

**REPORT No. 65/10**  
PETITIONS 827-98 – RUTALDO ELMER ALEJO SAAVEDRA  
798-03 – RAÚL ANDRÉS ARIAS CONDORI  
ADMISSIBILITY  
PERU  
June 21, 2010

**I. SUMMARY**

1. This report refers to two petitions filed in their own names by Rutaldo Elmer Alejo Saavedra (P 827-98) and Raúl Andrés Arias Condori (P 798-03) [hereinafter “the alleged victims” or “the petitioners”], alleging violation by the Republic of Peru (hereinafter also “Peru,” “the State,” or “the Peruvian State”) of rights enshrined in the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”). The petitions indicate that the alleged victims were arrested and prosecuted pursuant to decree-laws relating to the crimes of terrorism and treason against the fatherland promulgated starting in May 1992. They allege that these decrees, as well as the criminal proceedings that derived from them, are contrary to provisions of the Convention. The petitions assert that the alleged victims were subjected to torture, isolated for long periods of time, and subjected to subhuman detention conditions. The petitioners claimed that, after being convicted by justice officials whose identities remained secret, they faced new trials brought pursuant to a new legislative framework on the subject of terrorism adopted starting in January 2003, which they alleged were also incompatible with the Convention. They point out that after being imprisoned for several years they obtained an acquittal but the court failed to provide for full restitution for material and moral damages suffered.

2. The State maintained that the facts initially related by the petitions have changed in view of the adoption of a new legislative framework on terrorism in early 2003. It pointed out that this new framework and the trials that derive from it adhere to the rights protected in the American Convention and the Political Constitution of Peru. It argued that the allegations made by the petitioners regarding supposed violations of due process and personal freedom have changed by virtue of their having obtained acquittals in trials heard by the National Terrorism Chamber and the Supreme Court of Justice. The State asked the IACHR to order the archiving of the petitions based on Article 48.1.b) of the Convention. Finally, it argued that the petitioners did not file their claims for indemnity with the domestic courts and concluded that those claims do not meet the requirement provided in Article 46.1.a) of the Convention.

3. After examining the positions of the parties in the light of the admissibility requirements of Articles 46 and 47 of the Convention, the Commission concluded that it is competent to hear the petitions and that they are admissible in terms of the alleged violation of the rights established in Articles 5, 7, 9, 10, 8, and 25 of the American Convention, as they relate to Articles 1.1 and 2 thereof and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. In addition, the IACHR concluded that petition 827-98 is admissible in terms of the alleged violation of the rights established in Articles 11 and 13 of the Convention. The IACHR decided to join the two petitions and process them together in the merits phase under case number 12.762. In addition, it decided to notify the parties of this admissibility report, publish the report, and include it in its annual report.

**II. PROCESSING BY THE COMMISSION**

4. Petition 827-98 was received on November 9, 1998 and the petitioner submitted additional information on July 21, August 3, and September 2, 1999, on July 12, 2001, and on April 25, 2006. On September 15, 2008, that documentation was forwarded to the State, which was given a period of two months to submit its response. On December 19, 2008 the State sent its response and on January 6, 2009 it submitted the related annexes. The petitioner submitted additional communications on March 13 and August 7, 2009, January 27 and March 16, 2010. In turn, the State submitted additional briefs on June 3, June 10, November 2 and 11, 2009 and April 30, 2010.

5. Petition 798-03 was received on September 30, 2003 and the petitioner submitted additional information on August 27, 2004 and March 22, 2006. On August 19, 2008 that documentation was forwarded to the State, which was given a period of two months to submit its response. On December 17, 2008 the State sent its response and sent additional briefs on January 6, June 23, and November 2, 2009. The petitioner submitted an additional communication on February 12, 2009.

### III. POSITIONS OF THE PARTIES

#### *Preliminary considerations*

6. In the petitions dealt with by this report, the State and the petitioners described a first series of criminal trials, conducted during the 1990s, and a second set following the voiding of the earlier trials. The former trials were held under decree laws applicable to terrorism, enacted during the administration of President Alberto Fujimori. In January 2003, the Peruvian State adopted a new legislative framework that caused the voiding of a number of trials conducted for the crimes of terrorism and treason against the fatherland. Before setting out the positions of the parties, the IACHR deems it to be appropriate addressing the two legal frameworks within which the incidents described by the parties took place.

#### *Antiterrorist legislation in force from May 1992 to January 2003*

7. Decree Law No. 25475, dealing with different forms of the crime of terrorism, was enacted in May 1992. In August of that year, Decree Law No. 25659 was enacted, criminalizing the offense of treason against the fatherland and giving the military justice system competence over the prosecution of that crime. Those decrees, along with decrees Nos. 25708, 25744, 25880, and other complementary provisions, equipped the Peruvian legal system with new exceptional procedures for investigating, examining, and prosecuting individuals accused of terrorism or treason against the fatherland.

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

9. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,<sup>1</sup> holding closed hearings, solitary confinement during the first year of prison terms,<sup>2</sup> and summary deadlines for presenting charges and issuing judgments in the case of the crime of treason against the fatherland.<sup>3</sup> In addition, these decrees denied suspects the assistance of a legal representative prior to their first statement to an agent of the Public Prosecution Service<sup>4</sup> and restricted the attorney’s participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,<sup>5</sup> established concealed identities for judges and prosecutors (“faceless courts”),<sup>6</sup> prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.<sup>7</sup>

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<sup>1</sup> Decree Law No. 25475, Art. 12(d).

<sup>2</sup> Decree Law No. 25475, Art. 20.

<sup>3</sup> Investigations, prosecutions, and sentencing for treason against the fatherland were governed by Decree Laws Nos. 25708 and 25744.

<sup>4</sup> The right to the assistance of freely chosen defense counsel from the very onset of criminal proceedings was later established by Article 2 of Law No. 26447.

<sup>5</sup> Decree Law No. 25475, Art. 13(h).

<sup>6</sup> With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

<sup>7</sup> Decree Law No. 25744, Art. 2.

10. As for their provisions of material law, these decrees allowed for the possibility of applying more than one criminal offense to actions of a similar or identical nature; they did not differentiate between different levels of *mens rea*,<sup>8</sup> and they only indicated minimum prison terms, without setting maximum penalties.<sup>9</sup>

11. On May 12, 1992, the Executive Branch of Government passed Decree-Law 25499, also called the Repentance Law, which regulated the reduction, exemption, remission or mitigation of imprisonment sentences for persons charged or convicted for the crime of terrorism who provided information leading to the capture of chiefs, heads, leaders or principal members of terrorist organizations.<sup>10</sup> By means of Supreme Decree No. 015-93-JUS of May 8, 1993, the Executive Branch adopted the Regulations for the Repentance Law, which provided, among other measures, the secrecy or change of identity for the repentant persons making the statement.<sup>11</sup> The Repentance Law expired on October 31, 1994.<sup>12</sup>

### ***Antiterrorist legislation in force as of January 2003***

12. On January 3, 2003, a series of provisions contained in the terrorism decree-laws enacted during the Fujimori administration were ruled unconstitutional by the Constitutional Court.<sup>13</sup> That decision ruled Decree Law 25659 unconstitutional and ordered accusations for the crime of treason against the fatherland as defined therein to be tried as terrorism, as provided for in Decree Law 25475. In addition, it annulled the provisions that prevented the recusal of judges and the subpoena of officers involved in the police arrest report as witnesses and the provisions that allowed civilians to be tried by military courts. At the same time, absolute incommunicado detention and solitary confinement during the first year of prison terms were also ruled unconstitutional.

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

14. With regard to statements, arrest warrants, and technical and expert opinions given before faceless judges, the Constitutional Court ruled that they were not automatically tainted and that the regular civilian judges hearing the new charges would have to verify their worth as evidence, conscientiously and in conjunction with other substantiating elements as set down in regular criminal procedural law.<sup>14</sup>

15. Between January and February 2003, the executive branch<sup>15</sup> issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926, and 927, with the aim of bringing the country's laws into line with the Constitutional Court's judgment of January 3, 2003. In general terms, those decrees ordered the voiding of all judgments and trials conducted before the military courts or faceless judicial officers, together with the referral of all such proceedings to the National Terrorism Chamber, further named National Criminal Chamber, which was created within the Supreme Court of Justice and charged with distributing the new trials to the Specialized Criminal Courts. The new antiterrorist legislation also provided for partially open

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<sup>8</sup> Decree Law No. 25475, Art. 2.

<sup>9</sup> Decree Law No. 25475, Art. 3.

<sup>10</sup> Decree Law No. 25499, Articles 1.II.a and 1.III.

<sup>11</sup> Supreme Decree No. 015-93-JUS, Articles 8.a and 36.

<sup>12</sup> The Repentance Law was repealed by Law 26345 of August 30, 1994.

<sup>13</sup> Resolution of the Constitutional Court of January 3, 2003, File No. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens.

<sup>14</sup> Resolution of the Constitutional Court of January 3, 2003, File No. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens, grounds paragraph No. 159.

<sup>15</sup> On January 8, 2003, the Congress of the Republic of Peru enacted Law 27913, whereby it delegated the power to legislate on terrorism-related matters to the executive branch.

hearings during oral proceedings<sup>16</sup> and prohibited the imposition of harsher sentences than those that had been handed down in the voided trials.<sup>17</sup>

16. With reference to steps taken during criminal investigations and examination proceedings before faceless civilian or military judicial officers, Article 8 of Legislative Decree No. 922 upheld the validity of examination proceeding commencement deeds, police statements given in the presence of a representative of the Public Prosecution Service, technical reports, search records, statements given to the National Police, and statements made by repentants. Finally, Article 3 of that Legislative Decree ruled that the voiding of proceedings held by faceless judges would not trigger automatic release from prison, which could take place only if the Public Prosecution Service declined to press charges or if the judiciary refused to commence examination proceedings.

#### **A. Position of the petitioners**

*Rutaldo Elmer Alejo Saavedra (P 827-98)*

17. According to the allegations, Rutaldo Elmer Alejo Saavedra, then 28-years-old, pre-university professor and Judicial Branch official, was arrested on April 1, 1996 on a public road in the city of Lima, without a court order and without being caught *in flagranti delicto*. The record indicates that he remained in the dungeons of the National Division Against Terrorism (DINCOTE – as in its Spanish acronym) for 53 days, where he was subjected to physical and psychological torture in an effort to force him to incriminate himself and other persons. The petitioner attached a copy of a newspaper clipping from April 27, 1996, with his photograph and statements made DINCOTE agents accusing him of being a Shining Path leader and of having participated in attacks using explosives on behalf of that criminal organization.

18. The petition indicates that during the first nine days of his detention, Mr. Alejo Saavedra was held entirely incommunicado and kept in unhealthy cellars with rats. It alleged that he was subjected to various torture sessions and on April 9, 1996 he lost consciousness after being punched several times in the head, developing cerebral edema and visual disturbances. According to the report, the alleged victim was transferred to the Miguel Castro Castro Prison on May 23, 1996.

19. The petitioner asserted that the detention statement produced by DINCOTE contains false evidence, such as the distortion of teaching material used in his work as a pre-university history professor and classified by police agents as subversive. He indicated that his arrest occurred as the result of statements made by four people whose identity is confidential, who availed themselves of the Repentance Law. He stated that those persons presented invented evidence to DINCOTE in order to obtain the benefits of reduced sentences provided under the Repentance Law.

20. The petitioner indicated that he had undergone an initial trial for the crime of treason against the fatherland, and that in his first statement before the court he complained that he was being tortured by DINCOTE agents. He alleged that military justice officials did nothing to protect his life and personal safety. The petitioner asserted that on August 29, 1998 he was sentenced to thirty years in prison by a faceless judge of the Military Examining Magistrate Court of the Peruvian Air Force. He stated that on September 4, 1997 he was finally acquitted by the Supreme Council of Military Justice, which based its decision on a retraction in an oral proceeding by one of those who had made statements to avail themselves of the Repentance Law. The petitioner indicated that despite the acquittal, the Military Council continued his imprisonment and referred the case to the ordinary justice system to evaluate opening up a case for the crime of terrorism under Decree-Law 25475. He emphasized that the trial in the military forum lasted 24 months, while the legislation in effect at the time established an expeditious timeframe for prosecuting the crime of treason against the fatherland.

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<sup>16</sup> Legislative Decree No. 922, Art. 12(8).

<sup>17</sup> Legislative Decree No. 922, fifth complementary provision.

21. The petitioner asserted that on May 12, 1998 he was notified by the Public Prosecutor's Office of an arrest order and the start of a new trial before the 28<sup>th</sup> Criminal Court of Lima for the crimes provided in Articles 319 and 320 of the Penal Code. He asserted that the indictment was based on the same detention statement produced by DINCOTE in April 1996, concocted statements from repentants, and other evidences produced before the military justice officials. The petition indicates that on May 19, 1999 the National Criminal Chamber for Terrorism Cases sentenced him to seven years in prison for the crime of collaborating with terrorism as defined in Article 321.4 of the Penal Code of 1991. The petitioner emphasized that this crime is not consistent with the charges made by the Public Prosecutor in his indictment, on the basis of which the 28<sup>th</sup> Criminal Court of Lima had issued the order to open the preliminary proceeding. He indicated that despite this, on November 17, 1999 the Supreme Court of Justice declared that there were no grounds to nullify the decision of the National Criminal Chamber of May 19, 1999.

22. The petitioner asserted that on July 12, 1999 he submitted a *habeas corpus* action seeking to secure his freedom and nullification of the judgment of the National Criminal Chamber for Terrorism of May 19, 1999. He indicated that after being referred to different courts, the action was decided in his favor by the Constitutional Court on January 18, 2001, which ordered a new oral proceeding. The petition claims that the alleged victim was not informed of the decision of the Constitutional Court until August 23, 2001 and was not released from prison despite having been held for more than five years without a final conviction.

23. According to the allegations, Mr. Alejo Saavedra underwent a second oral proceeding before the National Criminal Chamber, and was acquitted on January 28, 2002. The Senior Prosecutor filed an appeal seeking reversal of this decision with the Provisional Criminal Chamber of the Supreme Court of Justice, which voided the acquittal and ordered a third oral proceeding. The petitioner asserted that the third trial began in April 2003 before the National Criminal Chamber, wherein he was convicted in the first instance to the sentence he had already served of five years and seven months. The petition indicates that on January 20, 2005 the Supreme Court of Justice amended the decision, definitively acquitting Mr. Alejo Saavedra.

24. The petitioner emphasized that over the course of nine years of successive criminal proceedings he was held in the Miguel Castro Castro Prison for five years, seven months, and 12 days, a situation that he contends has resulted in irreparable damage to his life plans and the psychological and moral integrity of his family. He stated that he was held in crowded, wet, and airless cells. He indicated that for several months, prison officials prevented him from receiving magazines, newspapers, books and teaching materials provided by his relatives. He stated that the foregoing results in a violation of the right established under Article 13 of the American Convention.

25. The petitioner asserted that before his arrest he was the only source of income for the maintenance of his younger siblings, who were in a precarious economic situation. He stated that his father, Guillermo Alejo Alberca, who died on January 17, 2002, suffered from alcoholism due to public humiliation because his son was detained and accused of belonging to the Shining Path. He stated that his maternal aunt, Mrs. Juana Alberca Ríos, who raised him, was not allowed to visit him in prison until December 2000. He indicated that until that date visits to those accused of terrorism or treason against the fatherland were restricted to direct family members who demonstrated their blood kinship through official documentation. He stated that on various occasions the mother who raised him asked the National Prison Institute for permission to visit him at the Miguel Castro Castro Prison, which was repeatedly denied until December 2000. He stated that this situation contributed to the deteriorating health of Mrs. Juana Alberca Ríos, who died on May 8, 2002.

26. The petitioner maintained that the Peruvian State has the obligation to compensate him for the material and moral damages he suffered due to the torture and subhuman detention conditions to which he was subjected, as well as the arbitrary deprivation of his freedom for more than five years. He argued that although Law 24973 governs compensation for judicial errors in Peru, it does not provide an effective remedy to allow people who are acquitted after many years of imprisonment to be fully compensated. He stressed that Articles 3.b) and 18 of that law establish that the court that issues the

acquittal decision “shall include therein the order to pay the corresponding compensation...” However, he pointed out that in the acquittal order ruling in his favor, dated January 20, 2005, the Supreme Court of Justice did not establish any compensation at all.

27. Finally, the petitioner alleged that the Peruvian State is responsible for violating the rights established in Articles 5, 7, 9, 10, 11, 13, 8, and 25 of the American Convention, as they relate to the obligations under Article 1.1 of the same instrument.

*Raúl Andrés Arias Condori (P 798-03)*

28. According to the allegation, Raúl Andrés Arias Condori, aged 23 and a law student, was traveling on the outskirts of the city of Lima on November 19, 1992, when he was detained by local inhabitants and accused of looking suspicious. The petition indicates that the inhabitants handed Mr. Arias Condori over to police officers in the area, who treated him to several blows that caused him to bleed and left him with a permanent deformation of the forehead.

29. The petitioner maintained that he was not *in flagranti delicto* and there was no court order against him. He stated that members of the National Police took him to the Monserrate Police Station in Lima and to the DINCOTE facilities, where he remained incommunicado for several days. He asserted that he was subjected to threats, humiliation, and physical and psychological torture, and was forced to sign an arrest statement and confiscation orders.

30. The petition alleges that on January 19, 1993, the General Legal Medical Director of Lima, Dr. Elba Placencia Medina, sent DINCOTE a medical certificate dated November 25, 1992, describing recent abrasions on the face and lower limbs of Mr. Arias Condori.<sup>18</sup> The petitioner stated that the DINCOTE agents concealed that certificate from court officials. He also alleged that he sent communications to the Judicial Branch reporting the torture and mistreatment to which he had been subjected, but obtained no response.

31. According to the information submitted by the petitioner, on December 3, 1992 the 10<sup>th</sup> Examining Magistrate’s Court of Lima for Terrorism Matters issued an order opening the investigation for a crime against the public order – terrorism as provided in Decree-Law 25475. The indictment accused Mr. Arias Condori of having participated in flag waving alluding to the Shining Path, and of having placed a bomb in a public place of the municipality of *Cercado de Lima* on November 18, 1992. The petitioner asserted that when the National Police searched him they drew up a record reporting that they found two black adhesive insulation tapes, a lighter, and a sailcloth briefcase. The petition indicates that the report recording the seizure of those items and the statement made by Mr. Arias Condori to DINCOTE agents were the only evidence submitted by the Public Prosecutor in his indictment.

32. The information submitted indicates that on September 24, 1994 the alleged victim was sentenced by faceless judges to 20 years in prison, and this decision was upheld in a definitive ruling from the Supreme Court on July 5, 1996.

33. The petitioner asserted that on May 21, 2003 the National Terrorism Chamber declared the criminal process conducted against him between 1992 and 1996 to be void. He indicated that in the new proceeding his attorney reiterated the tortures that allegedly occurred at the DINCOTE facilities in November 1992. The petition claims that the alleged victim told the National Terrorism Chamber that the record of seizure and statements gathered by the National Police in November 1992 had been signed under coercion and threats. According to the information submitted, the National Criminal Chamber acquitted Mr. Raúl Andrés Arias Condori on May 19, 2006, and this decision was upheld by a definitive ruling issued by the Supreme Court on June 12, 2008.

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<sup>18</sup> Initial petition received on September 30, 2003, annexes, copy of official letter 0181-93-IMLP/DGMLL of January 19, 1993 sent to DINCOTE, signed by the General Legal Medical Director, Dr. Elba Placencia Medina.

34. The petitioner emphasized that he was imprisoned for 14 years in the Miguel Castro Castro Prison and faced various criminal proceedings for a period of more than 16 years. He alleged that this situation resulted in irreparable damage to his life plans, as well as moral and material damages to his family. Finally, he asserted that the Peruvian State is responsible for the violation of rights established in Articles 1, 2, 5, 7, 8, 9, 11, 24, and 25 of the American Convention.

#### **B. Position of the State**

##### *Rutaldo Elmer Alejo Saavedra (P 827-98)*

35. The State's recounting of events was similar to that of the petitioner with respect to the criminal proceedings conducted in the military and ordinary forums since April 1996. It asserted that the initial petition filed in November 1998 by Mr. Rutaldo Elmer Alejo Saavedra was intended to question the validity of the proceedings to which he was subject at the time. It indicated that after those proceedings were invalidated, the Supreme Court of Justice finally acquitted the alleged victim in a definitive ruling dated January 20, 2005. The State maintained that with that decision the domestic courts remedied the alleged violations of due process, personal freedom, and judicial protection to the detriment of Mr. Alejo Saavedra. It argued that the facts that formed the basis for the initial petition would not remain and asked the IACHR to order the archiving of the petition pursuant to Article 48.1.b) of the American Convention.

36. As for the allegations that Mr. Rutaldo Elmer Alejo Saavedra was not compensated, the State asserted that the alleged victim did not present this claim to the domestic courts. It indicated that Law 24973 governs the procedures for exercising the constitutional right to be indemnified for material and moral damages deriving from judicial error or arbitrary detention. Regarding the allegation that in its definitive ruling of January 20, 2005 the Supreme Court failed to establish compensation for Mr. Elmer Alejo, the State asserted that domestic legislation would limit the setting of compensatory amounts to decisions on appeals for review, and not appeals for reversal, which was decided in the referenced definitive ruling of January 20, 2005.

37. The State asserted that even when the alleged victim lacks financial resources to file a civil action for compensation, the Ministry of Justice has a Program of Free Legal Assistance (ALEGRA), which supports court actions on various matters. It also indicated that Peruvian Bar Associations and Academic Centers have programs to provide free counsel that could have been used by Mr. Rutaldo Elmer Alejo. In this respect, the State concluded that the allegations relating to the payment of compensation did not satisfy the prior exhaustion of domestic remedies requirement provided in Article 46.1.a) of the American Convention.

38. Finally, the State did not submit specific information on the alleged violations of the personal integrity of the alleged victim during his imprisonment at the DINCOTE facilities and the Miguel Castro Castro Prison.

##### *Raúl Andrés Arias Condori (P 798-03)*

39. The State submitted information similar to that presented by the petitioner regarding the criminal process initiated in November 1992. It indicated that the process was voided on May 21, 2003 by the National Terrorism Chamber pursuant to Article 2 of Legislative Decree 926, which establishes the nullification of terrorism proceedings conducted by court officials with secret identities or prohibitions on the filing of recusals.

40. The State asserted that after a new criminal investigation was opened on May 19, 2006 the National Criminal Chamber issued an acquittal ordering the immediate release of Mr. Arias Condori. It indicated that on June 12, 2008 the Supreme Court of Justice declared that there were no grounds for nullifying that decision. According to the information submitted by the State, on September 17, 2008 the National Criminal Chamber ordered the voiding of the alleged victim's police and court record.

41. The State maintained that potential violations of the guarantees and judicial protection of Mr. Arias Condori were remedied in the second criminal proceeding opened in early 2003. It asserted that the proceeding was heard by competent and impartial judges and courts, and in the context of due process guarantees.

42. Regarding the allegations that Mr. Arias Condori was not compensated, the State asserted that this claim was not submitted to the domestic courts. It pointed out that Law 24973 governs the procedures for exercising the constitutional right to be compensated for material and moral damages deriving from judicial error or arbitrary detention. In this respect, the State indicated that the petitioner's allegations regarding the alleged right to be compensated do not satisfy the requirement provided in Article 46.1.a) of the American Convention.

43. In view of the acquittal and release of Mr. Raúl Andrés Arias Condori in May 2006, the State asserted that the facts presented in the initial petition have changed substantially and asked the IACHR to order the archiving of the petition pursuant to Article 48.1.b) of the American Convention.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

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

44. The petitioners are entitled, under Article 44 of the Convention, to file complaints. The alleged victims are individuals who were under the jurisdiction of the Peruvian State on the date of the alleged incidents. In addition, Peru ratified the American Convention on July 28, 1978. Consequently, the Commission has competence *ratione personae* to examine the petitions.

45. The Commission has competence *ratione loci* to hear the petitions, in that they describe violations of rights protected by the American Convention that allegedly took place within the territory of a state party thereto.

46. In addition, the Commission has competence *ratione temporis*, since the general obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petitions allegedly occurred.

47. Finally, the Commission has competence *ratione materiae*, because as explained below, the petitions addressed by this report allege facts that could tend to establish violations of rights protected by the American Convention and by the Inter-American Convention to Prevent and Punish Torture, ratified by the Peruvian State on February 27, 1990.

##### **B. Exhaustion of domestic remedies**

48. Article 46(1)(a) of the American Convention states that for a complaint lodged with the Inter-American Commission in compliance with Article 44 of the Convention to be admissible, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. That requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to enable them to resolve it before it is brought before an international venue.

49. The petitions considered in this report present acts of aggression, torture, and mistreatment allegedly committed by agents of the State. The information available indicates that those alleged facts were reported to different domestic courts since the first steps taken in the proceedings against the alleged victims during the 1990s.

50. The precedents established by the Commission indicate that whenever a crime that can be prosecuted *ex officio* is committed, the State has the obligation to pursue and promote the criminal

proceeding and that, in such cases, this constitutes the appropriate venue for clarifying the facts, judging those responsible, and establishing the respective criminal penalties, in addition to making other relevant forms of reparation possible. The facts presented by the petitioners regarding the alleged tortures and other assaults on their personal integrity are defined in domestic legislation as criminal behavior that should be investigated and judged *ex officio* by the judicial authorities, and thus this is the process that constitutes the appropriate venue for the petitions considered in this report.<sup>19</sup>

51. The Peruvian State has not submitted information on any investigations initiated regarding the alleged tortures and subhuman detention conditions harmful to the alleged victims, nor has it filed an objection regarding a failure to exhaust domestic remedies in this regard, and thus it tacitly waived submission of this defense.

52. In addition to the alleged violations of personal integrity, the petitions considered in this report suggest the violation of other provisions of the American Convention based on the detention and criminal cases against the alleged victims. The information submitted indicates that after the proceedings conducted during the 1990s were nullified, the alleged victims were definitively acquitted through rulings issued by the Supreme Court of Justice on January 20, 2005, with respect to Rutaldo Elmer Alejo Saavedra, and on June 12, 2008, with respect to Raúl Andrés Arias Condori. Both parties indicated that the second series of criminal proceedings culminated with the aforementioned definitive rulings of the Supreme Court of Justice. Based on the foregoing considerations, the IACHR concludes that the petitions considered in this report satisfy the requirement provided in Article 46.1.a) of the American Convention with respect to the claims relating to detention and criminal proceedings conducted against the alleged victims.

53. As to the objection formulated by the State regarding the failure to exhaust domestic remedies, in view of the fact that the alleged victims did not invoke the compensation procedure provided in Law 24973, the petitioner Rutaldo Elmer Alejo Saavedra maintained that Articles 3.b) and 18 of that law make it incumbent upon the court issuing the definitive ruling to set compensation,<sup>20</sup> which did not occur in the decisions acquitting the alleged victims. Without prejudging the effectiveness of Law 24973, the Peruvian State did not explain how the procedure provided therein would be suitable for remedying the alleged violations of personal integrity and freedom, judicial guarantees, and other rights protected in the American Convention, violations that allegedly occurred to the detriment of Rutaldo Elmer Alejo Saavedra and Raúl Andrés Arias Condori. In this respect, and for the purposes of the requirement provided in Article 46.1.a) of the Convention, the IACHR concludes that the alleged victims could not be required to file additional appeals in order for the Peruvian State to remedy the alleged violations of human rights presented before this international body.

### **C. Deadline for submitting the petition**

54. Article 46.1.b) of the Convention establishes that in order for a petition to be declared admissible it must have been submitted within a period of six months after the date when the interested party was notified of the final decision that exhausted the domestic jurisdiction.

55. According to paragraph 52 *supra*, the second series of criminal proceedings conducted against the alleged victims concluded between January 2005 and June 2008, subsequent to the filing of

<sup>19</sup> IACHR, Report No. 99/09, Petition 12.335, Colombia, *Gustavo Giraldo Villamizar Durán*, 29 October 2009, para. 33.

<sup>20</sup> In a communication received on March 13, 2009, the petitioner Rutaldo Elmer Alejo Saavedra attached copy of the Official Journal, *El Peruano*, of December 28, 1998, transcribing Law No. 24973. In the relevant sections, Articles 3.b) and 18 of that law establish as follows:

Article 3 – The following are entitled to indemnification for judicial error:

b) Those who have been subjected to a judicial proceeding and deprived of their freedom as a result thereof and have subsequently obtained an order for definitive archiving or a final acquittal.

Article 18 – In the cases indicated in subparagraphs a) and b) of Article 3, the judicial authority that issues the ruling shall establish therein the order to pay the corresponding indemnity (...).

the respective petitions. In this sense, satisfaction of the requirement established in Article 46.1.b) of the American Convention is intrinsically linked to the exhaustion of domestic remedies, which is thus satisfied.

56. Regarding the allegations on the conditions of detention, torture, and other alleged violations of personal integrity, as indicated in paragraphs 49 and 51 *supra*, these facts were reported to judicial authorities on various occasions. Given the absence of arguments presented by the State and of any information in the file regarding the initiation of investigations as of the date of this report, the IACHR considers that the petitions were submitted within a reasonable period of time.

#### **D. Duplication of procedures and international *res judicata***

57. Article 46.1.c) of the Convention provides that the admissibility of a petition must meet the requirement that the subject of the petition “is not pending in another international proceeding for settlement”; and Article 47.d) of the Convention stipulates that the Commission shall consider inadmissible any petition or communication if it is substantially the same as one previously studied by the Commission or by another international organization. The parties have not put forward the existence of any of these two circumstances, nor can they be inferred from the case files.

#### **E. Characterization of the alleged incidents**

58. For the purposes of admissibility, the Commission must decide whether or not the petition states facts that tend to establish a violation of rights as stipulated in Article 47.b) of the American Convention and whether or not the petition is “manifestly groundless” or “obviously out of order,” according to subparagraph c) of the same article. The rule governing evaluation of these particulars is different from the one required to decide on the merits of a complaint. The Commission must conduct a *prima facie* evaluation to examine whether the complaint substantiates the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. This review is a summary analysis that does not involve any prejudgment or advanced opinion on the merits of the case.

59. In view of the factual evidence submitted by the parties, the IACHR considers that the circumstances in which the detention of the alleged victims occurred, the alleged acts of torture, and the conditions of detention at the DINCOTE facilities and the Miguel Castro Castro Prison could tend to establish the violation of rights established in Articles 5 and 7 of the American Convention, consistent with Articles 1.1 and 2 of the same instrument and, based on the principle of *iura novit curia*, the potential violation of the rights established in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of Rutaldo Elmer Alejo Saavedra and Raúl Andrés Arias Condori. In addition, the IACHR considers that the effects of the facts referred to in this paragraph, as well as the alleged holding of the alleged victims incommunicado for long periods of time and restrictions on the right to receive visitors could establish violations of the right enshrined in Article 5.1 of the Convention, also to the detriment of their family members.

60. Regarding the alleged public exposure of Mr. Rutaldo Elmer Alejo Saavedra as a “terrorist” and member of Shining Path, the IACHR considers that should such facts be proven they could tend to establish a violation of the right enshrined in Article 11 of the American Convention. The IACHR will evaluate in the merits stage whether the alleged prohibition on Mr. Alejo Saavedra’s access to teaching materials, newspapers, and magazines during his imprisonment at the Miguel Castro Castro Prison, and the opening of a preliminary investigation in view of an alleged distortion of teaching materials used in his job as pre-university professor, constitute a potential violation of the right established in Article 13 of that instrument.

61. As for the allegations regarding the criminal proceedings conducted against the alleged victims during the 1990s, as well as the alleged incompatibility with the American Convention of the legislative framework supporting those proceedings, the IACHR considers that these could establish a violation of rights enshrined in Articles 9, 10, 8, and 25 as they relate to Articles 1.1 and 2 of the same instrument, all to the detriment of Rutaldo Elmer Alejo Saavedra and Raúl Andrés Arias Condori. In the merits phase, the Commission will analyze the arguments of the Peruvian State that the legislation in the

area of terrorism adopted starting in January 2003, the criminal proceedings deriving from that legislation, and the acquittal obtained by the alleged victims have remedied the alleged violations of the aforementioned provisions of the Convention.

62. Regarding the alleged violation of the rights enshrined in Articles 11 and 24 of the Convention to the detriment of Raúl Andrés Arias Condori, the IACHR considers that the petitioner has not submitted sufficient evidence to indicate a potential breach to those provisions.

63. Finally, in that the lack of foundation or the inadmissibility of the allegations made in the petitions is not evident, the Commission concludes that the complaints considered in this report satisfy the requirement established in Articles 47.b) and c) of the American Convention.

## V. CONCLUSIONS

64. Based on the factual and legal considerations presented and without prejudging the merits of the case, the Inter-American Commission concludes that petitions 827-98 and 789-03 satisfy the admissibility requirements provided in Articles 46 and 47 of the American Convention and consequently,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

#### DECIDES:

1. To declare petitions 827-98 and 798-03 admissible with respect to Articles 5, 7, 9, 10, 8, and 25 of the American Convention as they relate to the obligations established in Articles 1.1 and 2 of the same instrument and based on the principle of *iura novit curia*, in relation to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To declare petition 827-98 admissible also with respect to Articles 11 and 13 of the American Convention in connection with the obligations established in Article 1.1 of the same instrument.

3. To declare inadmissible the alleged violation of the rights established in Articles 11 and 24 of the American Convention with respect to petition 798-03.

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

5. To join the petitions considered in this Admissibility Report under case record 12.762 and initiate processing on the merits of the case.

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

Approved by the Commission on June 21, 2010. (Signed: Felipe González, President; Paulo Sergio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).