

REPORT N° 42/99

CASE 11.045

HUGO MUÑOZ SÁNCHEZ, BERTILA LOZANO TORRES, DORA OYAGUE FIERRO, LUIS ENRIQUE ORTIZ PEREA, ARMANDO RICHARD AMARO CONDOR, ROBERT EDGAR TEODORO ESPINOZA, HERÁCLIDES PABLO MEZA, FELIPE FLORES CHIPANA, MARCELINO ROSALES CÁRDENAS, AND JUAN GABRIEL MARIÑOS FIGUEROA.

(LA CANTUTA)

Peru

March 11, 1999

I. SUMMARY

1. In a petition submitted to the Inter-American Commission on Human Rights (hereinafter "the Commission") by the nongovernmental human rights organization *Asociación Pro Derechos Humanos* (APRODEH) on July 30, 1992, the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State") was accused of violating the human rights of Hugo Muñoz Sánchez, a professor at the Enrique Guzmán y Valle National University (located in La Cantuta, Lima), and of Bertila Lozano Torres, Dora Oyague Fierro, Luis Enrique Ortiz Perea, Armando Richard Amaro Condor, Robert Edgar Teodoro Espinoza, Heráclides Pablo Meza, Felipe Flores Chipana, Marcelino Rosales Cárdenas, and Juan Gabriel Mariños Figueroa, all students at that same university, by abducting them from the university in the predawn hours of July 18, 1992, an operation carried out by troops of the Peruvian army, and by proceeding to torture and summarily execute them on that same date.

2. The petitioner claims that through these actions, the State violated the victims' right to personal liberty, right to humane treatment, right to life, right to a fair trial, and right to judicial protection as enshrined in Articles 7, 5, 4, 8, and 25, respectively, of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). The State did not dispute the admissibility of the complaint.

3. The Commission has decided to admit the petition as regards question of the compatibility of Amnesty Laws Nos. 26479 and 26492 with the American Convention, to postpone until its review of the merits of the case its decision on admissibility as regards the alleged failure to investigate and punish the instigators of the La Cantuta massacre, to proceed with a thorough analysis of the incident, and to make itself available to the parties with a view to reaching a friendly settlement based on respect for the human rights set forth in the Convention.

II. PROCESSING BY THE COMMISSION

4. The petitioner presented the complaint on July 30, 1992. On August 4, 1992, the case was opened and a request for information was sent to the Peruvian State. The State replied on October 8, 1992. Both parties submitted additional documents on different occasions.

III. POSITIONS OF THE PARTIES

A. The Petitioner's Position

5. The petitioner claims that Mr. Vladimiro Montesinos Torres, an advisor and officer of the National Intelligence Service, Gen. Julio Salazar Monroe, currently Minister of Defense and then head of the National Intelligence Service (SIN), Gen. Juan Rivero Lazo, head of the Army Intelligence Directorate, and Gen. Luis Pérez Documet, head of the Army's Special Forces Directorate (DIFE) met some months prior to July 18, 1992, to draw up and approve the implementation of an operation called "Secuestro" [kidnap], intended to abduct and illegally execute a group of individuals from the Enrique Guzmán y Valle National University (La Cantuta). This plan was approved by Gen. Nicolás Hermoza Ríos.

6. According to the petitioner, it was also agreed that the abduction and subsequent massacre would be carried out by a special operations group called "Colina," comprising members of the SIE and of the DINTE, including Maj. Santiago Martín Rivas (aka "Kike"), Capt. Eliseo Carlos Pichilingue Guevara, Intelligence Operative Technician 3rd Class Eduardo Sosa Davila (aka "El Chato"), Nelson Carbajal García, Juan Supo, José Pino, individuals known as "Petete" and "Rambo," and others not identified.

7. The petitioner claims that in the predawn hours of 18 July 1992, armed, hooded members of the Army Intelligence Service (SIE) and the Army Directorate of Intelligence (DINTE)—Santiago Martín Rivas, Eduardo Sosa Davila, Eliseo Pichilingue, Nelson Carbajal García, Juan Supo, José Pino, Manuel Guzmán Calderón, and others, most of whom were members of the Colina Group—burst into the students' and faculty members' residences of the Enrique Guzmán y Valle National University (La Cantuta). Together with them was Lt. Aquilino Portella Nuñez or Julio César Estrada of the army's Special Forces Directorate (DIFE), the head of the Civic Action Base stationed at the university. Also involved in the operation were Peruvian troops from the Special Forces Directorate's BIG-19, led by Maj. Manuel Guzmán Calderón, who cordoned off the university residences to facilitate the abduction.

8. The petitioner reports that once inside the residences, the troops forced all the students to leave their rooms and lie belly-down on the floor. One soldier then pulled up each student's head by the hair and separated those who were to be detained. This was carried out with assistance from Lt. Aquilino Portella Nunez or Julio César Estrada of the army's Special Forces Directorate (DIFE), the head of the Civic Action Base stationed at the university, who knew the students and was carrying a list of those who were to be detained. The students detained were Bertila Lozano Torres, Dora Oyague Fierro, Luis Enrique Ortiz Perea, Armando Richard Amaro Condor, Robert Edgar Teodoro Espinoza, Heráclides Pablo Meza, Felipe Flores Chipana, Marcelino Rosales Cárdenas, and Juan Gabriel Mariños Figueroa.

9. The petitioner states that in the faculty residences, troops violently entered the home of Professor Hugo Muñoz Sánchez by climbing over the yard wall and destroying the service entrance. They then gagged Prof. Muñoz Sánchez and covered his head with a pair of black trousers. Some of the assailants searched Prof. Muñoz Sánchez's bedroom and, at the same time, prevented his wife from leaving that room. Prof. Muñoz Sánchez, bare-footed and bare-chested, wearing only a pair of trousers, was then carried away by the soldiers. The operation was filmed by one of his captors. Between Prof. Muñoz Sánchez's home and the gateway to the faculty

residences, some witnesses, including Mr. Octavio Mejía Martel and his wife, tried to intervene on his behalf but were forced to withdraw at gunpoint.

10. The petitioner reports that the soldiers then left the university, taking with them Prof. Muñoz Sánchez and the nine students Lozano Torres, Oyague Fierro, Ortiz Perea, Amaro Condor, Teodoro Espinoza, Pablo Meza, Flores Chipana, Rosales Cárdenas, and Mariños Figueroa. The victims were immediately taken to a site outside the city and, in a totally defenseless state, were tortured and then, while kneeling were shot to death in the head from behind.

11. According to the petitioner, the victims' bodies were clandestinely buried and covered with quicklime in three graves in the area known as Cerro Santa Rosa, at kilometer 1.5 of the Ramiro Priale highway, on land belonging to SEDAPAL. Following a public complaint later made by congressman Henry Pease, the perpetrators of the killings dug up the bodies, burned them, and moved them to other clandestine graves located in Chavilca, Cieneguilla.

12. The petitioner alleges that on July 12, 1993, the magazine *Sí*, edited by Ricardo Uceda, published a sketch indicating the place where some of the remains of the La Cantuta victims had been buried. The public prosecutor's office then conducted an investigation in the Chavilca gully in Cieneguilla. This investigation revealed the presence of four clandestine graves containing bones, most of them charred; in two of the graves, two sets of keys, a spent bullet, remnants of clothing, hair, etc., were found. Again, following a complaint made by the editor of *Sí* magazine, the public prosecutor conducted an investigation at Km 1.5 of the Ramiro Priale highway, on land belonging to the SEDAPAL company's La Atarjea Treatment Plant. On that site, which had up until then been used as a firing range by the Peruvian National Police, additional clandestine graves containing bones (one complete clothed human skeleton, a half skeleton, human tissue, remains of hair and clothing), together with empty cartridges, spent bullets, and traces of quicklime.

13. The petitioner claims that from the evidence gathered by the public prosecutor it could be concluded, in brief, that the remains found at Cieneguilla and at Km. 1.5 of the Ramiro Priale highway belonged to at least three of the victims, the students Luis Enrique Ortiz Perea, Armando Amaro Condor, and Juan Gabriel Mariños Figueroa. It was also firmly established that one of the bodies found in Cieneguilla was that of Bertila Lozano Torres, according to evidence given by dental technician, Juan Miguel Vásquez Tello. Evidence given by family members regarding remnants of clothing found also determined that some of the remains at Cieneguilla belonged to the students, Robert Teodoro Espinoza and Heráclides Pablo Meza. Likewise, it was established that some of the Cieneguilla remains belonged to Prof. Hugo Muñoz Sánchez.

14. On August 20, 1992, according to the petitioner, relatives of the victims began a number of *habeas corpus* proceedings, which were declared inadmissible. The Department of Public Prosecutions, through the eighth provincial public prosecutor in Lima, conducted no further investigations and refused to try the case in August 1993.

15. The petitioner states that on April 2, 1993, Congressman Henry Pease García announced that he had received a complaint from elements within the army. It gave a detailed report on the murder of the students in question and identified ranking

army and intelligence service officials as the perpetrators of the incident. As a result, the Democratic Constituent Congress had to set up a commission to investigate the case.

16. The petitioner reports that on May 6, 1993, Lt. Gen. Rodolfo Robles Espinoza, the army's third highest-ranking officer, published a document denouncing human rights violations by the National Intelligence Service and the Commander General of the army, specifically referring to the killings of the La Cantuta University students. After making these charges, he was removed from duty, tried, and subjected to death threats; as a result, he was forced to seek political asylum in Argentina.

17. According to the petitioner, in May 1993, almost 10 months after the incident, the military justice system decided to intervene; it opened an investigation, clearly attempting to bring the case into its jurisdiction and to prevent ranking officers implicated in the case from being investigated either by the congressional commission or, depending on how the probe developed, by civilian justice.

18. The petitioner reports that at the same time as this, in July 1993, after the Cieneguilla bodies were found, a special public prosecutor was appointed to conduct the pertinent investigations. On December 18, 1993, Special Prosecutor Víctor Cubas Villanueva presented the 16th Criminal Court in Lima with criminal charges against several officers of the Peruvian army in connection with the La Cantuta massacre of July 18, 1992. These charges were filed in spite of the strong pressure and anonymous threats exerted against the special prosecutor.

19. As of this point, alleges the petitioner, the soldiers involved were facing proceedings under both civilian and military law, and so a conflict of jurisdiction was likely. Thus, on December 17, 1993, General Narco Antonio Rodríguez Huerta, the examining military judge, submitted the jurisdictional challenge to Criminal Judge Carlo Nagno Chacon. The challenge held that military justice was investigating the La Cantuta incident, that the soldiers in question were under military jurisdiction, and that the civilian courts should refrain from dealing with the case. The following week, the aforesaid criminal judge referred the jurisdictional challenge to the Supreme Court of the Republic.

20. The petitioner states that the case documents were referred to the Court's Criminal Division, along with the prosecutor's ruling and the criminal judge's report, which both agreed that the soldiers involved should be tried in civilian courts because the crimes were common crimes of civilian jurisdiction and because civilian justice could offer the necessary guarantees for a serious, unbiased investigation of the facts. On February 3, 1994, after hearing the parties' arguments, the Court's five-member Criminal Division declared that it was unable to reach a decision on the jurisdiction under which the soldiers charged with abducting and murdering the professor and the nine students from Enrique Guzmán y Valle University should be tried.

21. Consequently, claims the petitioner, on the night of February 7, 1994, ruling-party congressman Julio Chu Meris proposed a legislative bill under which the Supreme Court's Criminal Division could resolve the jurisdictional challenge by a vote of only three judges, superseding the previous rule that required four of them to be in agreement. The bill was voted on in the predawn hours of February 8, 1994. The

ruling-party bloc in Congress passed the bill and, the next day, President of the Republic Alberto Fujimori immediately signed it into law.

22. The petitioner claims that finally, on February 11, 1994, in strict compliance with the new law and without waiting for a ruling on its constitutionality, the three judges of the Criminal Division, now with the necessary quorum, ordered that the trial of the individuals accused of the La Cantuta killings be referred to military justice.

23. The petitioner states that on February 21, 1994, in a first-instance ruling, the War Division of the Supreme Council of Military Justice (CSJM) sentenced 10 of the culprits to prison terms ranging from one to 20 years, including Maj. Santiago Martín Rivas and Maj. Carlos Pichilingue Guevara, operations chief and administrative chief, respectively, of the "Colina Group," which had carried out the killings of the professor and nine students from La Cantuta. The CSJM reviewed this decision and, on May 3, 1994, handed down a new decision, sentencing the following members of the Peruvian army: Major General Juan Rivero Lazo, Cavalry Colonel Federico Augusto Navarro Pérez, Infantry Captain José Adolfo Velarde Astete, Engineering Corps Majors Santiago Enrique Martín Rivas and Carlos Eliseo Pichilingue Guevara, and Technicians 3rd Class Julio Chuqui Aguirre, Nelson Rogelio Carbajal García, and Jesús Antonio Sosa Saavedra. The ruling also ordered compensation to be paid to the families of the deceased, to be contributed jointly by those convicted and by the Peruvian State.

24. The petitioner alleges that although Gen. Rodolfo Robles Espinoza and other elements within the army accused other high-ranking army officers of being behind the crime—including Commander General Nicolás de Bari Hermoza and presidential advisor Capt. Vladimiro Montesinos (ret.)—they were neither investigated nor questioned by the military justice system, let alone tried or convicted. The petitioner has submitted a press report that published an open letter from General Rodolfo Robles Espinoza, which reads as follows:

Gentlemen: . . . I am Lieutenant General Rodolfo Robles Espinoza. In 1992 I was the Commander General of the Third Military Region . . . I have always accepted my assignments without hesitation or grumbling. But this last change is brought on by a despicable act that no soldier and no man could tolerate, in that it deals with the systematic violation of the human rights of the Peruvian population by a group of hired assassins who, under orders from former Captain Vladimiro Montesinos and with the servile approval of Gen. Nicolás de Bari Hermoza Ríos (ret.), the unworthy Commander General of the Peruvian army, have been committing crimes that have unfairly sullied the glorious Peruvian army in its entirety. My utter loyalty to my army . . . force[s] me to reveal the following to the people: (1) The La Cantuta crime, in which one professor and 10 students from that university were slain, was carried out by a special intelligence detachment operating under direct orders from Presidential Advisor and virtual head of the SIN Vladimiro Montesinos, the actions of which are coordinated with the Army Intelligence Service (SIE) and the General Staff's Intelligence Directorate (DINTE) but always are approved of and known to the Commander General of the Army. This detachment was commanded by Maj. Martín Rivas Santiago Enrique of the Engineering Corps . . . also present was Infantry Lieutenant Portella Núñez Aquilino . . . that night, the cordon was put in place by the DIFE under the command of Maj. Gen. Pérez Documet Luis (aka "Tuto") and the raid or actual hit was carried out by Commando Infantry Battalion BIC-19 led by Infantry Lt. Col. Guzmán Calderón . . . Intelligence Operative Technician 3rd Class Sosa Dávila . . . Intelligence Operative Junior Officer 1st Class Ramos also participated. . . . Although these detachments are the perpetrators, responsibility for planning, conducting, and controlling them lie with higher echelons, such as DINTE Maj. Gen. Juan Rivero Lazo or Head of Special Operations Col. Navarro Pérez Federico Augusto. . . [1](#)

25. The petitioner reports that on June 14, 1995, in predawn hours and unexpectedly, the ruling party bloc in Congress passed Law No. 26479, which granted amnesty to military, police, and civilian personnel involved in human rights violations committed between 1980 and the date of the law's enactment. This legislation was enacted by the President of the Republic later that same day.

26. The petitioner claims that, according to Article 1 of this law, the amnesty covered all soldiers, police officers, and civil servants being charged, punished, tried, judged, or convicted for civilian or military crimes under either civilian or military law. Article 3 ordered the immediate release of all such persons under arrest, in detention, in prison, or facing jail terms. Article 6 ordered the permanent filing of all legal proceedings, regardless of whether they were still being processed or whether a sentence had already been handed down, and placed a ban on fresh investigations into the allegations of those proceedings. Law No. 26479, the amnesty law, was immediately applied by the Supreme Council of Military Justice, which on July 15, 1995, ordered the release of all the individuals convicted for the La Cantuta killings.

27. On June 28, 1995, the petitioner reports, the government's congressional majority passed Law No. 26492, the poorly titled interpretation law of the amnesty law, with which it assumed powers belonging to other branches of government, interfered with the administration of justice, and expanded the grounds for amnesty. This second law declared that the amnesty law neither interfered with the functioning of the courts nor undermined the State's obligation of respecting and guaranteeing full observance of human rights. Article 2 imposed a ban on judicial review, thus preventing those believing that their rights have been violated from seeking defense through the courts. The second law extended the amnesty to all soldiers, police officers, and civil servants, regardless of whether or not a complaint had been formally made.

B. The State's Position

28. On October 8, 1992, the State claimed it was waiting for information from the Ministry of Defense and the public prosecutor's office, and told the Commission that the Ministry of Justice had stated that:

. . . According to the report from the Office of the Attorney General with regard to the provisions of Article 5 of Law No. 25592, the complaints about the alleged disappearance of Hugo Muñoz Sánchez, Dora Oyague Fierro, and Juan Marinos Figueroa were recorded as events occurring in Lima on 18 July last; the Peruvian Army is suspected of being responsible and to date has been under investigation. The citizens Bertila Lozano Torres, Roberto Teodoro Espinoza, Marcelino Rosales Cárdenas, Felipe Flores Chipana, Luis Enrique Ortiz Perea, Armando Amaro Condor y Heráclides Pablo Meza do not appear in that report; consequently, my office has decided to serve notice on the Department of Public Prosecutions to keep it informed and for other issues of its competence.

29. On November 4, 1992, the State informed the Commission that the Ministry of Defense had reported, after concluding its investigations, that "the aforesaid citizens have in no way been detained or arrested by members of the military." The State added that according to the National Police, on July 18, 1992 no police operation had been carried out at La Cantuta National University, that a criminal court had declared groundless a *habeas corpus* suit brought on behalf of Dora Oyague Fierro, and that the Armed Forces Joint Command stated that a provincial prosecutor from Lima who conducted an on-site inspection of a hill near the aforesaid university found no human remains that would point to the commission of the crime under investigation.

30. On November 5, 1992, the State informed the Commission that the Office of the Attorney General had reported taking several steps into the ongoing investigation of the incident but, to date, had obtained no results; consequently, the investigation was continuing.

31. On December 30, 1992, the State informed the Commission that the Ministry of the Interior had stated that the Chosica police had arrested neither Dora Oyague

Fierro nor other students of La Cantuta University, and on January 6, 1993, it noted that after a number of investigations, the Department of Public Prosecutions had been unable to identify the persons responsible for the incident but that it was still investigating.

32. On October 7, 1993, the State alleged that the civilian provincial prosecutor dealing with the incident had disqualified itself and had referred the investigation of the case to the Supreme Council of Military Justice's War Division.

33. On February 5, 1996, the State stated that in proceedings No. 157-V-93, brought against Maj. Gen. Juan Rivero Lazo and others in connection with Hugo Sánchez Muñoz and others, the Supreme Council of Military Justice, by means of a final judgment dated May 3, 1994, had ordered Maj. Santiago Martín Rivas, Maj. Carlos Pichilingue Guevara, and Technicians 3rd Class Julio Chuqui Aguirre, Nelson Carbajal García, and Jesús Sosa Saavedra to pay, jointly with the Peruvian State, a civil indemnification to the victims' families; however, since the embargo placed on their salaries was no sufficient to cover that payment, the Ministry of Defense had deposited the amount of the indemnification, equal to three million new sols, which were being paid to the victim's relatives.

IV. ANALYSIS

The Commission proceeds to analyze the requirements for a petition to be admissible set forth in the American Convention, as follows:

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

34. As regards its competence over the matter of the complaint, the Commission notes that the events related by the petitioner and not disputed by the State indicate that the murders of the professor and students from the Enrique Guzmán y Valle National University were committed by military agents of the Peruvian State. The massacre was investigated and, as a result of that investigation, certain individuals were tried. As a result of those proceedings, the Supreme Council of Military Justice handed down a final judgment on May 3, 1994, in which the following members of the Peruvian Army were found guilty and convicted: Major General Juan Rivero Lazo, Cavalry Colonel Federico Augusto Navarro Pérez, Infantry Captain José Adolfo Velarde Astete, Engineering Corps Majors Santiago Enrique Martín Rivas and Carlos Eliseo Pichilingue Guevara, and Technicians 3rd Class Julio Chuqui Aguirre, Nelson Rogelio Carbajal García, and Jesús Antonio Sosa Saavedra. This judgment also ordered indemnification to be paid to the families of the murdered individuals, to be paid jointly by the convicts and the Peruvian State. Following that sentence, the petitioner has not questioned the Commission about the appropriateness of the punishment imposed on the person convicted or about the amount or the payment of the indemnification granted to the victims' families. Nevertheless, the petitioner maintains that Peru violated international obligations enshrined in the American Convention by enacting Amnesty Laws Nos. 26479 and 26492 and by enforcing their provisions to release the individuals convicted of the La Cantuta massacre.

35. The Commission notes that the aforesaid amnesty laws did in fact lead to the liberation of the only persons convicted for participating in the La Cantuta massacre. Thus, although the incident was investigated by the Peruvian State, as a result of

which the individuals found guilty by the courts were convicted, the Commission has competence over the matter of the complaint in order to determine whether the effects of enforcing said amnesty laws constituted violations of the obligations assumed by Peru under the American Convention. In this regard, the Inter-American Court has stated that:

At the international level, what is important to determine is whether a law violates the international obligations assumed by the State by virtue of a treaty. This the Commission can and should do upon examining the communications and petitions submitted to it concerning violations of human rights and freedoms protected by the Convention.²

36. The second issue in the analysis of the Commission's competence *ratione materiae* to deal with this case refers to the petitioner's allegations that there were masterminds behind the La Cantuta massacre who were never investigated. In this regard, the petitioner states that although General Rodolfo Robles Espinoza and other members of the army reported the conceptual involvement of Commander General of the Army Nicolás de Bari Hermoza, presidential advisor Capt. Vladimiro Montesinos (ret.), and other high-ranking soldiers in the La Cantuta killings, they were never investigated or questioned by the military courts, much less tried or convicted. The petitioner adds that Amnesty Laws Nos. 26479 and 26492 prevent an investigation being opened into the possible masterminds behind the massacre.

37. In this regard, the Commission notes that Article 1 of the American Convention enshrines the duty of states parties to respect the rights and freedoms contained in the Convention with respect to all persons under their jurisdiction, and to ensure their free and full exercise of those same rights and freedoms. Consequent to this obligation of ensuring free and full exercise of the rights and freedoms enshrined in the Convention, states parties are obliged to "prevent, investigate, and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."³

38. Of course, the obligation of investigating and punishing all violations of the rights set forth in the Convention requires the State to punish all those responsible for a human rights violation, including both its direct perpetrators and the masterminds behind it. Now, the petitioner's simple allegation that there were masterminds behind the La Cantuta massacre who were not investigated cannot, for the Commission, constitute sufficient proof of that circumstance, particularly considering the great political responsibility inherent in, for example, the simple act of summoning a person to give a statement as one of the masterminds. Thus, the chief evidence in the file supporting the petitioner's allegations regarding the masterminds are the declarations made by Gen. Rodolfo Robles Espinoza, which in themselves are not enough, at this stage in the proceedings, for the Commission to reach any conclusions regarding the potential masterminds behind the La Cantuta slayings. At the same time, the rank held by Gen. Robles Espinoza, the fact that his declarations were made in May 1993, before the victims' bodies were found in July of that year, and the fact that several of the individuals he accused in 1993 as the perpetrators of the La Cantuta massacre were later convicted, in 1994, for committing those crimes, lend enough credibility to his declarations for the Commission nor to declare itself *prima facie* incompetent to address this specific point. For the reasons given above, the Commission decides to postpone, until the in-depth report, its considerations regarding its competence *ratione materiae* to hear allegations regarding the possible masterminding of behind the La Cantuta massacre.

39. With regard to competence *ratione personae*, the Commission notes that the petitioner accuses the Peruvian State of violations of human rights enshrined in the American Convention. Since Peru ratified that Convention on July 28, 1978, the Commission has competence *ratione personae* to hear this petition in accordance with the express provisions of Article 33 of the Convention. As regards the petitioner, the Commission notes that APRODEH (Asociación Pro Derechos Humanos) is a legally recognized nongovernmental organization within Peru which, pursuant to Article 44 of the Convention, has the power to submit complaints to the Commission. Consequently, and with reference to the petitioner, the Commission is also competent *ratione personae* to deal with this petition.

40. With regard to its competence *ratione temporis*, the Commission notes that the incidents with which the Peruvian State is charged occurred in 1992 and later years; that is, after Peru's ratification of the American Convention in 1978. Thus, the Commission concludes that it is competent *ratione temporis* to hear this case.

B. Requirements for Admissibility of the Petition

a. Exhaustion of Domestic Remedies

41. The State has not claimed that the domestic legal remedies in this case have not been exhausted, which is sufficient to deem the requirement as met.

42. With regard to the amnesty laws, the Commission also notes that Article 2 of Law No. 26492 of June 28, 1995, prohibited the judicial review of Law 26479. This gave rise to the exemption from the requirement for the remedies under domestic law to be exhausted set forth in Article 46(2)(b) of the Convention, in that the alleged victims were not allowed access to those remedies.

43. Regarding the alleged failure to investigate and punish the masterminds behind the La Cantuta massacre, the Commission notes that the trial in which certain individuals were convicted for the killings ended with a judgment by the Supreme Council of Military Justice on May 3, 1994. That judgment made no statement either convicting or acquitting those accused of having masterminded the massacre. Then, although a new investigation aimed at identifying the masterminds behind the incident could theoretically have been opened, Article 6 of Law No. 26479, in accordance with the terms of Article 3 of Law No. 26492, stipulates that the Peruvian courts are prohibited from beginning any such investigation. Thus, given that Peru's internal legislation lacks an effective remedy for trying to determine the alleged responsibility of the masterminds, the exemption from the requirement of exhausting domestic law remedies, set forth in Article 46(2)(a), applies.

44. Based on these considerations, the Commission finds that, in the case at hand, the requirement for the exhaustion of domestic remedies set forth in Article 46(1)(a) of the Convention does not apply.

b. Filing Period

45. With regard to the requirement set forth in Article 46(1)(b) of the Convention, under which a petition must be submitted within six months of the notification to the victim of the final decision by which domestic remedies are exhausted, the

Commission also notes that this requirement is not applicable to the present case: since the exemptions from the required exhaustion of domestic remedies set forth in Articles 46(2)(a) and 46(2)(b) of the Convention apply, as indicated in the above paragraph, exemption from the aforesaid period for lodging the petition also applies, under Article 46(2) of the Convention.

c. Duplication of Proceedings and *Res Judicata*

46. The Commission understands that the substance of the petition is not pending in any other international settlement proceeding, nor does it duplicate a petition already examined by this or any other international body. Thus, the requirements set forth in Articles 46(1)(c) and 47(d) have also been met.

d. Grounds of the Petition

47. The Commission believes that the petitioner's report describes events that, if true, could constitute a violation of rights guaranteed by the Convention, in that as indicated by the analysis of the Commission's competence *ratione materiae* to hear this case, the points on which the Commission is to decide are, first, whether the amnesty laws under which the individuals convicted of the La Cantuta massacre were released constitute a violation by Peru of the American Convention and, second, whether the failure to investigate the alleged masterminds behind the slaying constitutes a violation by the Peruvian State of rights enshrined by the Convention.

V. CONCLUSIONS

48. The Commission believes that it is competent to hear this case as regards the compatibility of Amnesty Laws Nos. 26479 and 26492 with the American Convention in connection with the release of the individuals investigated and convicted of the La Cantuta massacre. The Commission decides to postpone the decision on its competence *ratione materiae* with regard to the possible masterminds behind the massacre until its in-depth report. The Commission concludes that, pursuant to Articles 46 and 47 of the American Convention, the petition is admissible, as set forth above.

Based on the arguments of fact and law indicated above, and without prejudging the substance of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the case in hand to be admissible as regards the compatibility of Amnesty Laws Nos. 26479 and 26492 with the American Convention, in connection with the release of the individuals investigated and convicted of the La Cantuta massacre.
2. To postpone the decision on its competence *ratione materiae* regarding the possible masterminds behind the massacre until its in-depth report.
3. To notify the petitioner and the State of this decision.

4. To continue analyzing the substance of the case.

5. To make itself available to the parties with a view to reaching a friendly settlement based on respect for the rights enshrined in the American Convention, and to invite the parties to express their opinions on that possibility.

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

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the eleven day of March, 1999. (Signed): Robert K. Goldman; Chairman, Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía and Carlos Ayala Corao.

1 Extract published in *La República* newspaper, Lima, May 7, 1993, p. 5.

2 Inter-Am.Ct.H.R., Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50, and 51 of the American Convention on Human Rights), Advisory Opinion OC-13 of 16 July 1993, Ser. A, Nº 13, paragraph 30.

3 Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser.C, Nº 4, paragraph 166.