

**REPORT No. 74/10**  
PETITIONS 574-98 – LUIS ALEJANDRO MIRANDA MOSCOL  
1067-03 – JORGE EDUARDO OLIVARES DEL CARPIO  
766-04 – AURELIO AQUINO PARI  
863-04 – BORIS MIJAIL TAYPE CASTILLO  
ADMISSIBILITY  
PERU  
July 12, 2010

**I. SUMMARY**

1. This report deals with petitions lodged on behalf of Luis Alejandro Miranda Moscol (P 574-98)<sup>1</sup>, Jorge Eduardo Olivares del Carpio (P 1067-03)<sup>2</sup>, Aurelio Aquino Pari (P 766-04)<sup>3</sup> and Boris Mijail Taype Castillo (P 863-04)<sup>4</sup> (“the alleged victims”), which allege the violation, by the Republic of Peru (“Peru,” “the State” or “the Peruvian State”), of rights enshrined in the American Convention on Human Rights (“the American Convention” or “the Convention”). The petitions claim that between 1992 and 1995, the alleged victims were arrested, prosecuted, and convicted under decree laws applicable to the crimes of terrorism and treason against the fatherland. They maintain that those decrees, and the criminal proceedings based on them, were in breach of a series of provisions contained in the American Convention. They also claimed that the alleged victims were tortured, kept in isolation for long periods, and held in subhuman conditions. The petitioners affirmed that after being convicted by military courts the alleged victims were retried before ordinary courts under legislative decrees enacted after January of 2003, which they claimed were also incompatible with the American Convention.

2. The State maintained that the facts set out initially in the petitions have altered substantially following the adoption of the new legislative framework governing terrorism in early 2003. It stated that this new framework and the criminal trials conducted under it are in line with the rights and guarantees set forth in the American Convention and the Constitution of Peru. Finally, it claimed that the facts described in the petitions do not tend to establish violations of any of the Convention’s provisions and asked the IACHR to rule them inadmissible in accordance with Article 47(b) thereof.

3. After examining the parties’ positions in light of the admissibility requirements set out in Articles 46 and 47 of the American Convention, the Commission concluded that it is competent to hear the four petitions and that they are admissible as regards the alleged violation of the rights enshrined in Articles 5, 7, 9, 11, 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, and of the rights contained in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. Furthermore, the IACHR decided to join the four petitions and to process them together in the merits stage under the number 12.765. Finally, the Commission decided to notify the parties of this Report on Admissibility, to make it public, and to include it in its Annual Report.

**II. PROCESSING BY THE COMMISSION**

4. Petition 574-98 was received on November 9, 1998, and the petitioners submitted additional information on December 7, 1998, July 3, 2000, May 7 and December 19, 2001, October 29, 2007, and July 22, 2008. The relevant parts of these documents were sent to the State on April 13, 2009, with a time limit of two months to respond. On June 15, 2009, the State presented its response and on

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<sup>1</sup> Filed on November 9, 1998 by Bertha Elena Temoche García and María Luisa Miranda Moscol. On October 29, 2007, Ms. Rosa A. Grados Vicuña and the alleged victim himself, Mr. Luis Alejandro Miranda Moscol, were registered as petitioners.

<sup>2</sup> Filed on December 8, 2003, by Mr. Jorge Eduardo Olivares del Carpio. The alleged victim’s parents, Ms. Julia L. del Carpio de Olivares and Mr. Federico Olivares Salas also submitted communications throughout the processing of the case.

<sup>3</sup> Filed on August 26, 2004, by Mr. Aurelio Aquino Pari.

<sup>4</sup> Filed on September 13, 2004, by Mr. Boris Mijail Taype Castillo.

November 2 and December 18, 2009 submitted additional briefs. The petitioners presented additional information on August 14, 2009.

5. Petition 1067-03 was received on December 8, 2003 and in briefs of November 10, 2004, January 18, and October 25, 2005, August 11, 2006, March 5 and May 8, 2007, May 13, June 4 and August 26, 2008 and January 29, 2009 the petitioners presented additional information. The relevant parts of these documents were sent to the State on April 13, 2009 with a time limit of two months to present a response. On July 21, 2009, the State presented its reply and on September 26, November 2, and December 2, 2009, January 19, May 17 and June 11, 2010 submitted additional briefs. The petitioners presented additional information on August 25, September 8 and 22, November 6 and December 23, 2009, March 30 and May 3, 2010.

6. Petition 766-04 was received on August 26, 2004, and on April 17, 2006 the petitioner presented additional information. The relevant parts of these documents were sent to the State on August 19, 2008, setting a time limit of two months to submit a response. On December 9, 2008, the State presented its response and on January 6, May 1, August 24 and November 2, 2009 submitted additional information. The petitioner submitted additional information on February 23 and July 13, 2009.

7. Petition 863-04 was received on September 13, 2004 and on July 12, 2005, March 23, 2006, July 22, 2008 the petitioner submitted additional information. On August 20, 2008, the relevant parts of these documents were sent to the State, with a time limit of two months to present a response. On April 29, 2009, the State sent its response and on September 4 and 24, November 24 and December 8, 2009, submitted additional information. The petitioner supplied additional information on July 1, 2009, January 8 and March 16, 2010.

### **III. POSITIONS OF THE PARTIES**

#### ***Preliminary considerations***

8. In the petitions dealt with by this report, the State and the applicants described a first series of criminal trials, conducted during the 1990s, and a second set following the voiding of the earlier trials. The former criminal proceedings 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 in which the incidents described by the parties took place.

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

9. 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 jurisdiction 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 exceptional procedures for investigating, examining, and prosecuting individuals accused of terrorism or treason against the fatherland.

10. 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.

11. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,<sup>5</sup> holding closed hearings, solitary confinement during the first year of prison terms,<sup>6</sup> and summary deadlines for presenting charges and issuing judgments in the case of the crime of treason against the fatherland.<sup>7</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>8</sup> and restricted the attorney's participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,<sup>9</sup> established concealed identities for judges and prosecutors ("faceless courts"),<sup>10</sup> prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.<sup>11</sup>

12. 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>12</sup> and they only indicated minimum prison terms, without setting maximum penalties.<sup>13</sup>

13. 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>14</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>15</sup> The Repentance Law expired on October 31, 1994.<sup>16</sup>

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<sup>5</sup> Decree Law No. 25475, Art. 12(d).

<sup>6</sup> Decree Law No. 25475, Art. 20.

<sup>7</sup> Investigations, prosecutions, and sentencing for treason against the fatherland were governed by Decree Laws Nos. 25708 and 25744.

<sup>8</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>9</sup> Decree Law No. 25475, Art. 13(h).

<sup>10</sup> With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

<sup>11</sup> Decree Law No. 25744, Art. 2.

<sup>12</sup> Decree Law No. 25475, Art. 2.

<sup>13</sup> Decree Law No. 25475, Art. 3.

<sup>14</sup> Decree Law No. 25499, Articles 1.II.a and 1.III.

<sup>15</sup> Supreme Decree No. 015-93-JUS, Articles 8.a and 36.

<sup>16</sup> The Repentance Law was repealed by Law 26345 of August 30, 1994.

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

14. 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>17</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.

15. 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.

16. With regard to statements, arrest warrants, 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>18</sup>

17. Between January and February 2003, the Executive Branch<sup>19</sup> issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926, and 927,<sup>20</sup> 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 hearings during oral proceedings<sup>21</sup> and prohibited the imposition of harsher sentences than those that had been handed down in the voided trials.<sup>22</sup>

18. 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 persons who applied to the benefits of Repentance Law ("*arrepentidos*"). 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. Petitioners**

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<sup>17</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>18</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>19</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.

<sup>20</sup> Legislative Decree 927 regulated the criminal law enforcement in matters of terrorism. It was derogated by the Law 29423 of October 14, 2009, which rendered inapplicable the requests for reduction of prison sentence, partial liberty and conditional parole by persons convicted of terrorism.

<sup>21</sup> Legislative Decree No. 922, Art. 12(8).

<sup>22</sup> Legislative Decree No. 922, fifth complementary provision.

## 1. Common claims

19. The petitions dealt with in this report claim that the alleged victims were arrested between 1992 and 1995 by members of National Anti-Terrorism Directorate of the Peruvian National Police (DINCOTE as in its Spanish acronym) or by other security forces, while not in *flagranti delicto* and without warrants for their arrest. They maintained that the alleged victims were prosecuted and convicted of the crime of treason against the fatherland, with the examination stage, trial, and sentencing governed by the “antiterrorist legislation” that came into force after May 1992.

20. The petitioners hold that the decrees making up that legislation are incompatible with the Constitution of 1979, in force at the time of their enactment, and the Constitution of 1993, as well as with the international human rights treaties ratified by Peru. They also stated that by having been enacted under a *de facto* regime, the 1992 decree laws were irretrievably defective.

21. The petitions claim that the alleged victims were tried before the military justice system by judicial officials whose identities were kept secret. According to the allegations, they were forced to sign blank pages or confessions after being tortured, and they were unable to refute evidence brought against them or to meet in private with defense counsel. It is also claimed that the charges brought by the Public Prosecution Service were based on fabricated or planted evidence and accusations made by “*arrepentidos*” or other persons under coercion, and that the accused were denied the opportunity of cross-examining the individuals who provided that information.

22. With reference to their personal liberty, the petitions claim that the alleged victims were detained without being informed of the charges against them, and that they were not brought before a competent authority to exercise judicial oversight over their arrests.

23. Regarding their detention conditions, the alleged victims were reportedly kept in isolation for periods of more than 23 hours a day; they were given no socio-pedagogical activities to foster their rehabilitation; they were subjected to continuous transfers, to locations far away from their families; in some cases they were housed in prisons with extremely low temperatures and precarious detention conditions, such as Challapalca-Tacna and Yanamayo-Puno, located at more than 4,000 meters above sea level; and their right to receive visits was restricted.

24. The four petitions claim that the trials before the military courts were voided by the National Terrorism Chamber in and after January 2003, under the judgment of the Constitutional Court of January 3 of that year and Legislative Decrees Nos. 921 to 927.<sup>23</sup> The alleged victims were convicted for the crime of terrorism by courts of the ordinary jurisdiction as provided for in Decree Law No. 25475, and the sentence imposed was upheld on appeal in each and every instance.

25. In general terms, the petitioners claimed that the new antiterrorist legislation was enacted after the commission of the offenses with which the alleged victims were charged, and they hold that the use of those laws in their cases violates the principle of freedom from *ex post facto* criminal laws. They asserted that evidence produced before the faceless military courts was upheld in the new trials before the regular justice system. They claimed that the creation of the National Terrorism Chamber, further named National Criminal Chamber, and its actions in these cases, following the alleged incidents, were in breach of the right to be judged by a court pre-established by law. They contended that the bringing of a second trial for allegations already ruled on during the 1990s was in breach of the principle of double jeopardy.

26. The petitioners claimed that following the voiding of their military convictions, the alleged victims were held in custody for several days or months, in the absence of final convictions and of procedural grounds that would have justified their preventive custody. They held that this undermined

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<sup>23</sup> According to the petitioners, the military trials of Mr. Aurelio Aquino Pari were voided prior to 2003, with the proceedings of the new examination phase before the civilian courts referred to the National Terrorism Chamber at the start of that year.

their right to the presumption of innocence and to personal liberty. They claimed that although the offense of treason against the fatherland, for which the alleged victims were originally convicted, was struck off the Peruvian Criminal Law, the offense of terrorism as provided for in Article 2 of Decree Law 25475, as well as the offenses of collaboration and affiliation to terrorist groups, ruled under Articles 4 and 5 of the same decree law, remain ambiguous and imprecise, in spite of the parameters for interpretation set by the Constitutional Court in its judgment of January 3, 2003.<sup>24</sup>

27. The petitioners indicated that through Law 29423 of October 2009, the Peruvian Congress abolished Legislative Decree 927 which regulated the criminal law enforcement in matters of terrorism. They stated that with the abolition of the said legislative decree, the benefits of reduction of prison sentence through study and work, partial liberty and conditional parole became inapplicable to persons convicted of terrorism. According to the petitioners, the retroactive application of Law 29423 against them involves a breach of the rights protected in the American Convention.

## 2. Specific allegations

### *Luis Alejandro Miranda Moscol (P 574-98)*

28. The petitioners alleged that the then Professor Luis Alejandro Miranda Moscol was arrested in the early hours of October 1, 1992, at his home in the Piura Province. They stated that officers of the Peruvian Investigatory Police Force (PIP) broke into his home, without a court order, blindfolded him, and forcefully drove him to the central police station of Piura, where he was kept incommunicado for 19 days. They indicated that no illegal material was found during the PIP raid, and that personal belongings of the alleged victim were damaged during the police's break-in.

29. The petitioners asserted that during the first ten days of detention Mr. Luis Miranda Moscol was subjected to beatings and electric shocks to his genitals, joints and lips and plunged into a tank of fetid water. He was then sent to hospital on October 4, 1992 after suffering cardiac arrhythmia. They added that Mr. Miranda Moscol was forced to listen to the cries of women and kids while officers of the PIP made him believe that they were torturing his wife and children. The petitioners attached a witness statement from a medical examiner called Jorge de la Cruz Flores, reporting that on October 4, 1992, he attended Mr. Luis Miranda Moscol, who "appeared to be in a generally bad condition, dehydrated, with evidence of subcutaneous bruising on the arms, back, legs and with injuries in the elbow and knee joints."<sup>25</sup> Applicants indicated that the alleged victim was paraded before the media wearing a striped suit.

30. According to the allegations, Mr. Miranda Moscol was accused of belonging to the insurgent group Shining Path and sentenced by a military tribunal to life imprisonment for the offense of treason against the fatherland. On March 24, 1993, Supreme Military Council upheld the said sentence and on December 12, 1994, the same Supreme Council dismissed an extraordinary review appeal filed by the alleged victim's wife. The petitioners confirmed that this sentence was based on declarations of "arrepentidos" and statements obtained under torture. They maintained that Mr. Miranda Moscol's lawyer was harassed by military agents and prevented from preparing an adequate defense. They emphasized that Mr. Miranda Moscol was transferred to detention centers far away from his family, such as Challapalca and Chiclayo.

31. The petitioners alleged that after the voiding of the proceedings held before the military courts, the alleged victim was tried again before the ordinary jurisdiction and that on November 25, 2005 the National Criminal Chamber sentenced him to 20 years imprisonment and other additional penalties. On November 29, 2006, the sentence was reduced to 18 years imprisonment by the Second Transitory Criminal Chamber of the Supreme Court of Justice. They asserted that the sentences pronounced in the

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<sup>24</sup> See paragraph 15, *supra*.

<sup>25</sup> Petitioners' communication of October 29, 2007, annexes, Testimony of Jorge de la Cruz Flores, of November 7, 2005.

ordinary courts were based on evidences produced before the military authorities in 1992, contradictory statements and other evidence which were insufficient to prove Mr. Miranda Moscol's participation in any criminal activity.

32. According to the allegations, after being deprived of his liberty for more than 14 years, Mr. Miranda Moscol was granted conditional parole on May 29, 2007. The applicants indicated that at present he suffers from gastrointestinal and heart problems, back and joint pains as a result of the physical and psychological mistreatment and poor diet in the cells of Investigatory Police and prison facilities.

33. The petitioners maintained that Mr. Miranda Moscol was sentenced and deprived of his liberty by virtue of judicial error and they emphasized that even when the alleged victim has been released, the State of Peru has the obligation to compensate him for the material and moral harm suffered by him and his family members.

*Jorge Eduardo Olivares del Carpio (P 1067-03)*

34. According to the allegations, Mr. Jorge Eduardo Olivares del Carpio was arrested at first on November 22, 1986 in the satellite city of Santa Rosa Callao and tortured by agents of the Anti-Terrorism Directorate (DIRCOTE), later known as the National Anti-Terrorism Directorate (DINCOTE). In January 1990, he was released after an acquittal issued by the 11th Correctional Court of Lima, which was upheld at final instance by the Supreme Court of Justice.

35. The petitioners alleged that on March 22, 1995, the alleged victim was arrested once again in a street in the province of Callao. Unidentified persons struck him on the head, blindfolded him and attempted to force him to sign memoranda of seizure. They indicated that he was transferred to the premises of the Special Intelligence Unit of the National Police (GEIN) in Lima, where he remained incommunicado for 34 days and was subjected to physical and psychological torture. They alleged that agents of GEIN confiscated his asthma medicine and paraded him in public in a striped suit on March 28, 1995.

36. The petitioners explained that in May 1995 Mr. Olivares del Carpio was sentenced to life imprisonment for the crime of treason against the fatherland in proceedings conducted by "faceless" judges of the II Judicial Military Sector. They indicated that the sentence was upheld at all levels of the military jurisdiction. On May 11, 1995, the alleged victim was taken by force to the Maximum Security Penitentiary of Miguel Castro Castro, remaining in a state of solitary confinement until January 1996. They alleged that on January 18, 1996 he was transferred to the Yanamayo-Puno penitentiary, with a set of restrictions on the right to receive visitors. They maintained that between 2003 and 2006, Mr. Olivares del Carpio was transferred to different prisons and then sent again to the Miguel Castro Castro Penitentiary.

37. The petitioners indicated that on October 2, 2002, Mr. Federico Olivares Salas, the alleged victim's father, lodged a *habeas corpus* petition, which was declared well-founded by the Constitutional Tribunal on January 30, 2003, after being dismissed by the first two instances. The said tribunal declared the nullity of the proceedings conducted in the military courts and ordered a new trial pursuant to Legislative Decree 922. However, Mr. Olivares del Carpio remained deprived of his liberty.

38. The petitioners stated that on May 16, 2006, in a proceeding conducted under number 548-03-SPN, the National Criminal Chamber sentenced Mr. Olivares del Carpio to 30 years imprisonment for the crime of disturbing the peace - aggravated terrorism. They indicated that in this judgment, Mr. Olivares del Carpio was cleared of the charge of having been the national leader of the insurgent organization Shining Path. It is said that after the lodging of the nullity appeal by the Higher Prosecutor, on September 14, 2006, the First Transitory Criminal Chamber of the Supreme Court of Justice increased the sentence to 35 years imprisonment on the ground that Mr. Olivares del Carpio's membership in the Central Committee of Shining Path had been proved.

39. The petitioners asserted that the National Criminal Chamber and the Supreme Court of Justice based their decisions on charges that did not comprise the Public Prosecutor's indictment and were not debated in the oral proceedings. They emphasized that the above courts admitted evidences and accusations made before the police and military prosecutors which had not been confirmed before a court of law. The documents lodged by the petitioners indicate that the violence, torture and inhuman conditions of detention allegedly inflicted to Mr. Olivares del Carpio were reported to the judicial authorities of the ordinary jurisdiction during the criminal proceedings and in the constitutional *habeas corpus* petition.

40. The petitioners pointed out that alongside the proceeding filed under number 548-03-SPN, Mr. Olivares del Carpio was charged in additional trials in the jurisdictions of Lima, Arequipa and Puno for allegedly leading the Regional Committee of Shining Path in Arequipa. They stated that on June 28, 2005 he was acquitted by the Special Terrorism Chamber of Puno in one of these trials but that the acquittal was declared void by the Supreme Court of Justice. They indicated that after the beginning of new oral proceedings, on December 27, 2007, the Special Terrorism Chamber of Puno once again cleared the alleged victim of the charges of belonging to the Regional Committee of Arequipa, and the decision was upheld by the Supreme Court of Justice.

41. The petitioners confirmed that a third procedure begun in 2004 before the Third Criminal Chamber of the Superior Court of Arequipa, and subsequently remitted to the National Criminal Chamber, coming to an end on March 19, 2007 with a *res judicata* declaration regarding the conviction issued in case file 548-03-SPN. They indicated that after the annulling of the proceedings before the military courts, the alleged victim initiated different *habeas corpus* actions alleging that his detention without a sentence had exceeded the legal terms and that due process guarantees had been violated. They indicated that the State of Peru is responsible for the violation of the rights enshrined in Articles 1, 5, 7, 8 and 24 of the American Convention.

*Aurelio Aquino Pari (P 766-04)*

42. The petitioner and alleged victim claimed that on July 24, 1994 he was arrested by members of the National Police while on his way home in the outskirts of Lima without any judicial warrant against him and without being informed of the reasons for his arrest. He stated that he was transferred to the Mirones Bajo police station where a memorandum of seizure of letters linking him with the Peruvian Communist Party was drawn up, in the absence of the Public Prosecution Service. On the following day, Mr. Aurelio Aquino Pari was transferred to the cells of DINCOTE-Delta 4, where he remained in isolation for 90 days and underwent physical and psychological torture in an attempt to force him to confess.

43. According to the information received, on March 16, 1995, Mr. Aquino Pari was sentenced to life imprisonment for the crime of treason against the fatherland by the Special Military Court which was upheld at last instance on July 18, 1996 by the Special Supreme Military Tribunal. It is alleged that this sentence was pronounced by "faceless" judges and was based on evidence fabricated by the police and on testimony by reserved identity "*arrepentidos*" or obtained by means of torture.

44. The petitioner asserted that during the first year of incarceration in the Miguel Castro Castro penitentiary, he had access to natural light and fresh air for less than 30 minutes a day and was subjected to a series of restrictions on the right to receive visitors. It is alleged that Mr. Aquino Pari was constantly moved from one cell to another and subjected to sudden relocations.

45. According to the information submitted, on November 5, 2002, the Superior Court of Justice of Lima granted the alleged victim's *habeas corpus* petition, voided the military proceedings and ordered the referral of the case to the Public Prosecution Service. On March 19, 2003, the Fourth Criminal Chamber for Terrorism ordered the initiation of the preliminary phase of the proceedings and on March 20, 2006 the National Criminal Chamber sentenced him to 30 years imprisonment for crime against public order - aggravated terrorism. On June 13, 2007 the Supreme Court of Justice established that there were no grounds for nullity thus concluding with the criminal proceedings.

46. The petitioner stressed that the civil courts based their decision on memoranda of seizure produced by the National Police of Peru without the intervention of the Public Prosecution Service, and on other evidence produced before the military courts. They also stated that testimony by "*arrepentidos*" was taken into account by ordinary courts, without the possibility of either discovering their identity or cross-examining them in oral proceedings. He indicated that individuals making statements against him before the National Police had retracted such statements in the hearings held before the National Criminal Chamber but that the retractions were not given due weight by the judicial authorities in the ordinary courts.

47. The petitioner indicated that a copy of a medical certificate allegedly proving the acts of torture and aggression he underwent in the DINCOTE cells between July and October 1994 was submitted to the National Criminal Chamber. A copy of a medical certificate dated May 7, 2003, was also submitted, which recorded pulmonary tuberculosis and post-trauma deformations in some toe bones, among other adverse effects on his health allegedly suffered whilst being incarcerated at the Miguel Castro Castro Penitentiary.<sup>26</sup>

48. Lastly, the petitioner pointed out that the State of Peru is responsible for the violation of the rights enshrined in Articles 1.1, 2, 5, 7, 8, 9 and 24 of the American Convention.

*Boris Mijail Taype Castillo (P 863-04)*

49. The petitioner and alleged victim claimed that he was arrested without a warrant by the National Police of Peru on March 22, 1995, while he was on his way to his place of work in the city of Huánuco, in the department of the same name. He was transferred to the cells of the local police station together with his wife and two young daughters. The following day the alleged victim was taken to DINCOTE facilities in Lima, where it is alleged he remained in absolute isolation for 32 days and underwent physical and psychological torture.

50. The petitioner added that during his imprisonment at the DINCOTE he received no information as to the whereabouts of his wife and daughters and that he was blackmailed into signing untruthful documents. According to the information submitted, on March 28, 1995, Mr. Taype Castillo was paraded before the media in a striped suit and publically accused of belong to the insurgent group Shining Path.

51. The petitioner alleged that on May 11, 1995, a 'faceless' military judge identified by code AN-1950-RG sentenced him to 30 years imprisonment for the crime of treason against the fatherland, based on evidence fabricated by the National Police of Peru. This sentence was upheld through all the levels of military jurisdiction.

52. The petitioner stated that he was imprisoned in the Yanamayo-Puno Penitentiary between September 1997 and May 2001 and in the Cachiche-Ica Penitentiary until May 2003, when he was finally transferred to the Miguel Castro Castro Penitentiary. During his detention in the two first prisons, he was subject to isolation for periods exceeding 23 hours per day, separated from his family and was subjected to a number of restrictions on his right to receive visits. It is alleged that Mr. Taype Castillo was denied educational and work materials and that he did not receive adequate medical treatment. This situation would have caused recurring gastritis and spinal injuries which persist up until the present.

53. The petitioner indicated that in August 2002 his father filed a *habeas corpus* petition demanding the nullifying of the proceedings before the military courts, which was dismissed in the last instance by the Superior Court of Justice of Lima.

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<sup>26</sup> Communication of the Petitioner of April 17, 2006, annexes, copy of the medical certificate No. 021-INPE/17-234-CMAX of May 7, 2003, signed by the surgeon of the Penitentiary Institute, Dr. Wenceslao Casalio Castro.

54. It is said that at the beginning of 2003, at the time of the enactment of Legislative Decrees No. 921 to 927, the military proceedings against Mr. Taype Castillo were declared null and void. On April 7, 2003, the Third Special Terrorism Court ordered the initiation of proceedings and on May 16, 2006, the National Criminal Chamber sentenced Mr. Taype Castillo to 18 years imprisonment and other supplementary punishments for crimes against public order - terrorism. On December 14, 2006, the First Transitory Criminal Chamber of the Supreme Court of Justice increased the sentence imposed to 20 years imprisonment.

55. The petitioner maintained that during the new criminal proceedings in the ordinary courts, a number of applications to disqualify evidence and cross-examine witnesses, as well as to void expert reports produced before the military authorities throughout 1995, were rejected. He emphasized that the judgments issued by the National Criminal Chamber and the First Transitory Criminal Chamber of the Supreme Court of Justice were based on evidence fabricated by the National Police and other evidence produced with the participation of military prosecutors, between March and April 1995.

56. Lastly, the petitioner claimed that the State of Peru is responsible for the violation of the rights enshrined in Articles 1.1, 2, 5, 7, 8, 9 and 24 of the American Convention.

## **B. State**

### **1. Common claims**

57. The State alleged that in January 2003, it unilaterally began to amend its legislation for the prosecution and punishment of the crime of terrorism, which led to the voiding of all the trials conducted throughout the 1990s by faceless civilian and military judges. It reported that the new trials were conducted under the terms of Legislative Decrees Nos. 921 to 927, which, it claims, are in line with the standards the inter-American human rights system.

58. The State reported that on August 9, 2006, the Constitutional Court dismissed an unconstitutionality suit filed by more than 5,000 citizens questioning the validity of those legislative decrees. Based on its own interpretation of judgments handed down by the Inter-American Court of Human Rights, the State maintained that the San José court has not questioned the validity of the antiterrorist legislation currently in force.

59. It held that the creation of a National Chamber and Specialized Criminal Courts for terrorism cases was intended to facilitate and streamline the prosecution of individuals charged with those crimes. Peru stated that the judges who serve on those panels were already employed as career magistrates, and so there was no basis for the alleged victims' claims that they were tried by *ad hoc* courts or in breach of the right to be judged by a court pre-established by law.

60. The State maintained that in their new trials before the ordinary courts, the alleged victims had the services of contracted or court-appointed defense attorneys, and that at all stages in the proceedings, they were able to present the evidence and lodge the remedies they deemed appropriate. It held that although evidence gathered in the military proceedings was used in the new trials before the ordinary courts, the judges assessed it with reasonable criteria and in conjunction with other evidence, as required by Legislative Decree No. 922.

61. The State emphasized that the sentences already served by the alleged victims following their initial arrests were taken into consideration in calculating the new penalties imposed by the courts of the ordinary jurisdiction. Regarding the denial of parole for the alleged victims following the voiding of their military trials, Peru stated that in its judgment of August 9, 2006, the Constitutional Court ruled that:

This restriction is intended to protect constitutional assets and principles that might be affected by the resurgence of subversive practices and/or to prevent the hindrance of the legitimate exercise of the State's power to punish individuals who have been found guilty of the crime of terrorism, including those whose prosecution was conducted before an incompetent judge and without the guarantees that inform the right of due process.

62. As to the alleged acts of torture, inhumane conditions of detention and other supposed violations of personal integrity to the prejudice of the alleged victims, the State made no specific claims regarding the admissibility requirements set out in Article 46(1) of the American Convention.

63. The State described the legal proceedings in the new trials before the regular courts and enclosed copies of parts of the corresponding case files. It underscored the fact that the alleged victims were represented by attorneys and had the opportunity of exercising their right of defense. Peru stressed that the IACHR is not entitled to review the merits decisions held by the domestic judicial entities within their jurisdiction and respectful of a fair trial.

64. With regard to the allegations surrounding the repeal of Legislative Decree 927 concerning the criminal enforcement for the offense of terrorism, the State confirmed the information submitted by the petitioners that Law 29423 denied prison benefits to individuals convicted of the crime of terrorism. The State indicated that the judgments of the Constitutional Court of Peru establish that the rules on criminal execution are of a procedural nature and are thus governed by the *tempus regit actum* principle. It considered that Law 29423 was enacted in accordance with the Political Constitution Peru

and that prison benefits are not to be treated as subjective rights but as being under the discretion of the judicial authorities, within the framework of criminal policy as established in the Constitution and the legislation in force at the time a decision is made on a request lodged by a convicted person.

65. Finally, it concluded that the petitions describe facts that do not tend to establish violations of the American Convention and asked the IACHR to rule them inadmissible in accordance with Articles 47(b) and 47(c) thereof.

## **2. Specific allegations**

### *Luis Alejandro Miranda Moscol (P 574-98)*

66. The State alleged that at the time when the complaint was lodged before the IACHR in November 1998, the alleged victim had not exhausted the domestic remedies to safeguard the rights which he considered had been breached. In this regard, it indicated that Mr. Miranda Moscol had at his disposal *habeas corpus* and *amparo* actions as suitable methods to protect his rights to personal freedom and judicial guarantees.

67. With regard to the request for indemnity drawn up by the petitioners, the State indicated that the alleged victim failed to invoke the remedies envisaged in Article 3 of Law 24973 providing for indemnification for judicial error and arbitrary detention. It concluded that the allegations on indemnity failed to satisfy the requirement set out in Article 46(1)(a) of the American Convention.

68. The State indicated that after the voiding of the proceedings that took place in the military courts, Mr. Luis Alejandro Miranda Moscol was convicted by the ordinary courts for crimes against public order - terrorism and sentenced in the last instance by the Second Transitory Criminal Chamber of the Supreme Court of Justice on November 29, 2006. It stated that on May 29, 2007 the Eight Criminal Chamber of Piura granted Mr. Luis Alejandro Miranda Moscol the benefit of conditional parole, on condition that the latter therefore observe a series of rules of behavior until the final service of his sentence.

69. With regard to the new proceedings conducted in the ordinary courts, the State maintained that the facts set out by the petitioners do not characterize a violation of the rights enshrined in the American Convention, and requested that the IACHR declare the petition inadmissible in conformity with Article 47(b) of the above instrument. The State did not submit specific information on the alleged violations of Miranda Moscol's personal liberty and integrity in the days subsequent to his detention in October 1992.

### *Jorge Eduardo Olivares del Carpio (P 1067-03)*

70. The State's submissions on the criminal proceedings followed against the alleged victim after the voiding of the proceedings in the military jurisdiction are similar to those made by the petitioners. It maintained that the sentences issued by the National Criminal Chamber on May 16, 2006 and by the First Transitory Criminal Chamber of the Supreme Court of Justice on September 14, 2006, proved to be duly reasoned in accordance with the applicable law and evidence adduced throughout the criminal trials.

71. The State indicated that the alleged victim had the possibility of exercising his defense and of challenging the judgment that sentenced him; and that the defense arguments were assessed in accordance with the procedure previously set down in domestic law. With regard to the criminal liability of the alleged victim established by the National Criminal Chamber and the Supreme Court of Justice, it stated that the IACHR is not entitled to substitute the findings of the competent organs established by domestic law, especially when they exercised their jurisdiction pursuant to the rules of due process.

72. The State did not submit arguments on the alleged violation of Mr. Olivares del Carpio's physical integrity and liberty in the months subsequent to his detention in March 1995. It mentioned that the National Penitentiary Institute (INPE) is carrying out socio-educational treatment measures in favor of

the alleged victim and other inmates at the Miguel Castro Castro Penitentiary, with full respect for their dignity and personal integrity.

73. Finally, the State alleged that the facts set out by the petitioners do not characterize a violation of the rights enshrined in the American Convention, and requested that the IACHR declare the complaint inadmissible in conformity with Article 47(b) of the above instrument.

*Aurelio Aquino Pari (P 766-04)*

74. The State alleged that, after the voiding of the proceedings conducted against the alleged victim in the military courts, on March 19, 2003, the Fourth Criminal Terrorism Court ordered the start of criminal proceedings. It indicated that on March 20, 2006, the National Criminal Chamber delivered a sentence of thirty years imprisonment for crimes against public order - aggravated terrorism. It stated that this sentence was upheld by Supreme Court judgment of June 13, 2007.

75. The State stressed that the sentencing of Mr. Aquino Pari was based on a raft of evidence, testimony and witness statements which demonstrated his participation in attacks as a member of Shining Path; that the proceedings were conducted in the ordinary courts by competent justices and that the alleged victim was able to exercise his right to a defense in the light of the law regarding terrorism in force at the time.

76. The State failed to submit arguments on the alleged violation of Mr. Aquino Pari's personal integrity and liberty. Lastly, it stated that the facts set out by the petitioner do not as such characterize a violation of the rights enshrined in the American Convention, and requested that the complaint be declared inadmissible in conformity with Article 47(b) of the above instrument.

*Boris Mijail Taype Castillo (P 863-04)*

77. The State argued that after his arrest by agents of the National Police on March 22, 1995, the alleged victim was sentenced to 25 years imprisonment by military courts. This decision was upheld by the Supreme Council for Military Justice. It indicated that on March 24, 2003, the National Chamber for Terrorism voided the above military proceedings, ordering the referral of the matter to the Public Prosecution Service for a new indictment.

78. It stated that on May 16, 2006, the National Chamber for Terrorism handed down a sentence of 18 years imprisonment, convicting Mr. Taype Castillo of the offense set out in Article 5 of Legislative Decree 25475. It added that after the lodging of the nullity appeal both by the Chief Public Prosecutor and by Mr. Taype Castillo, on December 14, 2006, the Supreme Court of Justice excluded the nullity of the judgment under appeal, increasing the sentence to 20 years imprisonment.

79. The State alleged that in its order for the opening of the initial phase of the proceedings, dated April 7, 2003, the Third Criminal Chamber with Special Jurisdiction in Terrorism issued an arrest warrant against Mr. Taype Castillo which, in its view, shows that the alleged victim's detention was subject to judicial review. It alleged that the judgments issued by the ordinary courts were duly reasoned by competent judicial authorities, which at all times observed the guarantees of due process set out in domestic law.

80. The State underlined that even though the National Criminal Chamber based its sentence against the alleged victim on evidence produced by the National Police and before the military courts, the Constitutional Tribunal of Peru ruled to the effect that the voiding of the military proceedings did not imply the automatic invalidity of the sources of evidence used. It pointed out that the IACHR has no jurisdiction to substitute the interpretation of the organs established by domestic law to apply criminal law and their assessment of evidence leading to the finding of Mr. Taype Castillo's criminal liability.

81. The State did not submit specific information regarding the alleged violation of Mr. Taype Castillo's integrity. Lastly, it stressed that the facts set out by the petitioner do not as such characterize a

violation of the rights enshrined in the American Convention, and requested that the complaint be declared inadmissible in conformity with Article 47(b) of the above instrument.

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

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

82. The petitioners are entitled, under Article 44 of the Convention, to file complaints. The alleged victims 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.

83. 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.

84. 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.

85. 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.

86. The IACHR considers that it does not have competence *ratione temporis* to assess the possible non-fulfillment by the State of Peru of the provisions of the Inter-American Convention to Prevent and Punish Torture derived from the alleged acts of torture against Jorge Eduardo Olivares del Carpio in November 1986 in the satellite town of Santa Rosa Callao.<sup>27</sup> Nevertheless, with regard to such allegations, the IACHR has competence *ratione temporis* to assess the possible responsibility of the State of Peru in the light of the American Convention.

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

87. 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.

88. The petitions addressed by this report describe, on the one hand, a series of acts of aggression, torture, and mistreatment, allegedly committed by state agents. The available information indicates that the alleged acts of violence and purportedly subhuman detention conditions were reported to the domestic jurisdiction authorities in different occasions throughout the 1990s. In addition, the judicial authorities of the civilian justice system who tried the new cases brought in and after 2003 heard allegations about evidence allegedly obtained through coercion and torture.

89. The Commission's established precedents indicate that whenever a publicly actionable offense is committed, the State has the obligation of bringing and pursuing criminal proceedings and that, in such cases, that is the suitable channel to clear up incidents, prosecute the guilty, and impose the

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<sup>27</sup> See paragraph 34 *supra*.

applicable criminal punishments, in addition to enabling other forms of reparation. The petitioners' allegations of torture and other supposed violations of humane treatment point to criminal actions under domestic law that must be investigated and prosecuted on an *ex officio* basis by the judicial authorities, and consequently that procedure is the adequate remedy for the petitions addressed in this report.<sup>28</sup>

90. The Peruvian State has submitted no information on investigations eventually carried out into the alleged torture and inhuman conditions of detentions to the prejudice of the alleged victims. It neither raised the objection of prior exhaustion of domestic remedies concerning these allegations, and so it has tacitly waived the right to present such a defense.

91. In addition to alleged violations of humane treatment, the petitions addressed by this report indicate breaches of other provisions of the American Convention arising from the arrests of the alleged victims and from the criminal prosecutions brought against them. The State maintains that the alleged violations of Convention-protected rights by the trials before the military courts were resolved through the new proceedings before the regular courts that took place in and after 2003. The information submitted indicates that after the voiding of the military trials, the four alleged victims were convicted under rulings handed down on final appeal by the Supreme Court of Justice between July 2005 and June 2007.

92. Based on the foregoing considerations, the IACHR concludes that the four petitions satisfy the requirement set by Article 46(1)(a) of the American Convention.

93. With regard to the objection of exhaustion of domestic remedies raised by the State concerning the allegations that Mr. Luis Alejandro Miranda Moscol would have the right to a indemnity, the IACHR observes that the facts set out by the petitioners relate to the alleged material and moral injuries caused by the alleged acts of violence, torture, deprivation of liberty and due process violations. In this sense, the submissions on the supposed obligation of the Peruvian State to provide compensation are linked to any eventual reparation to be considered by the IACHR at the merits stage. As to the States' allegations that Mr. Luis Alejandro Miranda Moscol had not filed a *habeas corpus* or *amparo* action in order to safeguard his personal liberty and right to a due process in the context of the military proceedings, the IACHR observes that the aforesaid proceedings were declared null and followed by new trials before ordinary courts. The information submitted by the parties indicates that the new trials concluded with a final judgment issued by the Supreme Court of Justice in November 29, 2009.

### **C. Filing period**

94. Article 46(1)(b) of the Convention states that for a petition to be admissible, it must be lodged within a period of six months following the date on which the complainant was notified of the final judgment at the national level.

95. As established in paragraph 91 above, the second set of criminal trials brought against the four alleged victims concluded between July 2005 and June 2007, after the petitions had been lodged with the Commission. Thus, compliance with the requirement contained in Article 46(1)(b) of the American Convention is intrinsically linked with the exhaustion of domestic remedies and it has consequently been satisfied.

96. With regard to the allegations involving conditions of detention, torture and other supposed violations of the right to a humane treatment, as established in paragraph 88 above, such facts were reported to the Peruvian authorities in different occasions, after the first trial before military tribunals and during the proceedings held by ordinary courts. Given that the State has not alleged and that the case files do not contain evidences that criminal proceedings have been initiated in order to investigate these facts, the IACHR considers that the four petitions were filled within a reasonable period of time.

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<sup>28</sup> IACHR, Report No. 99/09, Petition 12.335, Colombia, Gustavo Giraldo Villamizar Durán, October 29, 2009, para. 33.

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

97. Article 46(1)(c) of the Convention states that the admission of a petition is subject to its subject matter being “not pending in another international proceeding for settlement,” and Article 47.d of the Convention provides that IACHR shall not admit a petition that is substantially the same as one previously studied by the Commission or by another international organization. In the petitions addressed by this report, the parties have not argued the existence of either of those two circumstances, nor are they indicated by the record.

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

98. At the admissibility stage, the Commission must decide whether the stated facts could tend to establish a rights violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” as stated in Article 47(c). The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a *prima facie* assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. Said examination is a summary analysis that does not imply prejudging the merits or offering an advance opinion on them.

99. In light of the elements presented by the parties, the IACHR finds that the circumstances in which the arrests of the alleged victims were carried out, the alleged torture they suffered and the conditions of their detention at the DINCOTE facilities and prisons, the alleged searching of their homes without warrants and their alleged public presentation in prison garb could tend to establish violations of the rights enshrined in Articles 5, 7, and 11 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, as well as of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all with respect to Luis Alejandro Miranda Moscol, Jorge Eduardo Olivares del Carpio, Aurelio Aquino Pari and Boris Mijail Taype Castillo. In addition, the IACHR finds that the effects of the facts described in this paragraph, together with the purported holding of the alleged victims incommunicado for long periods of time and the restrictions placed on their right to receive visits, could tend to establish a violation of the right protected in Article 5.1 of the Convention with respect to the alleged victims and also with respect to their families.

100. The IACHR also finds that the allegations about the criminal trials conducted by the military and civilian justice systems, together with the alleged incompatibility between the American Convention and the regulatory framework governing those prosecutions, could tend to establish a violation of the rights enshrined in Articles 9, 8, and 25 thereof, in conjunction with Articles 1(1) and 2, all with respect to Luis Alejandro Miranda Moscol, Jorge Eduardo Olivares del Carpio, Aurelio Aquino Pari and Boris Mijail Taype Castillo. At the merits stage the Commission will analyze the Peruvian State’s claims that the terrorism legislation enacted in and after January 2003 and the criminal prosecutions conducted under those laws served to remedy the alleged breaches of the aforesaid provisions of the Convention.

101. Finally, in that these aspects of the claims are not obviously groundless or out of order, the Commission concludes that the petition satisfies the requirements set by Articles 47(b) and 47(c) of the American Convention.

#### **V. CONCLUSIONS**

102. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case, the Inter-American Commission concludes that Petitions 574-98, 1067-03, 766-04 and 863-04 satisfy the admissibility requirements contained in Articles 46 and 47 of the American Convention and, consequently,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**DECIDES:**

1. To rule Petitions 574-98, 1067-03, 766-04 and 863-04 admissible as regards Articles 5, 7, 9, 11, 8, and 25 of the American Convention, in conjunction with the obligations established by Articles 1(1) and 2 thereof, and as regards Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To give notice of this decision to the State and to the petitioners.

3. To join the four petitions addressed in this Report on Admissibility in the record of case 12.765 and to begin the processing of the merits of the case.

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

Done and signed in the city of Washington, D.C., on the 12<sup>th</sup> day of the month of July, 2010.  
(Signed: Felipe González, President; Paulo Sergio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, Rodrigo Escobar Gil, and Luz Patricia Mejía Guerrero, members of the Commission).