal Chamber listed the convictions handed down in those cases, many of which were declared null based on Legislative Decree 926, because they were handed down by faceless judges.¹⁶⁸ The verdicts listed did not include the June 18, 1993 acquittal of Ms. Feria Tinta, nor was any reference made to the Supreme Court’s ruling of December 27, 1993.¹⁶⁹

128. Under the heading “crimes charged.” the ruling states that Ms. Feria Tinta and her co-defendants in Case 35-93 are charged with the “crime of membership in a terrorist organization, owing to their involvement in drafting and editing, coordinating or disseminating the underground newspaper “El Diario,” which had become the mouthpiece for instigating and publicizing terrorist acts perpetrated by members of the (...) Sendero Luminoso, thereby discharging the specific functions that the executive leadership of that organization entrusted to them.”¹⁷⁰ In the same section, the ruling goes on to say that “Jesús Mónica Feria Tinta is also charged with the crime of defense of terrorism, criminalized in Article 316 of the Penal Code.” There is no indication of the facts upon which this charge is based. The ruling also states that the defendant is *in absentia*.¹⁷¹

129. In that ruling, the National Criminal Chamber also held that:

As for the defendants *in absentia* or defendants in contempt of court, (...) the Chamber finds that (...) the prosecution still has evidence that must be heard in oral proceedings with these defendants present. Hence, the verdict in their case will have to wait until they make their appearance in court.¹⁷²

130. In the operative part of this judgment, the National Criminal Chamber writes that an order must be issued to have the absent defendants located immediately and apprehended.¹⁷³

131. On October 4, 2006, the National Criminal Chamber granted a motion to nullify some of the lower-court convictions and ordered the case referred to the Criminal Chamber of the Supreme Court. The part of that decision that is relevant to this case ordered that “the confidential

¹⁶⁶ Annex 16. Decision 049 of the National Criminal Chamber of January 24, 2006. Attached to the State’s brief of October 1, 2007.

¹⁶⁷ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Attached to the State’s brief of October 1, 2007.

¹⁶⁸ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Attached to the State’s brief of October 1, 2007.

¹⁶⁹ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Attached to the State’s brief of October 1, 2007.

¹⁷⁰ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Attached to the State’s brief of October 1, 2007.

¹⁷¹ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Attached to the State’s brief of October 1, 2007..

¹⁷² Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Attached to the State’s brief of October 1, 2007.

¹⁷³ Annex 17. Judgment of the National Criminal Chamber delivered on May 25, 2006. Attached to the State’s brief of October 1, 2007.

records pertaining to the defendants *in absentia* be compiled in a dossier and certified copies made of the relevant procedural documents and issues.”¹⁷⁴

132. On January 24, 2007, the National Criminal Chamber ordered issuance of arrest warrants for three of the defendants, including Mónica Feria Tinta. The order was specifically for the Writs and Summons Division of the Peruvian National Police and the District Writs and Summons Office. It also ordered that the Docketing Clerk’s Office issue case status reports every six months.¹⁷⁵

133. On July 3, 2007, the National Criminal Chamber delivered another judgment concerning two of the defendants. In the operative part of that judgment, it ordered that the trial of a number of the defendants, including Ms. Feria Tinta, was not to proceed until they made their appearance in court.¹⁷⁶

134. On July 17, 2007, the National Criminal Chamber granted a motion for nullification that the civil party filed against one of the decisions delivered in the matter and ordered that the case be sent up to the Criminal Chamber of the Supreme Court.¹⁷⁷ It also ordered that the Docketing Clerk’s Office “comply with the court order to put together the respective dossier of confidential records” pertaining to the defendants *in absentia*.¹⁷⁸

135. On September 7, 2007, the main case was classified as “verdict pending.” The National Criminal Chamber was reserving any further proceedings in the case against the defendants *in absentia* until they appeared for trial.¹⁷⁹

136. In a report dated September 11, 2007, attached to the State’s brief and sent by the Office of the Provisional Provincial Prosecutor to the Representative of the Public Prosecutor’s Office with the National Human Rights Council, mention is made of the fact that there is a case pending against Ms. Feria Tinta, No. 506012802-2003, docketed on October 30, 2003 with the Second Criminal Court Specializing in the Crime of Terrorism, File No. 2003-605. Its status is listed as “with opinion (opinion No. 160, Final Report) dated 11/04/2003”.¹⁸⁰ This case was joined with case 641-2003, which was referred, together with an expanded final report, to the National Criminal Chamber on 02/15/2005).¹⁸¹ No information is available as to how or whether these cases are related to the case currently ongoing against Ms. Feria Tinta.

¹⁷⁴ Annex 18. Ruling of the National Criminal Chamber of October 4, 2006. Attached to the State’s brief of October 1, 2007.

¹⁷⁵ Annex 19. Ruling of the National Criminal Chamber of January 24, 2007. Attached to the State’s brief of October 1, 2007.

¹⁷⁶ Annex 33. Ruling of the National Criminal Chamber delivered on July 3, 2007. Attached to the brief received from the petitioner on July 7, 2008.

¹⁷⁷ Annex 20. Ruling the National Criminal Chamber delivered on July 17, 2007. Attached to the State’s brief of October 1, 2007.

¹⁷⁸ Annex 20. Ruling the National Criminal Chamber delivered on July 17, 2007. Attached to the State’s brief of October 1, 2007.

¹⁷⁹ Annex 15. Communication from the Judicial Branch’s Representative to the National Human Rights Council, dated September 7, 2007. Attached to the State’s brief of October 1, 2007.

¹⁸⁰ Anexo 21. Informe de la Fiscalía Provincial Provisional dirigido al Representante del Ministerio Público ante el Consejo Nacional de Derechos Humanos de 11 de septiembre de 2007. Anexo al escrito del Estado de 1 de octubre de 2007.

¹⁸¹ Annex 21. Report of the Office of the Provincial Prosecutor addressed to the Public Prosecutor’s Representative to the National Human Rights Council, dated September 11, 2007. Attached to the State’s brief of October 1, 2007.

137. On December 28, 2007, INTERPOL sent a communication reporting that Ms. Feria Tinta Tinta had been located in Germany and had been detained by the Cologne/Bonn airport police.¹⁸²

138. On January 4, 2008, the National Criminal Chamber of the Supreme Court ordered that “a request be filed with the German court authorities seeking extradition” of Mónica Feria Tinta.¹⁸³ The following is the description of the crimes with which Ms. Feria Tinta was charged:

1- Disturbing the public peace in the form of defense of terrorism, to the detriment of the State, a punishable crime under Article 316 of the 1991 Penal Code, original text; the aggravated form of this crime –which is the charge against her- carries a penalty of imprisonment for no less than four years and no more than six; and 2- Disturbing the peace – Terrorism (as membership in a terrorist group), to the detriment of the State, a punishable crime under Article 322 of the 1991 Penal Code, in its original version, which establishes a sentence of imprisonment for no less than ten years and no more than twenty; the Superior Prosecutor’s Office is seeking imprisonment for 20 years.¹⁸⁴

139. The decision of the National Criminal Chamber states that “the criminal case is still active” as the indictment contends that the crimes were committed concurrently and the second crime charged is a continuing offense.¹⁸⁵

140. On January 21, 2008, the Second Criminal Transitory Chamber of the Supreme Court declared that the application for extradition for the crime of disturbing the public peace in the form of defense of terrorism could not go forward, as the statute of limitations had expired; however, it declared that the application for extradition for the crime of disturbing the public peace in the form of terrorism by membership in a terrorist group, to the detriment of the Peruvian State could proceed.¹⁸⁶

141. On January 24, 2008, the Executive Branch issued Supreme Resolution No. 013-2008-JUS in which it agreed to the request for active extradition of the accused Jesús Mónica Feria Tinta, filed by the National Criminal Chamber of the Supreme Court.¹⁸⁷

142. On August 22, 2008, the Regional Superior Court of Cologne, Germany, declared the request for Monica Feria Tinta’s extradition to be inadmissible on the grounds that her June 18, 1993 acquittal had become *res judicata*; extradition would, therefore, be a violation of the principle of *non bis in idem*.¹⁸⁸

¹⁸² Annex 31. Decision of the Second Criminal Transitory Chamber of the Supreme Court, dated January 21, 2008. Attached to the brief received from the State on February 6, 2008.

¹⁸³ Annex 29. Decision of the National Criminal Chamber dated January 4, 2008. Attached to the brief received from the State on February 6, 2008.

¹⁸⁴ Annex 29. Decision of the National Criminal Chamber dated January 4, 2008. Attached to the brief received from the State on February 6, 2008.

¹⁸⁵ Annex 29. Decision of the National Criminal Chamber dated January 4, 2008. Attached to the brief received from the State on February 6, 2008.

¹⁸⁶ Annex 31. Decision of the Second Criminal Transitory Chamber of the Supreme Court, dated January 21, 2008. Attached to the brief received from the State on February 6, 2008.

¹⁸⁷ Anexo 30. Communication from the Office of the Director for Coordination with the Administration of Justice, to the National Human Rights Council, dated January 28, 2008. Attached to the brief received from the State on February 7, 2008.

¹⁸⁸ Annex 36. Decision of the Cologne Regional Superior Court, dated August 22, 2008. English rendering of the Spanish translation. Attached to the petitioner’s brief of July 7, 2008.

143. Over the course of the years, a series of articles appeared in the press that made reference to Ms. Feria Tinta.¹⁸⁹

G. *Effects of the narrated events on Ms. Feria Tinta's health*

144. On October 26, 1994, a physician sent a letter to Ms. Feria Tinta's legal advisors to the effect that in December 1993 she had been very ill, and had been treated for tuberculosis at the Whittington Hospital. The letter states that it was highly likely that she contracted the illness while in prison. The physician also mentions a peptic ulcer and her weakened state of mental health. The letter goes on to say that Ms. Feria Tinta cannot endure small spaces and has frequent episodes of weeping when she encounters something that reminds her of her past experiences.¹⁹⁰

145. On November 22, 1994, another physician sent a letter to Ms. Feria Tinta's legal advisors in which he wrote the following:

- In March 1994, Ms. Feria Tinta complained of a cough, phlegm, and weight loss. The diagnosis of tuberculosis was confirmed¹⁹¹ and she was treated.
- Her tuberculosis condition may, as she believes, be an extension of the tuberculosis she contracted while in prison, but the exact duration of the condition cannot be established. However, for someone of her age, there are only two possible explanations for the fact that her condition has lasted for so long: either she has had tuberculosis for a long time, or her immunological system is somehow compromised.
- He did not find any evidence of physical abuse, but that does not rule out the possibility that she may have been physically mistreated and the wounds may have healed.¹⁹²

146. On November 28, 1996, a psychological report was issued by London's Traumatic Stress Clinic.¹⁹³ The report states that it is based on information supplied by Mónica Feria Tinta.¹⁹⁴ After an explanation of Ms. Feria Tinta's life in Peru, the following observations are made regarding her mental health:

- Ms. Feria Tinta reported a series of symptoms indicative of a chronic and lasting post traumatic stress disorder, which is a recognized psychiatric condition.
- The follow symptoms are mentioned: intrusive thoughts and images, nightmares, flashbacks unleashed by external or internal stimuli. These phenomena are accompanied by intensive physiological reactions such as tachycardia, sweating, dizziness, nausea and sometimes vomiting. Other symptoms are avoiding things that remind her of her past, such as speaking her native language. It was also pointed

¹⁸⁹ Annex 37. Press clippings supplied by Ms. Feria Tinta.

¹⁹⁰ Annex 9. Communication from Dr. Gill Hinshelwood, dated October 26, 1994. Attached to the original petition received on June 17, 1997.

¹⁹¹ According to the account given in the original petition, her health suffered between May and November 1992 as a result of the prison conditions; as a result, in November 1992 she was taken to the hospital for a chest infect, which was later diagnosed as tuberculosis.

¹⁹² Annex 10. Communication from Dr. M.R. Hetzel MD FRCP, dated November 22, 1994. Attached to the original petition received on June 17, 1997.

¹⁹³ Annex 7. Psychological Report prepared by the Traumatic Stress Clinic, November 28, 1996. Attachment to the original petition received on June 17, 1997.

¹⁹⁴ Annex 7. Psychological Report prepared by the Traumatic Stress Clinic, November 28, 1996. Attachment to the original petition received on June 17, 1997

out that Ms. Feria Tinta had described a lack of concentration, irritability, problems sleeping, and the inability to experience positive emotions.

- She is also suffering from a depressive disorder that ranges from moderate to severe. By her own account, she is sad most days; she has episodes of crying, feels unmotivated in day-to-day activities, particularly social activities. She also expressed a sense of guilt because of the effect her detention had on her family.
- At the end of the report, the conclusion is that Ms. Feria Tinta's behavioral reactions during the interviews are entirely consistent with post traumatic stress disorder. Since her traumatic experiences, Ms. Feria Tinta has experienced a number of losses, including contact with her family, her job, studies and status. The report ends with the observation that if she is to recover, a safe environment needs to be created.¹⁹⁵

V. ANALYSIS OF LAW

147. The present case concerns, on the one hand, the alleged abuses committed against Ms. Feria Tinta during her time in detention, during the house searches, and in the days and months that followed, when she continued to be deprived of liberty; on the other hand, it concerns the alleged violations of a number of procedural guarantees in the criminal case prosecuted against her. In the next five sections, the Commission will examine the provisions that apply to the facts that the Commission has presumed to be true: A. The right to personal liberty, the right to a private and family life, the right to humane treatment, and the prohibition of torture, as they pertain to the circumstances of Ms. Feria Tinta's detention and the events that transpired at DINCOTE headquarters; B. The right to a fair trial, the right to judicial protection, the obligation to investigate torture, cruel, inhuman and degrading treatment, and the sexual violence to which Ms. Feria Tinta was subjected; C. The right to personal liberty as it pertains to preventive detention and the denial of the right to file a petition of *habeas corpus*; D. The right to a fair trial as it pertains to the case prosecuted against Ms. Feria Tinta, and E. The principle of legality and non-retroactivity of the law as it pertains to the case prosecuted against Ms. Feria Tinta.

A. *The rights to personal liberty, a private and family life, and humane treatment, and the prohibition of torture (articles 7, 11 and 5 of the American Convention in relation to articles 1(1) and 2 thereof and articles 1 and 6 of the IACPPT), as they pertain to the circumstances of Ms. Feria Tinta's detention and the events that transpired at DINCOTE headquarters.*

148. The relevant paragraphs of Article 7 of the American Convention read as follows:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

149. The pertinent paragraphs of Article 11 of the American Convention provide that:

¹⁹⁵ Annex 7. Psychological Report prepared by the Traumatic Stress Clinic, November 28, 1996. Attachment to the original petition received on June 17, 1997.

(...)

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

150. The relevant paragraphs of Article 5 of the American Convention are as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

(...)

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

151. Article 1(1) of the American Convention provides that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

152. Article 2 of the American Convention states that

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

153. Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, to which the Peruvian State was party at the time of the events, provide that:

Article 1

The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

.

154. Given the chronology of the events analyzed in this section, the IACHR's observations will be in the following order: 1. The detention and house searches; 2. The acts of violence committed in connection with the detention, in the hours after she was taken into custody and during the time she was held in the facilities of DINCOTE; and 3. The failure to segregate the alleged victim from the convicted inmates at Castro Castro prison.

1. *The detention and house searches*

155. The Inter-American Court has written the following concerning the guarantees that must attend any detention:

Article 7 of the American Convention (...) contains two distinct types of regulations: one general, the other specific. The general one is contained in the first subparagraph: “[e]very person has the right to personal liberty and security”; while the specific one is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Art. 7(2)) or in an arbitrary manner (Art. 7(3)), to be informed of the reasons for the detention and the charges brought against him (Art. 7(4)), to judicial control of the deprivation of liberty and the reasonable length of time of the remand in custody (Art. 7(5)), to contest the lawfulness of the arrest (Art. 7(6)).¹⁹⁶ Any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof.¹⁹⁷

156. As for the relationship between personal liberty and personal safety, the Court has written that “the protection of freedom safeguards both the physical liberty of the individual and his personal safety, in a context where the absence of guarantees may result in the subversion of the rule of law and deprive those detained of the minimum legal protection.”¹⁹⁸

157. The Commission, for its part, has written that Article 7 of the American Convention recognizes the guarantees that attend the right to personal liberty which the states parties have undertaken to respect and ensure, principally, that no one shall be deprived of his liberty except for the reasons and under the conditions established beforehand by the constitution or a law established pursuant thereto; hence, “no one shall be subject to arbitrary arrest or imprisonment.” Anyone who is detained is to be informed of the reasons for his detention and be promptly notified of the charge or charges against him. Any person detained shall be brought promptly before a judge and tried within a reasonable time or released while the proceedings continue. Furthermore, any person who is deprived of his liberty is entitled to recourse to a competent court in order that the court may decide, without delay, on the lawfulness of his arrest or detention.¹⁹⁹

158. The Commission recalls the Court’s case law on the question of the burden of proof when it is alleged that the State failed to comply with certain guarantees provided for in Article 7 of the Convention:

(...) the victim has no available means of proving this fact. His allegation is of a negative nature, and indicates the inexistence of a fact. The State declares that the information about the reasons for the arrest was provided. This is an allegation of a

¹⁹⁶ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 79. Citing *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 51; and *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 143.

¹⁹⁷ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 79. Citing *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, paragraph 54; and *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 116.

¹⁹⁸ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 80; *Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs*. Judgment of June 24, 2005. Series C No. 129, paragraph 56, and *Case of García Asto and Ramírez Rojas v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 25, 2005. Series C No. 137, paragraph 104.

¹⁹⁹ IACHR. *Report on the Situation of Human Rights in Ecuador*. 1997. OEA/Ser.L/V/II.96. Doc. 10 rev. 1. April 24, 1997. Chapter VII.

positive nature and, thus, susceptible of proof. Moreover, if it is recalled that, on other occasions, the Court has established that “in proceedings on human rights violations, the defense of the State cannot be based on the impossibility of the plaintiff to provide evidence that, in many cases, cannot be obtained without the cooperation of the State,” this leads to the conclusion that the burden of proof on this point corresponds to the State.²⁰⁰

159. The IACHR will now proceed to analyze the facts of the case in light of articles 7(2), 7(3), 7(4) and 7(5) of the American Convention.

160. The Inter-American Court has written that Article 7(2) of the Convention “recognizes the main guarantee of the right to physical liberty: the legal exception, according to which the right to personal liberty can only be affected by a law.”²⁰¹ It has also held that “[t]he legal exception must necessarily be accompanied by the principle of legal definition of the offense (*tipicidad*), which obliges the States to establish, as specifically as possible and “beforehand,” the “reasons” and “conditions” for the deprivation of physical liberty. Hence, Article 7(2) of the Convention refers automatically to domestic law. Accordingly, any requirement established in domestic law that is not complied with when depriving a person of his liberty will cause this deprivation to be unlawful and contrary to the American Convention.”²⁰²

161. The Commission has presumed it to be true that on April 13, 1992, Mónica Feria Tinta was taken into custody during a house search conducted by state security agents at a property owned by Ms. Feria Tinta and her family.

162. As for the lawfulness of the detention, the Commission observes that Article 20(g) of Peru’s 1979 Constitution, which was in force at that time, provided that “no one shall be detained except by a written order from a judge, setting forth the reasons for the order, or by the police authorities in a case of *flagrante delicto*.”²⁰³

163. Nothing in the documentary evidence suggests that the agents who detained Ms. Feria Tinta had a court order. Nor is there anything to suggest that she was engaging in any criminal act at the time the security forces arrived at the Las Esmeraldas property. For its part, the Peruvian State has not provided any information that would justify detention on the grounds of *flagrante delicto*. To the contrary, an analysis of the circumstances surrounding the detention, based on the contextual evidence that the IACHR has in its possession, indicates that the operation was part of a pattern of detentions and searches done to turn up supposedly subversive material, without regard for the measures necessary to comply with the legal formalities for procedures of this type.

164. As for Article 7(3) of the American Convention, the Inter-American Court has written that “no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the

²⁰⁰ I/A Court H.R.. *Case of Chaparro Álvarez and Lapo Ñiquez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 73.

²⁰¹ I/A Court H.R.. *Case of Chaparro Álvarez and Lapo Ñiquez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 56.

²⁰² I/A Court H.R.. *Case of Chaparro Álvarez and Lapo Ñiquez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 57.

²⁰³ Constitution of the Republic of Peru of July 12, 1979, available online [in Spanish] at the web portal of the Peruvian Congress at: www.congreso.gob.pe/ntley/ConstitucionP.htm.

fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.”²⁰⁴ On the question of arbitrary detentions, the Court, citing the Human Rights Committee, has written that “[a]rbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.”²⁰⁵

165. Concerning the arbitrary nature of Ms. Feria Tinta’s detention, it has been sufficiently established that the raid conducted at the Las Esmeraldas property used brute force, both to gain entry to the property and in its treatment of the persons who were there at the time, one of whom was Ms. Feria Tinta (see paragraph 199 *infra*). The State has offered no explanation asserting that force was necessary in the operation. For the Commission, the security agents’ use of unwarranted violence is sufficient to conclude that Ms. Feria Tinta’s detention and the search of the Las Esmeraldas property were arbitrary. As for the subsequent search at the apartment on Calle Casimiro Negrón, the IACHR considers that the fact that Ms. Feria Tinta was taken to that location under circumstances incompatible with her right to humane treatment (see, *infra*, paragraph 200), as she was kept blindfolded and threatened in the car, is sufficient to presume that that search, too, was arbitrary.

166. As for Article 7(4) of the Convention, the Court has established that the information on the “motives and reasons” for the arrest must be provided “when [the arrest] occurs,” which is a mechanism to avoid illegal or arbitrary detentions from the very moment when a person is deprived of his or her liberty. It also ensures the detainee’s right of defense.²⁰⁶ The Court has also written that the officer who makes the arrest must inform the person being arrested, in simple language, free of technical terminology, about the essential legal grounds and facts on which the arrest is based. Article 7(4) of the Convention is not satisfied by the mere mention of the legal grounds.²⁰⁷ Recently, the Inter-American Court has written that Article 7(4) of the Convention basically concerns two issues: i) the oral or written information on the reasons for the arrest or detention, and ii) notification, in writing, of the charges.²⁰⁸

167. Regarding the right to be informed of the reasons for the arrest and to be advised of one’s rights, the Commission finds that because of the way in which the operation was conducted –unlawfully, arbitrarily and, most especially, violently- it is reasonable to presume that Ms. Feria Tinta was not told the reasons for her arrest or advised of her rights. According to Ms. Feria Tinta, she was never even shown a police record of the arrest. For its part, the State has not provided any documents that would allow one to conclude that this guarantee was respected, and thus failed to shoulder its burden of proof.

²⁰⁴ I/A Court H.R., *Case of Gangaram Panday v. Suriname*. Judgment of January 21, 1994. Series C No. 16, paragraph 47; and I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, paragraph 66.

²⁰⁵ I/A Court H.R. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 92.

²⁰⁶ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 105. Citing: *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, paragraph 82; and *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, paragraph 107.

²⁰⁷ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 105. Citing: I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 71; and *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, paragraph 107.

²⁰⁸ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 106 (translation by the Commission).

168. As for the guarantee recognized in Article 7(5) of the Convention and its bearing on the right to personal security, the IACHR has indicated that the right to personal liberty also includes ensuring prompt and effective judicial oversight of detentions and arrests, in order to protect the well-being of detainees at a time when they are wholly within the control of the state and therefore particularly vulnerable to abuses of authority.²⁰⁹

169. As the Court has written, the provision begins by stating that any arrest or detention must be subject to immediate judicial oversight. The Court held that immediate judicial oversight is a means to avoid arbitrary or unlawful treatment, taking into account that under the rule of law the judge must guarantee the rights of the detainee, authorize precautionary or coercive measures, when strictly necessary, and generally seek to ensure that the person detained is treated in a manner consistent with the presumption of innocence.²¹⁰

170. As for the right to be brought promptly before a judicial authority, the IACHR observes that under Article 12(c) of Decree 25475, DINCOTE had the authority to detain persons for 15 days, and was required only to notify the judge within 24 hours of the arrest. The Commission notes that the guarantee provided under Article 7(5) of the Convention is not observed merely by informing the judicial authority of the detention. Article 7(5) means that any person deprived of his or her liberty shall be physically brought before the judicial authority. In the instant case, there is no information on record to suggest that the judicial authority was ever even informed of the detention.

171. As for the issue of whether the alleged victim ever appeared before a judge, the IACHR has observed that there is some difference of opinion as to whether it was 15 days or 17 days that DINCOTE had the alleged victim in custody without bringing her before a judicial authority. Inasmuch as the State did not provide any documentation to support its version, even though these are records that the State should have in its possession, the Commission presumed as true the fact that Ms. Ferial Tinta was in the DINCOTE facilities, with no judicial oversight, until April 30, 1992, in other words, for 17 days. This issue is relevant for purposes of determining the truth of what happened. However, to analyze the law embodied in Article 7(5) of the American Convention, the difference is irrelevant since holding a person for 15 days without ever bringing that person before a competent judicial authority, as allowed under Article 12(c) of Decree Law 25475 (see, *supra*, paragraph 41), is incompatible with the guarantee provided under Article 7(5) of the Convention.

172. In its Second Report on the Situation of Human Rights in Peru, the IACHR underscored the point that Article 12(c) of Decree Law No. 25475 clearly violates Article 7(5) of the American Convention.²¹¹ In the cases of *Cantoral Benavides* and *Castillo Petruzzi*, both against Peru, the Court wrote that “such provisions contradict the Convention, which states ‘Any person

²⁰⁹ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, paragraph 121. Citing: IACHR. Case 11.205, Report No. 2/97, Jorge Luis Bronstein *et al.* (Argentina), Annual Report of the IACHR 1997, paragraph 11. See, also, Case 12,069, Report No. 50/01, Damion Thomas (Jamaica), Annual Report of the IACHR 2000, paragraphs 37, 38.

²¹⁰ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 93; *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, paragraph 129; and *Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 30, 2008. Series C No. 187, paragraph 63.

²¹¹ IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Chapter II, C. Civil Jurisdiction; The Anti-Terrorist Legislation, paragraph 88, available at: <http://www.cidh.oas.org/countryrep/Peru2000en/chapter2.htm>.

detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power'. ”²¹²

173. In addition to the foregoing and in consideration of the fact that the arrest was made against the backdrop of two house searches, the Commission believes those facts should also be examined in connection with Article 11 of the American Convention.

174. The Court has observed that even though Article 11 of the Convention is called ‘Right to Privacy’, its content is broad and protects domicile, private life, family life and correspondence²¹³ from arbitrary or abusive interference. This protection implies acknowledgement of a person’s sphere that must be exempt from and immune to abusive or arbitrary intrusion or assaults on the part of third parties or the government.²¹⁴ Domicile and private and family life are intrinsically related, because the domicile becomes the space in which private and family life can freely unfold.²¹⁵

175. The Commission observes that at time of these events, the Peruvian Constitution provided that:

No one may enter, investigate or search a residence without authorization from the person who lives there or by an order from a court, the exception being a case of *flagrante delicto* or the imminent danger thereof. The law regulates exceptions for reasons of health or serious danger.²¹⁶

176. Nothing in the information available suggests that a court order had been issued to authorize the searches, or that it was a case of *flagrante delicto* that justified the entry into these domiciles.

177. It was never the contention of the State that this provision of the constitution had been temporarily restricted or that its restriction might in some cases be justified. Furthermore, Article 12(b) of Decree Law 25475 required that a representative of the Public Prosecutor’s Office be present when DINCOTE conducted investigative measures of this kind. The IACHR notes that the parties disagree on the issues of whether the provision of Article 12(b) of Decree 25475 that required the presence of a representative from the Public Prosecutor’s Office for this type of investigative measure was observed. Nevertheless, as indicated in the section on proven facts, the documentary evidence on file raises a series of questions as to the whether and for how long an agent from the Public Prosecutor’s Office was present during the operation.

178. First, the persons who were detained in the operation did not sign the respective police record and Ms. Ferial Tinta has consistently maintained that the representative from the

²¹² I/A Court H.R., *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, paragraph 73; and *Case of Castillo Petrucci et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 110.

²¹³ I/A Court H.R., *Case of Escué Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, paragraph 91.

²¹⁴ I/A Court H.R., *Case of Escué Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, paragraph 95; and I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraph 193.

²¹⁵ I/A Court H.R., *Case of Escué Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, paragraph 95; and I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraphs 193 and 194.

²¹⁶ Constitution of the Republic of Peru of July 12, 1979, available [in Spanish] online at the Peruvian Congress’ web portal at: www.congreso.gob.pe/ntley/ConstitucionP.htm.

Public Prosecutor's Office appeared on the scene only after the operation had gotten underway. Second, while the police record –a handwritten document- states that a representative from the Public Prosecutor's Office was present, the inconsistencies in that record weaken its evidentiary value. In effect, as pointed out in the section on proven facts, an excerpt from the record of the house search reads as follows: "The present record is made at 9:15 p.m. on April 14 (sic), and is signed below by the officers who participated."²¹⁷ This, despite the fact that the search at this property had allegedly concluded on April 13, 1992. As previously noted, with Decree Law 25475 in effect at that time, it was common for DINCOTE agents to conduct interrogations, searches and other measures that should properly be court-ordered measures, and did so without the Public Prosecutor's Office exercising oversight.

179. Thus, the IACHR considers that the information is sufficient to conclude that the search at the Las Esmeraldas property was illegal because the police acted without a court order; it is unclear whether a representative from the Public Prosecutor's Office was present for the duration; the State has made no attempt to clear up the inconsistencies among the various versions and has thus failed to shoulder its burden of proof by providing sufficient documentary evidence.

180. The illegalities associated with the operation and the questions about the presence of a representative from the Public Prosecutor's Office apply with equal force to the house search done at the apartment owned by Ms. Feria Tinta at Calle Casimiro Negrón de la Fuente, which followed the search of the Las Esmeraldas property and occurred while the police were driving Ms. Feria Tinta around the city blindfolded.

181. The observations made in the preceding paragraphs in connection with the alleged victim's arbitrary detention and the violence that attended it, also apply to the house searches, which were not only illegal, but also constituted arbitrary interference in Ms. Feria Tinta's private life.

182. In view of these considerations, the Commission concludes that the Peruvian State violated the rights recognized in articles 7(1), 7(2), 7(3), 7(4), 7(5) and 11(2) of the American Convention, in relation to the obligations undertaken in Article 1(1) thereof, to the detriment of Mónica Feria Tinta. Because the violation of Article 7(5) of the American Convention was a direct consequence of the fact that Article 12(c) of Decree Law 25475 was in effect, the Commission also concludes that the obligation set forth in Article 2 of the American Convention was violated.

2. *The acts of violence committed during the course of the arrest, in the hours that followed and during the time she spent in DINCOTE's custody*

2.1 *General observations on the absolute prohibition of torture and cruel, inhuman and degrading treatment and punishment*

183. As for the rights recognized in articles 5(1) and 5(2) of the Convention, the IACHR has emphasized that the American Convention prohibits the use of torture or any cruel, inhuman or degrading treatment or punishment against persons, regardless of the circumstances. The Commission has written that "[a]n essential aspect of the right to personal security is the absolute prohibition of torture, a peremptory norm of international law creating

²¹⁷ Annex 13, Excerpts from the handwritten record of the house search "signed" on April 14, 1993. Attached to the brief received from the petitioner on January 5, 2007; and Annex 28. Record of house search. Handwritten. Attached to the brief received from the State on February 6, 2008.

obligations *erga omnes*.”²¹⁸ The IACHR has also described the prohibition of torture as a norm of *jus cogens*.²¹⁹

184. Time and time again the Inter-American Court of Human Rights has held that “the absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international *jus cogens*. Said prohibition remains valid even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and other crimes, state of siege, or a state of emergency, civil commotion or domestic conflict, suspension of constitutional guarantees, domestic political instability or other public emergencies or catastrophes.”²²⁰ The Court has also written that various universal and regional treaties set forth said prohibition and uphold the right of all human beings not to be tortured. Similarly, various international instruments uphold this right and reaffirm that prohibition, including international humanitarian law.²²¹

185. Specifically, Article 2 of the IACPPT defines torture as

[...] any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

186. According to the inter-American system’s case law, the three elements of torture are as follows: a) an intentional act; b) which causes severe physical or mental suffering, c)

²¹⁸ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing: IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, paragraph 118.

²¹⁹ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing: IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, paragraph 154.

²²⁰ I/A Court H.R., *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, paragraph 76; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 271; and I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, paragraph 117.

²²¹ I/A Court H.R., *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, paragraph 77. Citing: the International Covenant on Civil and Political Rights, Art. 7; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Art. 2; the Convention on the Rights of the Child, Art. 37, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 10; the Inter-American Convention to Prevent and Punish Torture, Art. 2; the African Charter on Human and Peoples’ Rights, Art. 5; the African Charter on the Rights and Welfare of the Child, Art. 16; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), Art. 4, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3; the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Principle 6; the Code of Conduct for Law Enforcement Officials, Art. 5; the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, Rule 87(a); the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, Art. 6; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 17.3; the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Art. 4; the Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight against Terrorism, Guideline IV; and Art. 3 common to the four Geneva Conventions; Convention (III) relative to the Treatment of Prisoners of War, Arts. 49, 52, 87 and 89, 97; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Arts. 40, 51, 95, 96, 100 and 119; the Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol Art. 75.2.ii, and Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Art. 4.2.a.

committed with a given purpose or aim.²²² The Inter-American Court has written that “threats and real danger of submitting a person to physical injuries produces, in certain circumstances, a moral anguish of such degree that it may be considered psychological torture.”²²³

187. The Court has also held that the “injuries, sufferings, damage to health or prejudices suffered by an individual while he is deprived of liberty may become a form of cruel punishment when, owing to the circumstances of his imprisonment, there is a deterioration in his physical, mental and moral integrity, which is strictly prohibited by Article 5(2) of the Convention.”²²⁴ The Inter-American Court has written that “prolonged isolation and compulsory incommunicado [detention] are, in themselves, cruel and inhuman treatment, which harm the physical and moral integrity of the individual and the right to respect for the inherent dignity of the human person.”²²⁵

2.2 Specific observations on rape under articles 5 and 11 of the American Convention

188. The IACHR has consistently held that rape committed by members of the security forces of a state against the civilian population constitutes, in any situation, a serious violation of the human rights protected by Articles 5 and 11 of the American Convention.²²⁶ Such illicit acts impose severe and long-lasting physical and mental suffering, due to their nonconsensual and invasive nature, affecting the victim, her family, and the community. That is aggravated when the perpetrator is a state agent, because of the aggressor’s position of authority and because of the physical and psychological power he can exercise over the victim.²²⁷

189. The Inter-American Court has said that sexual violence against women has physical, emotional, and psychological consequences that are devastating for the victims²²⁸ and it has also ruled that the sexual rape of a detainee by a state agent is an especially gross and reprehensible act, taking into account the victim’s vulnerability and the abuse of power displayed by the agent.²²⁹

²²² IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martin Mejía, Peru, March 1, 1996, section 3. Analysis, and I/A Court H.R., *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, paragraph 79.

²²³ I/A Court H.R. *Case of the Miguel Castro Castro Prison*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 272, *Case of Baldeón García*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147 Paragraph 119; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 147; and *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paragraph 92.

²²⁴ I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, paragraph 101.

²²⁵ I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, paragraph 103, citing *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paragraph 87; *Case of Bámaca Velásquez*. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, paragraph 150, and *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, paragraph 83.

²²⁶ IACHR, Application to the Inter-American Court of Human Rights, Case 12.579, Valentina Rosendo Cantú *et al.*, Mexico, August 2, 2009, para. 60; Application to the Inter-American Court of Human Rights, Case 12.580, Inés Fernández Ortega, Mexico, May 7, 2009, para. 88; Report No. 53/01, Case 11.565, Merits, Ana, Beatriz, and Celia González Pérez, Mexico, April 4, 2001, para. 45.

²²⁷ IACHR, Application to the Inter-American Court of Human Rights, Case 12.579, Valentina Rosendo Cantú *et al.*, Mexico, August 2, 2009, para. 90; Application to the Inter-American Court of Human Rights, Case 12.580, Inés Fernández Ortega, Mexico, May 7, 2009, para. 117.

²²⁸ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 313, citing: United Nations Commission on Human Rights, 54th Session, *Report presented by Mrs. Radhika Coomaraswamy, Special Rapporteur on violence against women, with the inclusion of its causes and consequence, pursuant to resolution 1997/44 of the Commission*, E/CN.4/1998/54 of January 26, 1998, para. 14.

²²⁹ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 311.

In addition, it has held it to be an extremely traumatic experience that can have serious consequences²³⁰ and that causes great physical and psychological damage, which leaves the victim “physically and emotionally humiliated” – a situation that, in contrast to other traumatic experiences, is difficult to overcome with time.²³¹

190. In its final verdict in the *Čelebići* case, the International Criminal Tribunal for the former Yugoslavia (ICTY) held that “there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international humanitarian law.”²³² The concept of rape as torture has undergone development in recent years, particularly by the aforesaid International Criminal Tribunal.

As evidenced by international case law, the reports of the United Nations Human Rights Committee and the United Nations Committee Against Torture, those of the Special Rapporteur, and the public statements of the European Committee for the Prevention of Torture, this vicious and ignominious practice can take on various forms. International case law, and the reports of the United Nations Special Rapporteur evince a momentum towards addressing, through legal process, the use of rape in the course of detention and interrogation as a means of torture and, therefore, as a violation of international law. Rape is resorted to either by the interrogator himself or by other persons associated with the interrogation of a detainee, as a means of punishing, intimidating, coercing or humiliating the victim, or obtaining information, or a confession, from the victim or a third person.²³³

191. The United Nations Special Rapporteur on Torture has said that rape is one of the methods of physical torture, used on occasions to punish, intimidate, and humiliate.²³⁴ Similarly, the European Court of Human Rights has ruled that:

Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence.²³⁵

192. In another case involving rape at the hands of members of the security forces during Peru’s internal armed conflict, the IACHR described such actions as a form of psychological torture because its objective, in many cases, is not just to humiliate the victim but also her family or community:

²³⁰ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 311, citing: Report of the UN Commission on Human Rights, 50th Session, *Matter of the human rights of all persons submitted to any form of detention or imprisonment, and especially torture and other cruel, inhuman, or degrading treatments or punishments*, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32, E/CN.4/1995/34 of January 12, 1995, para. 19.

²³¹ I/A Court H. R., *Case of the Miguel Castro Castro Prison, Merits, Reparations, and Costs*, Judgment of November 25, 2006, Series C No. 160, para. 311, citing: ECHR, *Case of Aydin v. Turkey* (GC), Judgment of September 25, 1997, App. No. 57/1996/676/866, para. 83.

²³² Case No. IT-96-21-T, Judgment, para. 476, November 16, 1998. From Louis Henkin *et al.*, *Human Rights*, Foundation Press, New York, 1999, pp. 380 and 381.

²³³ ICTY, *Prosecutor v. Anto Furundžija*, Judgment of December 10, 1998, para. 163; upheld on appeal by the Appeals Chamber of the ICTY in a judgment of July 21, 2000.

²³⁴ United Nations, E/CN.4/1986/15, paras. 119 and 431.

²³⁵ European Court of Human Rights, *Aydin v. Turkey*, (57/1996/676/866), Judgment of September 25, 1997, para. 83.

Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them.²³⁶

193. In recent cases the Court has analyzed sexual assault committed by public officials in light of the elements of torture, to wit: i) intent, ii) severity of suffering, and iii) the existence of a specific purpose.²³⁷ Thus, the Inter-American Court has analyzed facts related to sexual assault in light of these elements and concluded that sexual assault constitutes a form of torture.

194. The Inter-American Court has defined rape not only as vaginal intercourse, but also “vaginal or anal penetration, without the victim’s consent, through the use of other parts of the aggressor’s body or objects, as well as oral penetration with the virile member.”²³⁸ The Inter-American Court also ruled recently that sexual violence is a paradigmatic form of violence against women with consequences that go beyond the person of the victim.²³⁹

195. In connection with the impact that rape cases have on private life, the Inter-American Court has ruled that the rights enshrined in Article 11 of the Convention cover a range of areas, including “sexual life and the right to establish and develop relationships with other human beings.”²⁴⁰ The Court has also stated that rape implies violations of essential aspects of private life and the nullification of the “right to freely make decisions regarding with whom to have sexual relations [...] and about basic bodily functions.”²⁴¹

2.3 Analysis of the facts prejudicial to Ms. Ferial Tinta

196. The Commission and the Court have consistently applied flexible standards of evidence; given the nature of the cases brought to their attention, it is difficult to obtain the kind of definitive evidence that unequivocally proves that the facts alleged occurred.

²³⁶ IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín Mejía, Peru, March 1, 1996.

²³⁷ I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paragraph 110.

²³⁸ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 310.

²³⁹ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 109; *Case of Fernández Ortega et al. v. Mexico*, Merits, Reparations, and Costs, Judgment of August 30, 2010, Series C No. 215, para. 119.

²⁴⁰ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 119; *Case of Fernández Ortega et al. v. Mexico*, Merits, Reparations, and Costs, Judgment of August 30, 2010, Series C No. 215, para. 129, citing the following judgments of the European Court of Human Rights: *Case of Dudgeon v. the United Kingdom*, Judgment of October 22, 1981, App. No. 7525/76, para. 41; *Case of X and Y v. the Netherlands*, Judgment of March 26, 1985, App. No. 8978/80, para. 22; *Case of Niemietz v. Germany*, Judgment of December 16, 1992, App. No. 13710/88, para. 29; and *Case of Peck v. United Kingdom*, Judgment of January 28, 2003, App. No. 44647/98, para. 57.

²⁴¹ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 119; *Case of Fernández Ortega et al. v. Mexico*, Merits, Reparations, and Costs, Judgment of August 30, 2010, Series C No. 215, para. 129, citing: ECHR, *Case of M.C. v. Bulgaria*, Judgment of December 4, 2003, App. No. 39272/98, para. 150; and ICTY, *Case of Mucić et. al. “Čelebići Camp,”* Judgment of November 16, 1998, Case No. IT-96-21-T, para. 492.

197. From its earliest cases, the Inter-American Court's standards for assessing the various means of evidence have been less formal than those established in domestic laws. Here, it has consistently made the point that international courts need not make a rigid determination of the *quantum* of the evidence required to reach a decision, as they have the power to appraise and assess evidence according to rules of logic and judgment. In determining whether a State bears international responsibility for violation of a person's rights, international courts have ample latitude in assessing the evidence offered in connection with the relevant facts of the case, in accordance with the rules of logic and based on experience.²⁴² The Inter-American Court has reiterated that for international human rights bodies, the authority to assess and weigh evidence must not be encumbered by restrictive rules of evidence.²⁴³

198. In prior cases, in order to deem proven a sexual assault, the Inter-American Commission has taken into consideration that there are well-documented descriptions of the practice of such acts, and that these correlate with the description given by the victim. Likewise, in order to confirm sexual assault in these contexts.²⁴⁴ [Text missing]

199. Recently, in the case of Rosendo Cantú *et al.* v. Mexico, involving acts of torture in the form of rape, the Court wrote that this violation is a particular form of aggression that generally happens when no one other than the victim and the assailant or assailants are present. Given the nature of this form of violence, evidence in the form of graphic representations or documents is unlikely; hence, the victim's statement is essential to proving the case.²⁴⁵

200. As for acts of physical and psychological violence, including sexual violence rape, alleged in the instant case, the IACHR has the account given by Ms. Feria Tinta in her case with the inter-American system, and the statements she made to the police and to the examining authority in the preliminary phase of the criminal case prosecuted against her.

201. Among the events that Ms. Feria Tinta said occurred during the search and her arrest at the Las Esmeraldas property are the following:

- Someone pointed a gun at her; she was thrown to the floor and dragged by the hair across the room for distance of three meters
- Glass fell on her back as a result of the brute force that the police used to gain entry into the property.
- Her hands were tied and she was blindfolded, and warned not to move.
- She was insulted with language like: "Shut up, you terrorist piece of shit. Who went to Ayacucho, huh?"
- While on the floor, the men groped her, put their hands inside her clothing and their fingers in her vagina, while another man stood on her legs.
- When she protested the sexual violence, she was beaten and kicked, while they questioned her.

²⁴² I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 184, citing I/A Court H.R., *Case of Almonacid Arellano*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006 Series C No. 154, paragraph 69. See also, I/A Court H.R., *Case of Juan Humberto Sánchez*. Interpretation of Judgment on Preliminary Objections, Merits and Reparations (Art. 67 of the American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, paragraph 42.

²⁴³ I/A Court H.R., *Case of Anzaldo Castro*, Judgment of September 22, 2009, paragraph 29; *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala*. Reparations and Costs, paragraph 51; *Case of Perozo et al. v. Venezuela*, paragraph 112, and *Case of Ríos et al. v. Venezuela*, paragraph 101.

²⁴⁴ CIDH, Report No. 5/96, Caso 10.970, Facts, Raquel Martin Mejía, Peru, 1 March 1996.

²⁴⁵ I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paragraph 89.

202. Ms. Feria Tinta described the following events that occurred before and after she was brought into the DINCOTE facilities:

- She was taken out of the Las Esmeraldas property blindfolded and tied up.
- In that condition, she was put into a car and taken to different places, none of which she could see. She could only listen.
- When she asked where they were taking her, the police threatened her several times saying that they were “going for an outing at the beach” an expression commonly understood in Peru as a threat of torture or murder.
- This situation went on for a number of hours, until the car pulled up in front of DINCOTE on April 14, 1992.

203. Ms. Feria Tinta’s account of what happened while she was in DINCOTE custody and before she was sent to Castro Castro prison includes the following:

- When she was brought into DINCOTE she was forced to sit on a cement floor and not permitted to either move or speak.
- When she asked to go to the bathroom, the police refused and she was forced to relieve herself in a can with two male police officers looking on.
- She was not given food or drink from 6:00 a.m. to 8:00 p.m. on April 14, 1992.
- She was hit in the face.
- She was forced to stand facing the wall for the rest of the night.
- She heard the cries of other detainees who were being beaten.
- She was forced to “collaborate,” for if she did not, her sister –also in custody at DINCOTE- would suffer even more.
- She was threatened with torture using the “tub” and electric shock.
- She was taken to a cell whose roach-infested, doorless bathroom consisted of a latrine.
- There were rats there; she was threatened with transfer to a floor “infested with rats.”
- She knew about the “indiscriminate torture sessions” that went on during the night and could hear the screaming.
- She was held in custody at DINCOTE for 17 days, and was taken from her cell three times.
- On one occasion they tried to take her from her cell at around 11:00 p.m.; when she refused, they threw a bucket of cold water on her and she was forced out of the cell and taken to another room.
- She stated that on another occasion she was taken from her cell at around 8:30 p.m. by a man she did not recognize; she was questioned about her presence in Ayacucho and told that if she didn’t cooperate her sister would be in danger.

204. Ms. Ferial Tinta’s account is consistent with the contextual information that the Commission has in its possession concerning the abuses committed in the course of arrests and house raids and searches and during incommunicado detention at DINCOTE, the practices commonly used and the various forms of physical, sexual and verbal violence inflicted on persons perceived to be terrorists. In particular, the Commission notes that in the description of the context above, in the section that addresses proven facts, many details are mentioned that match the specific details of the acts of violence suffered by Ms. Ferial Tinta, of the perpetrating authority, and of the time the acts were committed. Specifically regarding sexual assault, the Commission underscores that DINCOTE deserves “special mention” by the CVR, inasmuch as its members commonly committed this type of aggression against women prosecuted for terrorism. Furthermore, and consonant with Ms. Ferial Tinta’s account, sexual assault frequently began at the start of detention proceedings and was characterized by diverse acts, including “fondling” and vaginal insertion of fingers, acts described by Ms. Ferial Tinta in her account.

205. While the events described are consistent with the tactics being used in Peru at that time, the Commission believes that incommunicado detention with no judicial oversight poses a threat to the detainee's life and personal safety. In addition to the matching elements between the context and the facts described, her being held incommunicado by the State created an opportune situation for the occurrence of the facts as presented in Ms. FERIA TINTA's account. Furthermore, the results of the psychiatric examination²⁴⁶ of Ms. FERIA TINTA, in which she described the various acts of violence perpetrated against her, are compatible with a traumatic experience that triggered "chronic and lasting post-traumatic stress".²⁴⁷

206. The Commission is reminded that in cases such as this, the victim does not have any way to prove the acts of violence committed against her. It is up to the State, through its authorities, to order the necessary investigations to disprove complaints of abuses and aggression said to have been committed by its agents. In the instant case, the State did not order the proper medical tests and examinations to either corroborate or disprove the victim's claims. This serious omission is also consonant with the documented context of acquiescence and complicity by the authorities, including the Prosecutor's Office (see section on proven facts, above). Therefore, in the case of Ms. FERIA TINTA, not only is it difficult to obtain evidence, owing to the very nature of the acts described, but also owing to all of the institutional scaffolding erected at the time as an obstacle to access to evidence of these types of facts.

207. By not conducting a serious investigation of these claims, despite the fact that they fit a pattern known to have existed at that time and that Ms. FERIA TINTA had said in her statements to police and to the examining authority that she had been the victim of violence, the State not only failed to comply with its international obligations by never holding anyone accountable (see, *infra*, paragraphs 207-221), but also by attempting to obstruct any possibility of determining what actually happened once and for all. In a case such as this, the State cannot put up obstacles by claiming that the burden of proof is on the victim; in the instant case, the Commission has the alleged victim's account of the facts. A widespread context of sexual assaults exists that closely correlates with the accounts as pertains to the circumstances, type of act, authorities involved, time of occurrence, and the absolute absence of guarantees to safeguard individual safety, among other circumstantial evidentiary elements.²⁴⁸

208. Summarizing, the Commission considers that: i) the facts described by Ms. FERIA TINTA constitute acts of torture and cruel, inhuman and degrading treatment; ii) the facts recounted fit the pattern of abuses committed in Peru at that time when prosecuting crimes of terrorism; iii) Ms. FERIA TINTA was held incommunicado, without any judicial oversight, and exposed to the mistreatment she describes; iv) the State failed to conduct any investigation into these facts, thereby making it impossible to determine, once and for all, what really happened; and v) one of the consequences of these events is that Ms. FERIA TINTA now suffers from chronic post traumatic stress disorder.

209. It is reasonable to infer from the above body of evidence that from the moment of her arrest and for the 17 days she remained in custody at the facilities of DINCOTE, Mónica FERIA

²⁴⁶ In a similar sense, in the case of *Rosendo Cantú et. al vs. México*, the Inter-American Court indicated the following: "Furthermore, the Court considers that that credibility of the account by Ms. Rosendo Cantú appears supported by the psychiatric medical opinion given on 11 March 2002." See also, I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paragraph 99.

²⁴⁷ Annex 7. Psychological Report prepared by the Traumatic Stress Clinic, November 28, 1996. Attachment to the original petition received on June 17, 1997.

²⁴⁸ See, also, I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paragraph 102.

Tinta was subjected to various forms of torture –including rape- and cruel, inhuman and degrading treatment. The Commission therefore concludes that the Peruvian State violated the rights recognized in articles 5(1), 5(2) and 11 of the American Convention, in relation to the obligations undertaken in Article 1(1) thereof, to the detriment of Mónica Feria Tinta. The Commission also concludes that the State violated articles 1 and 6 of the IACPPT, to the detriment of Mónica Feria Tinta.

3. *The failure to segregate Mónica Feria Tinta from the convicted inmates at Castro Castro prison*

210. As the Commission indicated in the section on proven facts, Ms. Feria Tinta alleged that during the time she was confined in Castro Castro Prison, from April 30 to May 13, 1992, she was co-mingled with convicted inmates. The State has not contested this claim. Given the context in which the events occurred and considering the State's failure to deny the claim and/or provide specific information explaining why Mónica Feria Tinta was not separated from the convicted inmates, the Commission concludes that the State violated the right recognized in Article 5(4) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mónica Feria Tinta.

B. *The rights to due process and to judicial protection, and the obligation to investigate torture, cruel, inhuman and degrading treatment, and the sexual violence to which Ms. Feria Tinta was subjected (articles 8 and 25 of the American Convention; articles 1, 6 and 8 of the IACPPT, and Article 7 of the Convention of Belém do Pará)*

211. Article 8(1) of the American Convention provides that:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

212. Article 25(1) of the American Convention reads as follows:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

213. Article 1(1) of the American Convention provides that:

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

214. Article 2 of the American Convention reads as follows:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

215. Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (IACPPT) provide the following:

Article 1. The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6 [...] The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. [...] The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8. The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. [...] Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. [...] After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

216. Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, in which the States Parties undertake to investigate and punish acts of violence committed against women (hereinafter the Convention of Belém do Pará), reads as follows:

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

(...)

b. apply due diligence to prevent, investigate and impose penalties for violence against women;

c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;

(...)

e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;

f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;

g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and

h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

217. The Court has written that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”²⁴⁹ The Court has also held that:

²⁴⁹ I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 124; I/A Court H.R., *Case of the La Rochela Massacre*. Continúa...

From Article 8 of the Convention it is evident that the victims of human rights violations, or their next of kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.²⁵⁰

218. The Court has also stated that victims and their next of kin have the right to expect, and the States the obligation to ensure, that what befell the victim will be properly investigated by the authorities of the State; that those suspected of committing these crimes will be prosecuted; that the appropriate penalties will be imposed, and reparations will be made to compensate for any harm and damages that the next of kin have suffered.²⁵¹ Thus, once they learn of an event involving violation of human rights, including the right to humane treatment and the right to personal liberty,²⁵² State authorities have an obligation to undertake, on their own initiative and without delay, a serious, impartial and effective investigation²⁵³ conducted within a reasonable period of time.²⁵⁴

219. The IACHR, for its part, has written that “[I]n the light of the general obligation of the State Parties to respect and guarantee the rights of all persons subject to its jurisdiction, contained in Article 1(1) of the American Convention, the State has the obligation to commence immediately an effective investigation to identify, prosecute and punish the responsible parties, when a complaint has been filed or when there are sufficient grounds to believe that an act of torture has been committed in violation of Article 5 of the American Convention.”²⁵⁵

220. The Inter-American Court has also held that:

based on the general obligation to guarantee every person subject to its jurisdiction the human rights set forth in Article 1(1) of the Convention, together with the right to personal integrity set forth in Article 5 (Right to Personal Integrity) of the treaty, the State has the obligation to immediately initiate *ex officio* an effective investigation to identify, prosecute

...continuación

Judgment of May 11, 2007. Series C. No. 163, paragraph 145; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 381; and I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, paragraph 106.

²⁵⁰ I/A Court H.R., *Case of García Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 102; I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 227; and I/A Court H.R., *Case of the Serrano Cruz Sisters*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, paragraph 63.

²⁵¹ I/A Court H.R., *Case of García Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 103; I/A Court H.R., *Case of Bulacio*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, paragraph 114; and I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

²⁵² I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 100.

²⁵³ I/A Court H.R., *Case of García Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 146; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz*, Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 130.

²⁵⁴ I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraph 114; I/A Court H.R., *Case of the la Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163, paragraph 146; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

²⁵⁵ IACHR, Report No. 88/08, Case 12.449, Teodoro Cabrera García and Rodolfo Montiel Flores, October 30, 2008, paragraph 158.

and punish perpetrators when a complaint has been filed or when there are sufficient reasons to believe that an act of torture has been committed.²⁵⁶

221. As for the application of the relevant provisions of the IACPPT and the Convention of Belém do Pará regarding the obligation to investigate facts such as those that occurred in the present case, the Inter-American Court has written that:

[...]the lack of investigation of grave facts against humane treatment such as torture and sexual violence in armed conflicts and/or systematic patterns,²⁵⁷ constitutes a breach of the State's obligations in relation to grave human rights violations, which infringe non-revocable laws²⁵⁸ (*jus cogens*) and generate obligations for the States²⁵⁹ such as investigating and punishing those practices, in conformity with the American Convention and in this case in light of the CIPST and the Convention of Belém do Pará.²⁶⁰

222. The IACHR recalls that the International Criminal Court for the former Yugoslavia wrote that “[t]he condemnation and punishment of a rape becomes all the more urgent where it is committed by, or at the instigation of, a public official, or with the consent or acquiescence of such an official.”²⁶¹

223. In the instant case, the Commission has presumed a number of facts to be true and on that basis has concluded that the Peruvian State violated a number of Ms. Ferial Tinta's rights. The violations are of various kinds and include the unlawful and arbitrary nature of her detention and the house search, the physical and psychological abuse she endured, the victim's rape and the threats made against her life and safety during her time in custody. They also include the physical discomforts forced upon her, the food and sleep deprivation, the threats of torture, and the

²⁵⁶ I/A Court H.R., *Case of Baldeón García*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, paragraph 156; *Case of Gutiérrez Soler*. Merits, Reparations and Costs. Judgment of September 12, 2005. Series C No. 132, paragraph 54; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 159, and *Case of Ximenes Lopes*, Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, paragraph 148. See also *Eur.C.H.R., Assenov and others v. Bulgaria*, no. 90/1997/874/1086, Judgment of 28 October 1998, par. 102 and *Eur.C.H.R., İlhan v. Turkey* [GC], no. 22277/93, Judgment of 27 June 2000, paragraphs 89-93.

²⁵⁷ In this regard, it is worth noting that in international law different courts have ruled on this matter, such as the International Criminal Tribunal for the Former Yugoslavia, which has qualified sexual violence as comparable to torture and other cruel, inhumane, and degrading treatment, when it has been committed within a systematic practice against the civil population, or with the intention of obtaining information, punishing, intimidating, humiliating, or discriminating against the victim or a third party. Cf. *ICTY, Trial Ch II. Prosecutor v. Anto Furundzija*. Judgment, Dec. 10, 1998. para. 267.i, 295; *ICTY, Trial Ch II. Prosecutor v. Delalic et al (Celebici case)*. Judgment, Nov. 16, 1998. para. 941; *ICTY, Appeals Ch. Prosecutor v. Delalic et al (Celebici case)*. Judgment, Feb. 20, 2001. para. 488, 501; and *ICTY, Trial Ch II. Prosecutor v. Kunarac et al*. Judgment, Feb. 22, 2001. para. 656, 670, 816. Similarly, the International Criminal Tribunal for Rwanda has also compared rape to torture, indicating that the former can constitute torture if committed by or with the acknowledgement, consent, or instigation of a public officer. Cf. *ICTR, Trial Ch I. Prosecutor v. Akayesu, Jean-Paul*. Judgment, Sep. 2, 1998, paragraphs 687, 688. On the other hand, the European Court of Human Rights has indicated that rape can constitute torture when committed by state agents against people in their custody. Cf. *ECHR. Case of Aydin v. Turkey*. Judgment, Sep. 25, 1997, paragraphs 86, 87, and *Case of Maslova and Nalbandov v. Russia*. Judgment. July 7, 2008. Para. 108.

²⁵⁸ Cf. *Case of Goiburú et al. v. Paraguay*, Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 128; *Case of the La Rochela Massacre v. Colombia*, Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, paragraph 132, and *Case of Anzaldo Castro v. Peru*, Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 59.

²⁵⁹ I/A Court H.R., *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paragraph 131.

²⁶⁰ I/A Court H.R., *Case of the Las Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, paragraph 140.

²⁶¹ *Celebici Case No. IT-96-21-T*, Judgment of November 16, 1998, paragraph 495. In: Louis Henkin et al., *Human Rights*, Foundation Press, New York, 1999, pp. 380 and 381.

inhuman conditions to which she was subjected during those initial hours after being brought into DINCOTE on April 14, 1992. Finally, the detention conditions she endured at DINCOTE headquarters for more than two weeks did not meet the relevant international standards. The Commission has already classified some of these forms of treatment as torture.

224. To date, the Peruvian State has not undertaken any investigation into these facts, even though it had learned, through various means, of Ms. Feria Tinta's account of what happened. These included her statement to the police and her statement to the examining authority, and the various submissions by Ms. Feria Tinta in the course of her case within the inter-American human rights system. It is worth noting that on June 18, 1993, even the Lima Superior Court addressed the irregularities committed in her detention and in the house search. Given these circumstances the fact that the State has to this day failed to undertake an investigation is a clear violation of its obligation to ensure the rights to humane treatment and personal liberty.²⁶² Furthermore, the failure to investigate has meant that no one has been made to answer for these serious violations and justice has been denied to this day.

225. Based on the foregoing considerations, the Commission concludes that the Peruvian State violated the rights to judicial guarantees and to judicial protection, recognized in articles 8(1) and 25(1) of the American Convention, in relation to the obligations established in Article 1(1) thereof, to the detriment of Mónica Feria Tinta. The Commission also concludes that the State failed to comply with its obligations under articles 1, 6 and 8 of the IACPPT and Article 7 of the Convention of Belem do Pará, to the detriment of Mónica Feria Tinta.

C. *The right to personal liberty (Article 7 of the American Convention) in cases of preventive detention and in cases where petitions of habeas corpus are not available remedies*

226. The sections of Article 7 of the American Convention that are relevant to this case read as follows:

1. Every person has the right to personal liberty and security.
(...)
3. No one shall be subject to arbitrary arrest or imprisonment.
(...)
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

227. Article 1(1) of the American Convention states that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

²⁶² I/A Court H.R., *Case of González et al. "Cotton Field"*. Judgment of November 16, 2009, paragraph 287; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, paragraph 142.

228. Article 2 of the American Convention provides that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

1. Ms. Ferial Tinta's preventive detention from April 30, 1992 to June 18, 1993

229. The Court has written that preventive detention is subject to the principles of legality, the presumption of innocence, necessity, and proportionality, all of which are strictly necessary in a democratic society.²⁶³ It has also held that preventive detention is a precaution and not a punitive measure.²⁶⁴ Because it is the most severe measure that can be applied to the person accused of a crime, the Court has held that preventive detention must be applied only in exceptional cases. In the Inter-American Court's view, the rule must be that a defendant remains at liberty until his or her guilt is determined.²⁶⁵

230. The Court has held that the personal characteristics of the alleged author and the seriousness of the crime with which he or she is charged are not, in themselves, sufficient justification for preventive detention, which is a precautionary rather than punitive measure.²⁶⁶

231. As for the reasons that might justify preventive detention, the organs of the inter-American human rights system have interpreted Article 7(3) of the American Convention to mean that evidence suggesting guilt is a necessary though not sufficient prerequisite to order that the suspect be taken into custody pending trial. In the words of the Court,

there must be sufficient evidence to [reasonably presume] that the person committed to trial has taken part in the criminal offense under investigation.²⁶⁷ However, "even in these circumstances, the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment, but [...] based on a legitimate purpose, which is: to ensure that the accused does not prevent the proceedings from being conducted or elude the system of justice."²⁶⁸

²⁶³ I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, paragraph 67; *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, paragraph 106; *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, paragraph 197; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, paragraph 74.

²⁶⁴ I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, paragraph 77.

²⁶⁵ I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, paragraph 67; I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 196; and I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, paragraph 74.

²⁶⁶ I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, paragraph 69; *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, paragraph 106; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, paragraph 75; and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 180.

²⁶⁷ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 111. Citing: *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, paragraph 101, and *Case of Servellón García et al. v. Honduras. Merits, Reparations and Costs*. Judgment of September 21, 2006. Series C No. 152, paragraph 90.

²⁶⁸ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 111. Citing: *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, paragraph 103; and *Case of*
Continúa...

232. Applying these criteria to the present case, the IACHR notes first that Ms. Feria Tinta was in custody at DINCOTE for days until, on April 30, 1992, the Tenth Ad Hoc Examining Judge ordered her preventive detention. As indicated in the section on proven facts, this court authority ordered that the investigation get underway and stated that Ms. Feria Tinta should be held in the Castro Castro maximum security prison. The Commission has no information at all as to whether the judge in question had cited reasonable procedural grounds for ordering preventive detention that were specific to Ms. Feria Tinta, such as the possibility that she was a flight risk or might obstruct the proceedings. To the contrary, the court rulings that the Commission has in connection with the first criminal proceeding are decisions that concern the defendants as a group; none of the rulings states the grounds for ordering preventive detention of any single individual.

233. The Commission observes that Article 13 (a) of Decree 25475 of May 5, 1992 which, once it took effect, was the law applied to the proceedings against Ms. Feria Tinta, made preventive detention during the examining phase mandatory, "with no exceptions." This law is, *per se*, incompatible with articles 7(1) and 7(3) of the American Convention, under which every person is entitled individually to a determination of the lawfulness of his or her preventive detention and of the procedural grounds for ordering his or her preventive detention.

234. The Commission finds that Ms. Feria Tinta's preventive detention was arbitrary as no explanation was given of the procedural ends being pursued with respect to her individual case, and because preventive detention was applied as a general rule and not the exception. Therefore, the Commission concludes that the Peruvian State violated the right recognized in Article 7(1) and 7(3) of the American Convention, in relation to the obligations undertaken in articles 1(1) and 2 thereof, to the detriment of Mónica Feria Tinta.

2. Decree Law 25659 denies recourse to habeas corpus in terrorism cases.

235. The Inter-American Court has observed that the guarantee contained in Article 7(6) of the American Convention is not subject to any type of suspension,²⁶⁹ as its purpose is to control the lawfulness of an arrest or detention and safeguard a variety of basic human rights. In the words of the Court,

[i]n order for *habeas corpus* to achieve its purpose, which is to obtain a judicial determination of the lawfulness of a detention, it is necessary that the detained person be brought before a competent judge or tribunal with jurisdiction over him. Here *habeas corpus* performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment.²⁷⁰

...continuación

Servellón García et al. v. Honduras. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, paragraph 90.

²⁶⁹ I/A Court H.R., *Habeas Corpus in emergency situations* (Arts. 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraphs 42-43; see also I/A Court H.R., *Judicial Guarantees in States of Emergency* (arts. 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 38; I/A Court H.R., *Case of Loayza Tamayo*. Judgment of September 17, 1997. Series C No. 33, paragraph 50.

²⁷⁰ I/A Court H.R., *Habeas Corpus in emergency situations* (Arts. 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraph 35; *Case of Suárez Rosero*. Judgment of November 12, 1997. Series C No. 35, paragraph 63.

236. The case law of the Inter-American Court is that the rights to life and to humane treatment are threatened whenever the right to *habeas corpus* is partially or wholly suspended,²⁷¹ as it leaves persons defenseless in the face of the unfettered power of the State, a power that can become abusive and arbitrary. Therefore, constitutions and laws that allow, either explicitly or implicitly the suspension of *habeas corpus* in emergencies are incompatible with the American Convention.²⁷²

237. As established in the proven facts section, Ms. Feria Tinta was detained from April 13, 1992, to June 1993. During that period, Decree Law No. 25659 of August 7, 1992 was issued. Article 6 of that law provided that “at no stage of the police investigation and the criminal trial shall applications for procedural guarantees filed by persons detained for, charged with, or being prosecuted for the crimes of terrorism criminalized in Decree Law No. 25475, or to challenge the provisions of this Decree Law be admissible.”²⁷³ This prohibition was in effect for more than ten months during the period that Ms. Feria Tinta was in preventive detention, and had the effect of making it legally impossible for Ms. Feria Tinta to file a petition of *habeas corpus*.²⁷⁴ Time and time again the Inter-American Court has held that this provision is incompatible with Article 7(6) of the American Convention.²⁷⁵

238. The Commission therefore concludes that the Peruvian State violated the right recognized in Article 7(1) and 7(6) of the American Convention, in relation to the guarantees undertaken in articles 1(1) and 2 thereof, to the detriment of Mónica Feria Tinta.

D. The right to due process (Article 8 of the American Convention) as it pertains to the criminal proceedings prosecuted against Ms. Feria Tinta

239. Article 8 of the American Convention provides the following:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
 - (...)
 - b. prior notification in detail to the accused of the charges against him;
 - c. adequate time and means for the preparation of his defense;
 - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
 - (...)
 - f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

²⁷¹ I/A Court H.R., *Habeas Corpus in emergency situations* (Arts. 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraph 36.

²⁷² I/A Court H.R., *Habeas Corpus in emergency situations* (Arts. 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraph 43.

²⁷³ Decree Law No. 25659 of August 7, 1992, available [in Spanish] at the Peruvian Congress' web portal at: www.congreso.gob.pe/ntley/Imagenes/Leyes/25659.pdf.

²⁷⁴ See also: I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 114.

²⁷⁵ I/A Court H.R., *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, paragraphs 169 and 170, and *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999. Series C No. 52, paragraph 188.

- g. the right not to be compelled to be a witness against himself or to plead guilty; and (...)
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

240. Article 1(1) of the American Convention reads as follows:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

241. Article 2 of the American Convention provides that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

242. The Commission will examine the facts pertaining to the criminal case prosecuted against Ms. Ferial Tinta in the following order: i) the guarantees of the competence, independence and impartiality of the judicial authorities who heard the case; ii) the right of defense; iii) the right to a presumption of innocence; iv) the right to public proceedings; v) the Supreme Court's ruling of December 27, 1993, in light of the guarantee of a reasoned decision and the presumption of innocence; vi) the allegations of violation of the principle of *non bis in idem*; and vii) Conclusion.

1. The guarantees of the competence, independence and impartiality of the judicial authorities who heard the case

243. The Commission has repeatedly held that "faceless tribunals" violate every individual's right to know who the judge or judges are who will hear his or her case, whether or not those judges are competent to hear the case and whether they have any stake in the outcome, such that the individual's right to be tried by an impartial judge might be violated. Not knowing the identity of the judge makes it impossible to know whether that judge is independent and impartial.²⁷⁶ As the Commission wrote:

Keeping secret the identity of the "faceless" judges and prosecutors [makes it impossible to guarantee] the independence and impartiality of the courts. The anonymity of the judges deprives the defendant of the basic guarantees of justice. He does not know who is judging him or whether that person is qualified to do so. Thus the defendant is prevented from having a trial by a competent, independent, and impartial court as guaranteed by Article 8 of the American Convention. Moreover, proceedings involving terrorism do not allow for recusal of judges or court assistants. Since the purpose of recusal is to guarantee the impartiality of the person who hands down the judicial decision, prevention of its exercise denies the guarantee of a fair trial before an impartial court.

²⁷⁶ IACHR, Application filed with the Inter-American Court of Human Rights. *Case of García Asto and Ramírez Rojas v. Peru*. June 22, 2004, paragraph 114. Available [in Spanish] at: <http://www.cidh.oas.org/demandas/12.413%20García%20Asto%20y%20Ramírez%20Rojas%20Peru%2022%20jun04%20ESP.pdf>; See, also, IACHR. *Third Report on the Situation of Human Rights in Colombia*. February 26, 1999. OEA/Ser.L/V/II.102, paragraphs 121 and 122. Available at: <http://www.cidh.oas.org/countryrep/Colom99en/table%20of%20contents.htm>.

To keep their identity secret, the norm authorizes the judges not to sign or seal the decisions they issue. Only codes and keys are used to identify the judges. For this reason, the institution of "faceless" judges violates another of the guarantees indispensable in a democratic society: the need to hold public officials liable when they act in violation of the law. By not knowing the identity of the persons judging them, the defendants are prevented from holding these officials civilly liable. With all the restrictions mentioned, the principles of criminal due process are in danger of being seriously impaired.²⁷⁷

244. In the *Castillo Petruzzi, Cantoral Benavides, Lori Berenson Mejía, and García Asto and Ramírez Rojas* cases, all of which were brought against Peru, the Inter-American Court held that "faceless" judges in the prosecution of terrorism crimes made it impossible for the victims to know the identity of the judge and, consequently, to assess the judge's qualifications, to ascertain whether there were grounds for disqualification or recusal, and to exercise a proper defense before an independent and impartial court.²⁷⁸

245. As indicated in the section on proven facts, Article 15 of Decree Law 25475 provided that the identity of the "judges and members of the Public Prosecutor's Office and of the justice auxiliaries" was to be kept confidential when prosecuting crimes of terrorism. This provision was applied to the case of Ms. FERIA TINTA once it entered into force in May 1992. Furthermore, Article 13(h) of Decree Law 25475 prohibited challenges seeking disqualification of judges or justice auxiliaries in terrorism cases.

246. The proven facts established that the identity of the judges on the Lima Superior Court at the time of Ms. FERIA TINTA's acquittal on June 18, 1993, and the justices on the Supreme Court at the time the acquittal was overturned on December 27, 1993, was kept confidential. Furthermore, the identity of at least one official of the Public Prosecutor's Office with judicial functions, specifically the official who issued the January 8, 1993 resolution that held that there were grounds to move to oral proceedings, was also kept confidential. Summarizing, throughout the proceedings conducted against her and as a result of the application of a legal provision that was incompatible with the American Convention, Ms. FERIA TINTA was prevented from knowing who the authorities were who were sitting in judgment of her, thereby making it impossible for her to evaluate and/or challenge their competence, independence and impartiality.

247. Based on these considerations, the Commission concludes that the Peruvian State violated the right to be heard by a competent, independent and impartial court, recognized in Article 8(1) of the American Convention, in relation to the guarantees undertaken in articles 1(1) and 2 thereof, to the detriment of MÓNICA FERIA TINTA.

2. The right of defense

248. In general terms, the Court has held that the right of defense must be exercised from the moment a person is accused of being the possible perpetrator of or participant in a punishable offense and must cover the entire proceeding.²⁷⁹

²⁷⁷ IACHR. Annual Report of the Inter-American Commission on Human Rights, 1996. Chapter V. Peru, II The State of Emergency.

²⁷⁸ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 149. Citing: *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, paragraph 147; *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, paragraph 127; and *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999. Series C No. 52, paragraph 133.

²⁷⁹ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 29. Citing, *mutatis mutandis*, I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Continúa...

249. Specifically, the Court has held that to be in compliance with the guarantee recognized in Article 8(2)(b) of the American Convention,

the State must notify the accused not only of the charges against him, that is, the crimes or offenses he is charged with, but also of the reasons for them, and the evidence for such charges and the legal definition of the facts. The defendant has the right to know, through a clear, detailed and precise description, all the information of the facts in order to fully exercise his right of defense and prove to the judge his version of the facts. (...) [T]imely compliance with Article 8(2)(b) is essential for the effective exercise of the right to defense.²⁸⁰

250. The Court has written that Article 8(2)(b) of the Convention applies even before the “charges”, in the strict sense, are filed. For this right to serve its intended purposes, notification must be made before the suspect makes his first statement²⁸¹ before any public authority.²⁸²

251. As for the right of defense, and specifically the right to be assisted by counsel in one’s defense, the Court has written that an accused may answer and refute the charges by the statements he makes regarding the charges against him, or the accused may choose to be represented by counsel, a lawyer who advises him about his rights and obligations and who ensures, *inter alia*, that the evidence is introduced in accordance with the law.²⁸³

252. Of particular relevance to this case is the Court’s holding to the effect that

If the right of defense is there the moment an investigation into an individual is ordered (...), then the accused must have access to legal representation from then on, and especially during the proceeding at which his statement is taken. Denying the accused the advice of counsel severely restricts the right of defense, upsetting the equality of arms and leaving the accused with no means to protect himself from the punitive authority.²⁸⁴

...continuación

Judgment of November 12, 1997. Series C No. 35, paragraph 71; and *Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 186, paragraph 148.

²⁸⁰ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 28. Citing: *Cf. Case of López Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141, paragraph 149; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, paragraph 225; *Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs*. Judgment of June 24, 2005. Series C No. 129, paragraph 118, and *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114, paragraph 187.

²⁸¹ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 30. Citing: I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, paragraph 187; and I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 225.

²⁸² I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 30.

²⁸³ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 61.

²⁸⁴ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 62.

253. The Court has also written that the right to adequate time and means to prepare one's defense, recognized in Article 8(2)(c) of the American Convention, involves observance of the right to be heard, which ensures that the accused will be involved in analyzing the evidence.²⁸⁵

254. As for Article 8(2)(f) of the American Convention, the Court has observed that one of the prerogatives that must be granted to the accused in order to defend himself is the right to examine witnesses testifying for and against him, under the same conditions.²⁸⁶

255. In the instant case, the Commission has no information as to whether Ms. Feria Tinta was formally notified of the charges against her or the exact date that the notification would have been made. However, the Commission believes that the following considerations make it reasonable to presume that notification was not given from the start of the investigation for the following reasons.

256. In the section on proven facts, the Commission observed that a number of court records suggest that the operation that resulted in Ms. Feria Tinta's detention was staged after an investigation that DINCOTE had been conducting previously (see, *supra*, paragraph 74). Nothing in the Commission's files on this case suggests that Ms. Feria Tinta had been advised that an investigation had been undertaken that might involve her. In any event, the Commission notes that the first time Ms. Feria Tinta had contact with anyone other than DINCOTE officers was approximately one week after she was brought into that police unit, when she was to make her first statement to the police with a representative from the Public Prosecutor's Office present. Nothing in the record indicates that before making her statement, Ms. Feria Tinta was advised of the charges against her, as required under the American Convention.

257. Moreover, Ms. Feria Tinta repeatedly stated that she had difficulties meeting with her attorney. At the time of her statement to the police, which happened approximately one week after she was brought into DINCOTE, Ms. Feria Tinta recounted that her attorney was only permitted to be present for the first part of her statement, with the result that her statement "was incomplete". And although her attorney was present for the proceedings that court authorities held on April 30, 1992 and in March 1993, Ms. Feria Tinta was unable to meet with her attorney beforehand even though the question of whether she would remain in custody would be decided there. According to Ms. Feria Tinta, throughout her preventive detention, which lasted one year and three months, she was able to speak with her attorney just three times, for periods of 15 to 25 minutes.

258. The State has not contested these facts. Indeed, they are entirely consistent with the pattern at that time regarding the possibility of exercising one's right of defense in proceedings of this type, with the legal limitations prescribed in Article 12(f) of Decree Law 25475, whereby accused persons could not be assisted by counsel until they made their statements to the Public Prosecutor's Office. Moreover, Ms. Feria Tinta's account is consistent with the severe regime of isolation and incommunicado detention enforced at the Santa Mónica prison after a number of inmates from Castro Castro prison were transferred there. That severe regime was in force a long period of time, which coincided with the period during which Ms. Feria Tinta was in preventive

²⁸⁵ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 54.

²⁸⁶ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 152. Citing: I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, paragraph 184, and I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 154.

detention there.²⁸⁷ From these observations it is evident that Ms. Feria Tinta's right to be assisted by counsel was severely impaired.

259. The Commission would also point out the provision contained in Article 13(c) of Decree Law 25475, which provided that anyone who, "because of his functions", had a hand in preparing the police report could not be offered as a witness in either the pretrial phase or at trial. The effect of this provision was to further encumber Ms. Feria Tinta's chances of defending herself. The Inter-American Court has already addressed this provision and its incompatibility with the right of defense, particularly the right recognized in Article 8(2)(f) of the American Convention.²⁸⁸

260. Furthermore, the Commission notes that under Article 13(a) of Decree law 25475, prior to the verdict, the authorities hearing a case were prohibited from ruling on any procedural question, objection or defense. This restriction clearly affected the right of defense in that it limited the means and opportunities that Ms. Feria Tinta had to raise preliminary objections in her favor.

261. Finally, the Commission observes that Ms. Feria Tinta's version of the events is that the DINCOTE officers who had her in their custody for the first 17 days of her detention, had on several occasions made comments to the effect that if she "cooperated" things would go easier for her sister. Specifically, Ms. Feria Tinta's account states that during her time in DINCOTE's custody, she was removed from her cell one day and interrogated with the threat that if she did not cooperate her sister "would be in danger". In the analysis of the right to humane treatment, the Commission deemed that there were sufficient elements to presume the suffering that Ms. Feria Tinta endured while in DINCOTE facilities to be true. The Commission considers that threats of this type, whose purpose is to force someone to incriminate himself, not only violate the right to personal integrity but also, taken in combination with the other facts established, are a violation of the right not to be compelled to be a witness against oneself, recognized in Article 8(2)(g) of the Convention.

262. Based on these considerations, the Commission concludes that the Peruvian State violated the right of defense, particularly the guarantees set forth in articles 8(2)(b), (c), (d), (f) and (g) of the American Convention, in relation to the obligations undertaken in articles 1(1) and 2 thereof, to the detriment of Mónica Feria Tinta.

3. The right to the presumption of innocence

263. The presumption of innocence means that the guilt of the accused must be determined at trial, only after formal charges are brought, and guilt must be proven in a final verdict in which the accused' culpability is established.²⁸⁹ Consequently, Article 8(2) of the Convention requires the States to compile the evidence incriminating the accused in order to "establish that person's guilt." The substantiation of guilt calls for the formulation of a judgment establishing blame in a final sentence.²⁹⁰

²⁸⁷ I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160. See. Proven facts, paragraph 197(51).

²⁸⁸ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 154. Citing: I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, paragraph 183; and I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 153.

²⁸⁹ IACHR. Application filed with the Inter-American Court of Human Rights. *Case of García Asto and Ramírez Rojas v. Peru*, June 22, 2004, paragraph 127. Available [in Spanish] at: <http://www.cidh.oas.org/demandas/12.413%20García%20Asto%20y%20Ramírez%20Rojas%20Peru%2022%20jun04%20OESP.pdf>.

²⁹⁰ IACHR, Report 12/96, Case 11.245, *Jorge A. Giménez* (Argentina).

264. The Court has written that the principle of presumption of innocence is the basis for judicial guarantees, as it is premised on the idea that a person is innocent until proven guilty.²⁹¹

265. In the past, the IACHR has observed that the use of evidence obtained in violation of human rights is a violation of Article 8(2) of the American Convention, because it implies a violation of the principle of presumption of innocence.²⁹² The Court has explained that

The principle of presumption of innocence, as stated in Article 8(2) of the Convention, demands that a person cannot be convicted unless there is clear evidence of his criminal liability. If the evidence presented is incomplete or insufficient, he must be acquitted, not convicted.²⁹³

266. If a person cannot be convicted on the basis of incomplete or insufficient evidence, he or she certainly cannot be convicted on the basis of evidence that is unlawful because it was obtained by violating that person's human rights.²⁹⁴ The instant case has established that the house search that resulted in Ms. Feria Tinta's detention was illegal and arbitrary. In that search, conducted with extreme violence that included acts of torture that left the victim defenseless, documents labeled as "terrorist" or "subversive" propaganda were seized. This evidence, together with DINCOTE's police report, formed the bulk of the evidence offered to the court and then weighed by faceless judges. The Commission considers that this fact *per se* constitutes a violation of the right to be judged "with due guarantees," protected under Article 8(1) of the Convention, and of the right to the presumption of innocence under Article 8(2) thereof.

267. Article 13(a) of Decree Law 25475 provided that once the complaint was brought, the Criminal Judge was to order the preliminary or pretrial proceedings, issuing an arrest warrant within 24 hours; no form of release, on bond or otherwise, was permitted. The same article stated that "Preliminary questions, prejudicial questions, objections and any other motion will be decided at trial with the judgment." In this report, the Commission previously observed that this article is incompatible with the right to personal liberty (*supra* paragraph 229) and the right of defense (*supra* paragraph 256). The Commission believes that the provision requiring that a preliminary or pretrial inquiry be instituted and expressly prohibiting the judges from issuing any pronouncement on any procedural or other matter that might be favorable to the accused or that could put an end to proceedings, is also a violation of the principle of presumption of innocence.

268. In its 2000 Report on the *Situation of Human Rights in Peru*, the Commission wrote that:

The Public Ministry then presents and formalizes the complaint before a criminal judge, who must issue an order initiating the investigation (*Auto Apertorio de Instrucción*) within 24

²⁹¹ I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, paragraph 77. See also, IACHR, *Case of Jorge Alberto Giménez*, Argentina, Report No. 11.245 of March 1, 1996, paragraphs 75, 76 and 77.

²⁹² IACHR. Application filed with the Inter-American Court of Human Rights. *Case of García Asto and Ramírez Rojas v. Peru*, June 22, 2004, paragraph 138. Available [in Spanish] at: <http://www.cidh.oas.org/demandas/12.413%20García%20Asto%20y%20Ramírez%20Rojas%20Peru%2022%20jun04%20OESP.pdf>.

²⁹³ I/A Court H.R., *Case of Cantoral Benavides*, Judgment of August 18, 2000, paragraph 120.

²⁹⁴ IACHR. Application filed with the Inter-American Court of Human Rights. *Case of García Asto and Ramírez Rojas v. Peru*, June 22, 2004, paragraph 139. Available [in Spanish] at: <http://www.cidh.oas.org/demandas/12.413%20García%20Asto%20y%20Ramírez%20Rojas%20Peru%2022%20jun04%20OESP.pdf>.

hours, and issue an arrest warrant. Article 13(a) of Decree Law No. 25,475 provides that the criminal judge cannot rule on any prior issue, objection, or defense, nor can he decide to release the accused. Consequently, even if the judge is convinced of the accused' innocence, he could not order his release. This no doubt represented another violation, in this procedure, of the right to the presumption of innocence set forth at Article 8(2) of the Convention, according to which: "Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law."²⁹⁵

269. Among the press clippings supplied by Ms. Feria Tinta, the IACHR was able to identify several in which statements made by various public officials suggest prejudgment in violation of the principle of presumption of innocence.²⁹⁶ The Commission recalls that the right to a presumption of innocence requires that the State not convict an individual informally or issue any opinion in public that might bias public opinion, so long as the accused' criminal culpability has not been legally established.²⁹⁷ Citing the European Court, it wrote that:

[the right to] the presumption of innocence may be infringed not only by a judge or court but also by other public authorities.
[...]

Article 6 paragraph 2 (of the European Convention) cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected.²⁹⁸

270. Based on these considerations and inasmuch as the provision mentioned above was applied in the criminal case prosecuted against Ms. Feria Tinta, the Commission finds that the State violated the right to presumption of innocence, recognized in Article 8(2) of the American Convention, in relation to the obligations undertaken in articles 1(1) and 2 thereof, to the detriment of Mónica Feria Tinta.

4. The right to a public trial

271. The Inter-American Court has remarked that every criminal proceeding must be public in nature and that this is one of the guarantees that attends any person on trial.²⁹⁹ This right is guaranteed by conducting one phase of oral proceedings, open to the public, where the defendant can come face-to-face with the judge and the evidence.³⁰⁰ As the Court wrote:

²⁹⁵ IACHR. *Second Report on the Situation of Human Rights in Peru, 2000*: Chapter II, Administration of Justice and Rule of Law, paragraph 101. See, also, IACHR. Application filed with the Inter-American Court of Human Rights. *Case of García Asto and Ramírez Rojas v. Peru*, June 22, 2004, paragraphs 127 et seq. Available [in Spanish] at: <http://www.cidh.oas.org/demandas/12.413%20García%20Asto%20y%20Ramírez%20Rojas%20Peru%2022%20jun04%20ESP.pdf>.

²⁹⁶ See in Annex 37. Clippings from the newspaper *El Correo* of November 13, 2007, October 30, 2007, February 5, 2008, February 10, 2009, and from the news outlet *24 Horas Libre* of May 14, 2008.

²⁹⁷ I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, paragraph 160.

²⁹⁸ I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, paragraph 159. Citing: Eur. Court H.R., *case Allenet de Ribemont v France*, judgment of 10 February 1995, Series A no. 308, paragraphs 36 and 38.

²⁹⁹ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 149. Citing: I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, paragraph 198; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, paragraphs 146 and 147.

³⁰⁰ I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraphs 166 and 167. Citing *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, paragraphs 146 and 147.

Criminal proceedings are made public to prevent justice from being administered in secret; the proceedings are thus subjected to scrutiny by the parties and by the public. This guarantee is also a function of the need for transparent and impartial judgments and serves as a means to build confidence in the courts.³⁰¹ The right to a public trial refers specifically to the access that the parties and even third parties have to information from the proceedings.³⁰²

272. Article 13(f) of Decree Law 25475 provided that the trial must be conducted in private hearings. Indeed, the evidence in the case file shows that no phase of the proceedings conducted in the case of Ms. Feria Tinta were made public, and no public hearings were held. The State made no attempt to justify the closed proceedings.

273. Therefore, the Commission finds that the Peruvian State violated the right recognized in Article 8(5) of the American Convention in relation to the obligations undertaken in articles 1(1) and 2 thereof, to the detriment of Mónica Feria Tinta.

5. The December 27, 1993 Supreme Court ruling in light of the guarantee of a reasoned judgment and the principle of presumption of innocence

274. The Court has described a reasoned judgment with stated grounds as one of the “procedural guarantees” recognized in Article 8(1) of the American Convention. It wrote that stated grounds are the externalization of the reasoning that led to the court’s conclusion.³⁰³ According to the Court, the duty to state the grounds for a court’s ruling is one of the guarantees of a proper administration of justice,³⁰⁴ protects the citizens’ right to be judged on the grounds that the law establishes, and lends credibility to legal decisions in a democratic society.³⁰⁵ As the Inter-American Court wrote:

the reasons given for a judgment must show that the arguments by the parties have been duly weighed and that the body of evidence has been analyzed. Moreover, a reasoned decision demonstrates to the parties that they have been heard and, when the decision is subject to appeal, it affords them the possibility to argue against it, and of having such decision reviewed by an appellate body.³⁰⁶

³⁰¹ I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 168. Citing: *Osinger v. Austria*, no. 54645/00, § 44, 24 March 2005; *Riepan v. Austria*, no. 35115/97, § 40, ECHR 2000-XII; and *Tierce and Others v. San Marino*, nos. 24954/94, 24971/94 and 24972/94, § 88, ECHR 2000-IX.

³⁰² I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 168.

³⁰³ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 77. Citing: *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, paragraph 107.

³⁰⁴ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 77. Citing the following: The European Court has so ruled in the Case of Suominen: “The Court then reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based.” Cf. *Suominen v. Finland*, no. 37801/97, § 34, 1 July 2003.

³⁰⁵ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 77.

³⁰⁶ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 78. Citing the following: “In its turn, the Human Rights Committee considered that the absence of a reasoned judgment of the Court of Appeal was likely to prevent the author from successfully arguing his petition before a higher court, thus preventing the

Continúa...

275. The Commission has established that on December 27, 1993, the “faceless” Supreme Court overturned Ms. Feria Tinta’s acquittal and ordered that oral proceedings be conducted again. The only reason given for this decision was that “in the verdict under study the facts with which the accused are charged are not properly assessed and the weighing of the evidence offered to establish the accused’ guilt or innocence is inadequate.” The Supreme Court did not offer any explanation of the reasons why it believed that the facts with which the accused were charged had not been properly assessed, nor did it indicate which facts had not been properly assessed or what evidence had not been properly weighed. That Court did not give an individualized explanation for its decision with respect to Ms. Feria Tinta, did not explain which facts of her case had not been properly assessed or what evidence was improperly weighed. Instead, the Supreme Court made a generic reference to the “accused,” without drawing any distinction or making any clarification specific to any single individual, even though many people were named as defendants in the case, charged with separate crimes; the evidence offered with respect to each of the defendants was different, as was the indictment.

276. The Commission deems that these failings are sufficient to conclude that in its December 27, 1993 ruling the Supreme Court failed to comply with the duty to state the grounds for a judgment; by that omission, it engaged the international responsibility of the Peruvian State. In Ms. Feria Tinta’s case, it was all the more important that the Supreme Court should explain the reasons for its decision, since the latter overturned her acquittal by a lower court, which had made the case for reasonable doubt regarding Ms. Feria Tinta’s guilt (see *supra* paragraphs 111, 112 and 113). Thus, the failure to explain the grounds for the ruling, as described in the preceding paragraphs, is also a failure to comply with the principle of presumption of innocence.

277. Based on these considerations, the Commission concludes that the Peruvian State violated the obligation to state the grounds for a judgment and the principle of presumption of innocence recognized, respectively, in articles 8(1) and 8(2) of the American Convention, in relation to the obligations undertaken into Articles 1(1) and 2 thereof, to the detriment of Mónica Feria Tinta.

6. *The arguments claiming a violation of the guarantee of non bis in idem and Ms. Feria Tinta’s current standing with the Peruvian courts*

278. The Inter-American Court has held that the principle of *non bis in idem*, recognized in Article 8(4) of the American Convention, is intended to protect the rights of individuals who have been tried for specific facts from being subjected to a new trial for the same cause.³⁰⁷ The Court wrote that “[u]nlike the formula used by other international human rights protection instruments (for example, the United Nations International Covenant on Civil and Political Rights, Article 14(7), which refers to the same “crime”), the American Convention uses the expression “*the same cause*,” which is a much broader term in the victim’s favor.”³⁰⁸

279. The petitioner argued that the Supreme Court was in violation of this principle, as it ordered a new trial for the same cause of which she had already been acquitted. She added that

...continuación

availability of a further remedy.” United Nations, Human Rights Committee, *Case of Hamilton v. Jamaica*, Communication No. 333/1988, CCPR/C/50/D/333/1988, March 23, 1994.

³⁰⁷ I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Judgment of September 17, 1997. Series C No. 33, paragraph 66.

³⁰⁸ I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Judgment of September 17, 1997. Series C No. 33, paragraph 66.

the German court that heard Peru's application for Ms. Feria Tinta's extradition found that it was inadmissible, as it represented a violation of the very core of the guarantee prohibiting retrial for the same cause. The German court therefore refused to extradite Ms. Feria Tinta to Peru to stand trial for the crime of terrorism for which her extradition was sought. Another argument made by Ms. Feria Tinta was that by the time the Supreme Court's decision was handed down, the deadline for delivering its decision had already passed.

280. After evaluating the information available in the case file, the Commission finds that it does not have sufficient information to conclude that the right recognized in Article 8(4) of the American Convention was violated. This provision can only be applied if the verdict of acquittal has become final. Although the Commission considers that the legal basis and/or motion that gave rise to the Supreme Court's ruling is unclear,³⁰⁹ this does not invariably mean that the June 18, 1993 acquittal had become final. As for the claim that the Supreme Court's ruling was handed down after the deadline, the IACHR does not have any information suggesting that under Peruvian law, the verdict would automatically become final as a result of that kind of judicial error.

281. Given these considerations, the Commission does not have sufficient information to conclude that the Peruvian State violated the guarantee of *non bis in idem*, recognized in Article 8(4) of the American Convention, to the detriment of Mónica Feria Tinta.

282. Nevertheless, where Ms. Feria Tinta's standing vis-à-vis the Peruvian courts is concerned, the Commission has certain items from the file of the new case being prosecuted against her; the latter is the reason why there is, to this day, a standing international warrant for her arrest. The analysis done of the items in question, most of which were supplied by the Peruvian State, suggests that the new case is based, either in whole or in part, on a vitiated judicial process.

283. First, it is unclear what legal basis or procedural situation the State is invoking to pursue its punitive intent.

284. Nowhere in the available records of the proceedings, which includes the indictment, is it clearly stated whether the current case is based on the Supreme Court's December 27, 1993 ruling, which overturned Ms. Feria Tinta's acquittal and ordered a new trial; or whether it is because all proceedings conducted in the presence of faceless judges, on the basis of unconstitutional laws or laws incompatible with the Convention, were declared null and void by virtue of Decree 926 (see *supra* paragraphs 53 and 54). In an order of April 2, 2004, the National Terrorism Chamber made reference to "the procedural standing of Ms. Feria Tinta after her acquittal was overturned." Also, in a September 21, 2004 ruling by the Supreme Court's Permanent Criminal Chamber, mention is made of the fact that the Supreme Court had overturned her acquittal and ordered a new trial.

285. The available information thus seems to suggest that the Supreme Court's December 27, 1993 ruling is being recognized as fully valid, despite its incompatibility with the American Convention by virtue of the fact that it was delivered by faceless judges, who did not explain the reasons for their decision, and was a violation of the presumption of innocence, as established in this report on the merits. The Commission wishes to emphasize that no legal validity

³⁰⁹ While a September 21, 2004 decision in the new case indicates that the "superior court prosecutor" reportedly filed a motion to have the June 18, 1993 ruling overturned, the Commission has no information concerning the date on which the motion was supposedly filed, the legal grounds for the motion, the deadline for filing the motion or the arguments made (ver. *supra* párrs. 122 y 123).

can be attached to a ruling of this kind merely for the sake of being able to pursue the State's punitive intentions.

286. Secondly, from the records of the proceedings made available to the Commission, it appears that the new case is being built on evidence obtained by unlawful and arbitrary means, in operations in which a number of rights recognized in the American Convention were violated, as has been established in this report on the merits. Thus, for example, in the opinion of the Third National Criminal Superior Court Prosecutor stating that "there are grounds for moving to oral proceedings" against the defendants, one of whom was Mónica Feria Tinta, mention is made of, *inter alia*, the April 13, 1992 raid at the Las Esmeraldas property and the "[s]ubversive propaganda, handwritten and typed documents alluding to the subversive group" confiscated on that occasion.

287. Finally, the Commission must not fail to point out that despite the Constitutional Court's ruling of January 3, 2003, it would appear that some parts of Decree Law 25475, which was found to be incompatible with the ACHR, are still in force in Peru. One such provision is Article 13(c) of that decree, which precludes as evidence any testimony given by officers who had a hand in writing the police report. As observed in the corresponding section of this report, the Inter-American Court has repeatedly held that this provision is a violation of the right of defense.

7. Conclusion

288. For the reasons explained in this section, the Commission concludes that the Peruvian State violated the rights recognized in articles 7(1), 7(3), 7(6), 8(1) and 8(2), 8(2)(b), c), f) g) and 8(5) of the American Convention, in relation to the obligations undertaken in articles 1(1) and 2 thereof, to the detriment of Mónica Feria Tinta. The Commission also concludes that the Peruvian State did not violate the right recognized in Article 8(4) of the American Convention. It also finds that the flaws in the case prosecuted in 1992 and 1993 are present in the new case as well.

D. The principle of legality and the principle of non-retroactivity (Article 9 of the American Convention), as it pertains to the criminal case prosecuted against Ms. Feria Tinta.

289. Article 9 of the American Convention reads as follows:

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

290. Article 1(1) of the American Convention provides that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

291. Article 2 of the American Convention states that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

1. **General observations on the principle of legality and principle of non-retroactivity.**

292. The Inter-American Court has held that under the rule of law, the principles of legality and non-retroactivity govern the actions of all bodies of the State in their respective fields, particularly when the exercise of its punitive power is at issue.³¹⁰ Furthermore, it has also stressed the point that in a democratic system, precautions must be strengthened to ensure that punitive measures are adopted with absolute respect for the basic rights of the individual and subject to careful verification of whether or not unlawful behavior exists.³¹¹

293. The principle of legality recognized in Article 9 of the Convention encompasses the basic principles of *nullum crimen sine lege* and *nulla poena sine lege* principles, which prohibit states from prosecuting or punishing persons for acts or omissions that did not constitute criminal offenses under the applicable law at the time they were committed.³¹²

294. It is the State that decides what behaviors will be criminalized and with respect to which it will exercise its punitive authority. In doing so, the State is pursuing its policy on crime based on its own historical, social and other considerations. However, implicit in Article 9 of the American Convention are certain rules that States must observe when exercising their authority to criminalize certain acts. As it pertains to the instant case and as interpreted in inter-American case law, the corollary of the principle of legality is the rule to the effect that crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offense, establishing the elements and factors that distinguish it from other forms of conduct that are either not punishable or punishable with non-criminal measures.³¹³

295. The Commission has written that the principle of legality enables individuals to know what is legal and what is illegal and to adjust their conduct accordingly.³¹⁴ As the IACHR has written, "The principle of legality has a specific role in the definition of crimes; on the one hand, it

³¹⁰ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 30, 2004. Series C No. 111, paragraph 177; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, paragraph 107; I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 80; I/A Court H.R., *Case of Fermín Ramírez*. Judgment of June 20, 2005. Series C No. 126, paragraph 90; and I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 187.

³¹¹ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, paragraph 106; Citing, inter alia, Eur. Court H.R. Ezelin judgment of 26 April 1991, Series A no. 202, para. 45; and Eur. Court H.R. Müller and Others, judgment of 24 May 1988, Series A no. 133, para. 29. See also: I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 81; and I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 189.

³¹² IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, paragraph 225.

³¹³ IACHR, *Report on the Situation of Human Rights in Peru (2000)*, OEA/Ser.L./V/II.106, Doc. 59 rev. 2, June 2, 2000, paragraphs 80, 168; IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, paragraph 225; I/A Court H.R., *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999 (Merits, Reparations and Costs), Series C No. 52, paragraph 121; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, paragraph 157; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 30, 2004. Series C No. 111, paragraph 174; I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 79; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 188; I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55.

³¹⁴ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, paragraph 225, and Executive Summary, paragraph 17.

guarantees individual liberty and safety by pre-establishing the behavior that is penalized clearly and unambiguously and, on the other hand, it protects legal certainty.”³¹⁵

296. The Court has also held that the definition of the offense must be established beforehand, in precise, accurate, narrow and unambiguous language, especially as criminal law is the most restrictive and severe means to establish blame for some unlawful conduct and inasmuch as the system of laws must afford the citizen with legal certainty.³¹⁶

297. The Court has also held that “when applying criminal legislation, the judge of the criminal court is obliged to adhere strictly to its provisions and observe the greatest rigor to ensure that the behavior of the defendant corresponds to a specific category of crime, so that he does not punish acts that are not punishable by law.”³¹⁷

298. Concerning the risks of imprecision in the description of the crimes, the Court wrote that “[a]mbiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.”³¹⁸

299. Applying these principles, the Inter-American Court has decided a number of cases by concluding that the principle of legality was violated because, for example, laws “refer to conduct that is not precisely defined, meaning that it could be” classified as one crime, but could also be classified as another.³¹⁹ The Court also highlighted the problems caused by ambiguities of this kind, which can have the effect of restricting the guarantees of due process or altering the sentence, depending on which crime the individual is prosecuted for.³²⁰ The Court also wrote that in such situations, there is no legal certainty as to the elements that distinguish one crime from another, the elements with which they are carried out, the objects or property against which they were perpetrated and the effects they have on the whole of society.³²¹

³¹⁵ IACHR, Application and Arguments to the Inter-American Court of Human Rights in the Case of *De la Cruz Flores v. Peru*, referred to in: I/A Court H.R., *Case of De la Cruz Flores v. Peru*, Judgment of November 18, 2004 (Merits, Reparations and Costs), Series C. No. 115, paragraph 74.

³¹⁶ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55; and I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, paragraph 63.

³¹⁷ I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 82; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 190.

³¹⁸ I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 121; and I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 30, 2004. Series C No. 111, paragraph 174.

³¹⁹ Referring to articles 1, 2 and 3 of Decree Law No. 25.659 and articles 2 and 3 of Decree Law No. 25.475, which describe the crimes of treason and terrorism in Peru, respectively; it is impossible to determine when a person is committing one crime or the other.

See. I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, paragraph 153; I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 119.

³²⁰ I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 119; and I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, paragraph 119.

³²¹ I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, paragraph 117.

300. The Inter-American Court has also had occasion to evaluate the precision of the language used to define a crime, irrespective of its relationship to other crimes. Thus, for example, when it examined the crimes of slander in Chile and Venezuela, it observed that a vague and ambiguous description (...) does not clearly specify the scope of the criminal conduct, thus leaving room for broad interpretation,” which means that certain behaviours could end up carrying harsh penalties simply by labelling them as more serious offenses.”³²² To be more specific, in the case of Usón Ramírez, the Inter-American Court wrote that since the law was silent on the question of intent, it allowed the subjectivity of the offended party to determine the existence of a crime, even though the active subject may not have intended to injure, offend, or disparage the passive subject.”³²³

301. According to the principle on the nonretroactivity of a criminal law less favorable to the accused, the State must not exercise its punitive authority through retroactive application of criminal laws that will impose harsher penalties, allow aggravating circumstances, or create aggravated degrees of the crime. This principle also means that a person cannot be punished for something that was not a crime or was neither a punishable nor indictable offense at the time of its commission.³²⁴

2. The lack of precision in identifying the punishable behaviors attributed to Ms. Feria Tinta

302. Before turning to an examination of the principle of legality as it pertains to some of the laws invoked against Ms. Feria Tinta, the Commission is compelled to point out that from the records the Commission has available of the proceedings conducted in the case brought against Ms. Feria Tinta, it is impossible to identify precisely what criminal behaviors were attributed to her.

303. Thus, for example, the Commission was able to establish that the criminal case instituted on April 28, 1992, involved a large number of defendants, one of whom was Ms. Feria Tinta. Using rather vague terms, the complaint makes reference to the “crime of disturbing the peace – terrorism.” Opinion 118-92 from the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism states that “the conduct attributed to the defendants would come under Article 322 of the Penal Code and Decree Law No. 25475, and they would face punishment under that decree law once it is enacted inasmuch as they are said to have defended terrorism.” However, Article 322 of the Penal Code did not criminalize defense of terrorism; Article 322 was about membership in a terrorist organization.

304. A January 8, 1993 resolution by the Public Prosecutor’s Office states that “there are grounds for moving to oral proceedings” against 93 persons in the case, who are accused in custody and are being prosecuted for the crime of TERRORISM AND UNLAWFUL TERRORIST ASSOCIATION against the State.” That same decision states that the charge is a criminal offense punishable under articles 319, 320 and 322 of the Penal Code, which were replaced by articles 2, 3 and 5 of Decree Law 25475. Unlike previous stages in the proceedings, at this stage no reference is made to the crime of defense of terrorism, described in Article 316 of the Penal Code.

³²² I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 56; and I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 92.

³²³ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 56.

³²⁴ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 191. Citing. I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 105; *Case of Ricardo Canese*. Judgment of August 30, 2004. Series C No. 111, paragraph 175.

305. In the June 18, 1993 verdict of acquittal, the faceless Lima Superior Court makes reference to “the charges against them for the crime of terrorism and unlawful terrorist association.”

306. The faceless Supreme Court’s December 27, 1993 judgment ordered a new trial for the “crime of terrorism and other crimes against the State”, without any further clarification.

307. The opinion from the Third National Criminal Superior Court Prosecutor dated September 25, 2005, the National Criminal Chamber’s January 24, 2006 ruling, the May 25, 2006 ruling of the National Criminal Chamber and the January 4, 2008 request from the National Criminal Chamber seeking Ms. Feria Tinta’s extradition all state that the crimes with which Mónica Feria Tinta is charged are punishable crimes under articles 315 and 322 of the 1991 Penal Code. These provisions criminalize defense of terrorism and membership in a terrorist organization.

308. Summarizing, the various pronouncements that have come from the Public Prosecutor’s Office and judicial authorities refer indiscriminately to terrorism, membership in a terrorist organization, and defense of terrorism. The laws that those opinions and decisions cite as the basis for the indictment and prosecution are neither clear nor consistent, nor are the specific acts she is alleged to have committed that qualify as the crimes for which she is being prosecuted.

309. Because the crimes of terrorism, membership in a terrorist organization and defense of terrorism are three different crimes under the law and carry different penalties, The right to legal defense and the principle of legality, as understood together, impose the obligation on both the Prosecutor’s Office and on judicial authorities to establish clearly and precisely the facts that make up each type of crime. Otherwise, the defendant cannot clearly understand which acts are punishable as crimes or the penalties that go with each charge. According to the foregoing, the indistinct use of crimes and the lack of clarity about the facts that comprise those crimes constitute violations of Mónica Feria Tinta’s right to legal defense and of the principle of legality.

3. *Retroactive application of Decree Law 25475 to the case of Mónica Feria Tinta*

310. The Commission has established that Ms. Feria Tinta was deprived of liberty on April 13, 1992 and that on April 28, 1992 a criminal case was instituted against her for supposed acts committed prior to that date. On May 5, 1992, seven days later, Decree Law 25475 was issued that defined the basic crime of terrorism, and other related criminal behaviors, and established the respective penalties.

311. Even though this decree law was issued subsequent to the date on which the criminal case against her was brought, the substantive provisions of that newly issued decree were applied retroactively in the indictment and prosecution of Ms. Feria Tinta.

312. Opinion 118-92 from the Office of Lima Provincial Prosecutor 43 – Specializing in Terrorism states that “the conduct attributed to the accused would come under Article 322 of the Penal Code and Decree Law 25475, and they would face punishment under that decree law once it is enacted inasmuch as they are said to have defended terrorism.” Thereafter, the January 8, 1993 resolution of the Public Prosecutor’s Office states that “there are grounds for moving to oral proceedings” against the 93 “accused in custody and being prosecuted for the crime of TERRORISM AND UNLAWFUL TERRORIST ASSOCIATION against the State.” The Public Prosecutor’s Office sought a sentence of imprisonment for 20 years as well as an accessory penalty of disqualification. The Commission notes that the accessory penalty of disqualification was not among the relevant provisions of the 1991 Penal Code; instead, it was a penalty instituted under Article 5 of Decree Law 25475, which shows that this was the law relied upon in the sentence sought. Furthermore,

the decision itself expressly states that the crime is a punishable offense under articles 319, 320 and 322 of the Penal Code, which were replaced by articles 2, 3 and 5 of Decree Law 25475, "which must be taken into account at time of sentencing."

313. Given the foregoing considerations, the Commission concludes that the Peruvian State violated the principles of legality and non-retroactivity of the criminal law less favorable to the accused, recognized in Article 9 of the American Convention, in relation to the obligations undertaken in articles 1(1) and 2 thereof, and to the detriment of Mónica Feria Tinta.

VI. CONCLUSIONS

314. Based on the considerations of fact and of law set forth throughout this report, the Inter-American Commission concludes that the Peruvian State is responsible for violation of the rights to humane treatment, personal liberty, a fair trial, legality and freedom from ex post facto laws, protection of honor, dignity and family and private life, and judicial protection, recognized in articles 5, 7, 8, 9, 11 and 25 of the American Convention, in relation to the obligations undertaken in articles 1(1) and 2 thereof, to the detriment of Ms. Mónica Feria Tinta. The Commission further concludes that Peru is responsible for violation of the obligations established in articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Ms. Mónica Feria Tinta.

VII. RECOMMENDATIONS

315. Based on these findings,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IS RECOMMENDING TO THE PERUVIAN STATE THAT IT:

1. Order full reparations for Ms. Mónica Feria Tinta for the human rights violations declared in this report. The reparations should include pecuniary and non-pecuniary damages. If the victim so desires, order the necessary measures for rehabilitation of her physical and mental health.

2. Conduct an impartial and effective investigation, within a reasonable period of time, to shed full light on the violations of the American Convention, identify the intellectual and material authors and impose the appropriate penalties.

3. Order the administrative, disciplinary or criminal proceedings to address the actions or omissions by state officials that had the effect of denying justice to the victim and allowing those responsible for the violations established to go unpunished.

4. Complete the process of amending the provisions of Decree Law 25475 that are still in force and that this report found to be incompatible with the American Convention.

5. Cease and desist from any exercise of the State's punitive authority against Mónica Feria Tinta that perpetuates the same procedural flaws that vitiated the legal proceedings conducted in 1992 and 1993 and that led to violations of the American Convention. Specifically, the State must take steps to ensure that no legal case is prosecuted against Ms. Feria Tinta that is based on evidence obtained by illegal and arbitrary means, as described in this report on the merits.