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REPORT No. 37/21
PETITION 368-11

REPORT ON ADMISSIBILITY

IRIS YOLANDA QUIÑONES COLCHADO AND FAMILY
PERU

Approved electronically by the Commission on February 28, 2021.

Cite as: IACHR, Report No. 37/21, Petition 368-11. Admissibility. Iris Yolanda Quiñones Colchado and family. Peru. February 28, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Iris Yolanda Quiñones Colchado
Alleged victim:	Iris Yolanda Quiñones Colchado and family [1]
Respondent State:	Perú [2]
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (legality and retroactivity), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights [3]

II. PROCEEDINGS BEFORE THE IACHR [4]

Filing of the petition:	March 22, 2011
Notification of the petition to the State:	December 9, 2015
State's first response:	March 10, 2016
Additional observations from the petitioner:	April 29, 2019
Additional observations from the State:	June 7, 2020
Notification of the possible archiving of the petition:	November 12, 2018
Petitioner's response to the notification regarding the possible archiving of the petition:	April 29, 2019

III. COMPETENCE

Competence *Ratione personae:*	Yes
Competence *Ratione loci*:	Yes
Competence *Ratione temporis*:	Yes
Competence *Ratione materiae*:	Yes, American Convention (deposit of the instrument of ratification made on July 28, 1978) Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women [5] (deposit of the instrument of ratification made on December 7, 1995) and Inter-American Convention to Prevent and Punish Torture (deposit of the instrument of ratification made on March 28, 1991)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International *res judicata*:	No

[1] The Petition was filed by Iris Yolanda Quiñones Colchado and in favor of fifteen of her relatives individualized on an attached document.

[2] As set forth in Article 17.2.a of the Commission's Rules for Procedure, Commissioner Julissa Mantilla Falcón, a Peruvian national, participated neither in the discussion not in the decision of the present matter.

[3] Hereinafter "the American Convention".

[4] The observations submitted by each party were duly transmitted to the opposing party.

[5] Hereinafter the "Belém do Pará Convention".

Rights declared admissible:	Articles 5 (humane treatment), 7 (personal liberty) 8 (fair trial), 9 (legality and retroactivity), 11 (honor and dignity), 17 (rights of the family), 24 (equality before the law), and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects); Article 7 of the Belém do Pará Convention; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, in the terms of section VI

V. FACTS ALLEGED

1. Mrs. Quiñones Colchado claims that members of the National Anti-Terrorism Directorate (hereinafter, "DIRCOTE") detained her for considering that she was associated with the South Zone Regional Metropolitan Committee of the Communist Party of Peru – Shining Path (hereinafter, "Shining Path"), without the existence of a flagrant situation and without a judicial warrant. In addition, claims she was subjected to torture, cruel and inhumane treatment during her arrest and captivity; and that she was not judged by a natural, independent and impartial judge.

2. She holds that on August 25, 1993, while she was detained, isolated and incommunicado, members of DIRCOTE tortured her, threatened her and committed acts of sexual violence so she would self-incriminate; and that on September 24, 1993, a month after her arrest, she was finally able to give a statement to the police. She affirms that only fifteen days after her arrest authorities confirmed to her family that she was being deprived of liberty. She claims that her family intended to file an habeas corpus before the DIRCOTE to guarantee her survival, but such body refused to admit such remedy.

3. She states that after staying for fifty-two days in the DIRCOTE, on October 15, 1993 she was transferred to the military base of Las Palmas to be judged in the military jurisdiction. She claims that during that summary trial both the judges and prosecutors as well as the defense counsel who represented her were hooded[6]; and that the counselor did not make any allegation because he could not access the casefile and only authorized his attendance for the reading of the sentence. She holds that on November 3, 1993 a military judge sentenced her for life on account of high treason and for terrorism. After this, she specifies that her family could only get to visit her in 1994, almost a year and a half after her detention, and that her son (aged six at the time), as well as other relatives, suffered humiliating and demeaning treatments during their visits.

4. She informs that the abovementioned sentence was annulled in 2003, after an hábeas corpus decision in her favor. She specifies that a proceeding was initiated and that on May 22, 2006 the National Criminal Chamber sentenced her again. Nonetheless, on August 15, 2007 the Supreme Court of Justice, by means of Supreme Executory, annulled such decision and ordered a new trial. Based upon which, on January 29, 2009 the National Criminal Chamber sentenced her to twenty-eight years of imprisonment and payment of twenty-thousand soles as civil reparation to the State for crimes against public order under the modality of terrorism. She specifies she filed a nullity remedy against this decision, but that on October 14, 2009 the First Transitory Criminal Chamber of the Supreme Court, by means of Supreme Executory No. 1523-2009, rejected the remedy based on the analysis and valuation of the evidence provided.

5. Based on this, the alleged victim claims a breach of her right of presumption of innocence because ever since her detention she was considered a terrorist; even presenting her before the press with an arsenal of weapons and subversive material. She adds that two witnesses who "negotiated" their freedom

[6] On October 12, 1996, by means of Law No.26671, the figure of faceless judges and prosecutors was revoked.

incriminated her, and that one of them was a witness of classified identity and adds that the allegedly inculpatory objects such as the subversive material, which DIRCOTE allegedly found in her domicile, actually belonged to the landlady from whom she rented some space. Additionally, she holds she was not allowed to choose a lawyer[7], and that the defense counsel assigned to her was the same one who represented the codefendants, two of which were accused of being members of Shining Path.

6. On the other hand, she holds that, according to Law Decree No. 25475, in force at the time, the detained could only receive the visit of an attorney after having provided a statement. She affirms that such law was unconstitutional because in it is Article 12, subsection d) it stipulated: *"when circumstances so require and the complexity of investigations so demands, in order to better clarify the facts subject to investigation, it may be resorted to have the detained absolutely incommunicado for the maximum time allowed by law, with the knowledge of the Public Ministry and the respective jurisdictional authority*"[8]. Criterion which, as she claims, was not respected either because there was no document addressed to the Public Ministry as to the days during which she was incommunicado.

7. Finally, the alleged victim claims that in her case "the criminal law for the enemy" was applied. She argues that, proof of this, is that the antiterrorist legislation adopted in 2003 (Legislative Decrees No. 922 and 926) violates the principle of non-retroactivity of criminal law. Likewise, she holds that there was a disregard to a natural judge; and that according to the legislation in force[9] it shall be impossible for her to be reinstated as a teacher once the twenty-eight-year imprisonment sentence is served, of which she has effectively served twenty-five years. In this sense, she considers that Legislative Decree No. 921 counters Article 139 subsection 22 of the Political Constitution of Peru[10]. Lastly – and with no major detail–claims that shortly before serving the entire sentence, the Public Ministry along with DIRCOTE have initiated a new judicial proceeding against her for alleged links with a terrorist organization only for having a Marxist ideology, considering that in Peru there is no legislation that punishes a person for having a determined ideology.

8. The State, on it is part, replies that the alleged victim does not provide detailed and enough information, which credits the exhaustion of domestic jurisdiction, as, set forth by Article 28 of the IACHR's Rules for Procedure. Along this line, informs that the petition was filed in an untimely fashion. On it is writ dated March 10, 2016, it announced that it reserved the right to "oppose an exception of untimeliness to file a petition before the Inter-American Commission", since it was managing the access to the certified copy to credit the exact date of the last judicial notification".

9. In addition, argues that the alleged facts do not represent a violation of human rights. It holds that the detention of the alleged victim in 1993 was made in flagrant crime, product of a preliminary investigation, as mentioned in criminal complaint No.73-2003 of May 13, 2003. Likewise, holds that due process was respected, since the alleged victim had a defense counsel, was able to file remedies to challenge the decision of the National Criminal Chamber and was judged by competent and impartial courts, which issued adequately motivated sentences.

10. Regarding the alleged unconstitutionality of Law Decree No. 5475, the State holds that it has adapted the antiterrorist legislation to Inter-American standards. It specifies that it repaired the possible irregularities produced when judging civils for high treason in Military Jurisdiction with secret identity magistrates. In this sense, explains that on January 3, 2003 the Constitutional Court revised the antiterrorist

[7] The right to being advised by a freely chosen legal counsel as of the first stages of the criminal proceeding was afterward incorporated by Article 2 of Law No.26447, which came into force on April 22, 1995.

[8] Subsection d) was declared unconstitutional by Sentence of the Constitutional Court. Casefile No.010-2002-AI-TC Lima published on January 4, 2003.

[9] Law No. 29988 of January 18, 2013 for the staff of public and private educational institutions sentenced or prosecuted on terrorism, apology to terrorism, crimes of violation of sexual liberty and illegal drug trafficking.

[10] Article 139 subsection 22 of the Political Constitution of Peru: "Principles and rights of the jurisdictional function include: (…) the principle that the penitentiary regime is intended to reeducate, rehabilitate and reincorporate the sentenced into society".

legislation and declared unconstitutional the norms that were incompatible with the Constitution and the American Convention. In such sense, specifies that proceedings initiated after the referred sentence redressed the procedural violations that may have occurred previously.

11. On the other hand, argues that on August 9, 2006 the Constitutional Court determined the constitutionality and compatibility of Legislative Decrees No. 921 al 927, with respect and protection of human rights. It adds that it has no information as to the new proceeding against the alleged victim for alleged links with a terrorist organization.

12. Finally, concerning alleged tortures Mrs. Quiñones Colchado suffered during her arrest, the State claims that according to a legal medical certificated dated August 31, 1993 all that was certified was an excoriation on the nose of the alleged victim, which required one day of incapacity to work. In view of the State, such diagnosis does not qualify as an act of torture.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

13. The alleged victim considers that she complied with the requirements to file a petition before the IACHR. The State, on it is part, holds that no information has been provided which properly corroborates the exhaustion of domestic jurisdiction and that there may be noncompliance of Article 46.1.b) of the American Convention.

14. In regard to the criminal proceeding introduced against the alleged victim, the IACHR observes that on October 14, 2009, after the annulment of two previous proceedings, the Frist Transitory Criminal Chamber of the Supreme Court rejected the nullity remedy filed by Mrs. Quiñones Colchado versus the sentence of January 29, 2009 which convicted her on first instance for crimes against public order under the modality of terrorism. From the information provided, the IACHR considers that such decision exhausted domestic jurisdiction, which is why the present petition meets the requirement of exhaustion of domestic remedies in accordance with Article 46.1.a) of the American Convention.

15. As for the timeliness of the filing, the Commission observes that the last judicial decision was notified on December 10, 2010 and that the petition was filed on March 22, 2011 by postal mail. According to common practice by the IACHR on the matter, presuming the days that elapsed while the petition was in the mail, the Commission considers that the petition was filed in a timely fashion, thereby meeting the requirement set forth in Article 46.1.b) of the American Convention[11]. Likewise, although the State reserved the right to "oppose an exception of untimeliness" until finding documents which corroborate the date of the last judicial notification, the Commission observes that on latter writs such documentation was never submitted, which is why it holds that there was no adequate proof as to credit such questioning.

16. On the other hand, concerning the alleged acts of torture, the IACHR recalls that, upon possible crimes against humane treatment committed by agents of the State, the domestic remedies to be considered for purposes of admissibility of petitions are those related to the criminal investigation and punishment of those responsible[12]. Such investigation is to be conducted promptly and ex officio, in order to protect the interests of the victims, preserve the evidence and even safeguard the rights of every person who in the context of the investigation may be considered a suspect. On the present case, the Commission, confirms that the alleged victim informed judicial authorities that she suffered acts of torture while held detained. Under these circumstances, taking into account that the State has failed to provide information which certifies that it complied with its duty to initiate an investigation pursuant to clarify what happened and eventually punish those responsible, the IACHR concludes, as in several previous cases, that the

[11] IACHR, Report No. 173/17, Petition 1111-08. Admissibility. Marcela Brenda Iglesias, Nora Ester Ribaudo and Eduardo Rubén Iglesias. Argentina. December 29, 2017, para. 8.

[12] IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10.

exception to the exhaustion of domestic remedies, in accordance to the set forth in Article 46.2.c) of the Convention is applicable [13]. Likewise, the IACHR considers that the facts raised on this end of the petition remain current given their lack of investigation, and that they were submitted within a reasonable time in the terms of Article 32.2 of the IACHR's Rules for Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

17. Taking these considerations into account, and upon examining the elements of fact and law exposed by the parties, the Commission appraises that the petitioner's allegations, concerning infringement of fair trial on the criminal proceeding and the lack of investigation of acts of torture and sexual violence, are not manifestly unfounded and require a study on the merits since the alleged facts, if corroborated, may characterize violations of rights established in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (legality and retroactivity), 11 (honor and dignity), 24 (equality before the law), and 25 (judicial protection) of the American Convention in relation to it is Articles 1.1(obligation to respect rights) and 2 (obligation to abide by domestic legal effects), to the detriment of the alleged victim and her family, as well as Article 7 of the Belém do Pará Convention and Article 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of the alleged victim.

18. Concerning the allegations from the State in regard to the "fourth instance formula", the Commission reiterates that, for purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as Article 47(b) of the American Convention so stipulates, or whether the petition is 'manifestly unfounded' or its 'total inadmissibility is evident', according to subsection (c) of such Article. The criterion to assess these requirements differs from the one used to decide on the merits of a petition. Likewise, within the scope of its mandate it is competent as to declare a petition admissible if it refers to domestic proceedings which may violate rights guaranteed by the American Convention. In this sense, upon admitting a petition, the IACHR does not intend to supersede the competence of domestic judicial authorities. Within the scope of its mandate, it is thus competent to declare a petition admissible and to decide on its merits if it refers to domestic proceedings which may violate rights guaranteed by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 9, 11, 24, and 25 of the American Convention in connection to it is Articles 1.1 as well as Article 7 of the Belém do Pará Convention; and Articles 1, 6 and 8 of the CIPST; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 28th day of the month of February, 2021. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.

[13] IACHR. Report No. 77-19. Petition 74-08. Admissibility. Claudio Roberto Fossati. Ecuador. 28 of mayo of 2019, para. 13; and Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruiz Fuentes. Guatemala. March 5, 2008, para. 64.

Annex 1

List of alleged victims

1. José Gonzalo Messa Quiñones (son)
2. Elena Messa Quiñones (daughter)
3. Segunda Elena Colchado de Quiñones (mother)
4. José Antonio Quiñones Bravo (father)
5. María Elena Quiñones Bravo (sister)
6. Gladys Jacqueline Quiñones Colchado (sister)
7. Esther Isabel Quiñones Colchado (sister)
8. Carmen Yadira Quiñones Colchado (sister)
9. Sonia Soledad Quiñones Colchado (sister)
10. Rosa Teresa Quiñones Colchado (sister)
11. Paúl Roberto Quiñones Colchado (btother)
12. Wilmer Rómulo Quiñones Colchado (btother)
13. Carlos Eduardo Quiñones Colchado (btother)
14. Ricardo Quiñones Colchado (btother)
15. Cesar Gustavo Quiñones Colchado (btother)