

**REPORT No. 57/12**  
**CASE 11.568**  
**MERITS**  
**LUIS ANTONIO GALINDO CÁRDENAS AND FAMILY**  
**PERU**

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March 21, 2012

**I. SUMMARY**

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a complaint presented on January 3, 1995, by Mr. Luis Antonio Galindo Cárdenas<sup>1</sup> (hereinafter “the petitioner,” “the alleged victim,” or “Mr. Galindo”), in which he alleged the violation of a series of provisions of the American Convention on Human Rights (hereinafter “the American Convention,” “the Convention,” or “the ACHR”) by the Republic of Peru (hereinafter “the Peruvian State,” “the State,” or “Peru”) through his alleged illegal arrest on October 16, 1994, at a time when he was serving as a provisional judge of the Superior Court of Justice of Huánuco, under Terrorism Decree Law No. 25475, following which he was detained and psychologically tortured at the headquarters of the Political/Military Command of the Huallaga Front in the city of Huánuco for a period of 31 days, after being falsely and publicly accused by President Alberto Fujimori of having applied for the benefits established in the provisions of Decree Law No. 25499, known as the “Repentance Law.” He further alleged that the State had failed to fulfill its obligation to investigate his complaints and to punish those responsible.

2. The Commission, in Admissibility Report No. 14/04, found that the facts, if proven, would tend to establish violations of the rights enshrined in Articles 5, 7, 9, 8, and 25 of the American Convention, in conjunction with Articles 1 and 2 thereof, with respect to Mr. Luis Antonio Galindo Cárdenas, and it decided to rule the petition admissible in accordance with the terms of Articles 46 and 47 of the American Convention on Human Rights.

3. At the merits stage, the petitioner claimed that the Peruvian State had violated Mr. Galindo’s right to personal liberty in that he was detained absent a prior court order and without being caught *in flagrante delicto*, he was never formally told of the charges against him, and, once released after a detention longer than was permitted by law, he was not given a deed of arrest or of release. He also alleged violations of his right to humane treatment during his detention, in that he was held incommunicado; of the right to be tried by a natural, independent, and impartial judge, in accordance with his status as a serving magistrate; and of the principle of legality, in that the definition of the crime of terrorism on which the investigation against him was based has been ruled incompatible with the American Convention by the Inter-American Court.

4. In contrast, the State claimed that the petitioner was arrested in accordance with the law in order to establish his criminal responsibility for the crime of terrorism, in that a person covered by the Repentance Law had indicated that he was a member of an organization with ties to Shining Path. Peru noted that there was no evidence that Mr. Galindo was held on a military base. It held that Mr. Galindo admitted having defended members of Shining Path and that he voluntarily expressed his desire to seek the benefits of the Repentance Law. In addition, it claimed that during the processing of the case, the petitioner provided no evidence to substantiate in any way the psychological torture he allegedly suffered. Regarding the alleged violation of the right to a fair trial, the State claimed that Mr. Galindo filed for neither habeas corpus nor *amparo* relief and, although after his release he filed complaints alleging illegal arrest and torture, those allegations were shelved under Amnesty Laws Nos. 26479 and 26492, which were later ruled invalid by the Inter-American Court in its judgment in the *Barrios Altos* case. Peru stated that there were currently no open proceedings in connection with the alleged facts. Finally,

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<sup>1</sup> Later, the representation of the alleged victim was taken up by attorney Cristina Galindo, the victim’s sister, and, on April 5, 2004, by attorney Richard M. Rocha.

regarding the alleged violation of the right to judicial protection, the State noted that the petitioner filed for no remedies, in spite of being both an attorney and a magistrate.

5. After analyzing the positions of the parties, the Inter-American Commission concluded that the State of Peru was responsible for violating the rights to humane treatment, to personal liberty, to a fair trial, to legality and freedom from *ex post facto* laws, and to judicial protection, enshrined in Articles 5, 7, 8, 9, and 25 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, with respect to Mr. Galindo Cárdenas. In addition, the Commission concluded that in the case at hand, with respect to the members of Mr. Galindo's family, the State violated the right to human treatment enshrined in Article 5 of the American Convention, in conjunction with Article 1.1 thereof.

## **II. PROCESSING BY THE IACHR**

### **A. Processing of the Case**

6. The Commission examined the petition during its 110th period of sessions and adopted Admissibility Report No. 14/04 on February 27, 2004, which it conveyed to the parties on March 11, 2004, while at the same time making itself available to the parties with a view to reaching a friendly settlement in the matter pursuant to Article 48.1.f of the American Convention. In addition, according to Article 38.1 of its Rules of Procedure in force at the time, the Commission asked the petitioner to submit his additional comments on the merits. On April 5, 2004, the Commission received a communication from the petitioner indicating that attorney Richard M. Rocha had been appointed to serve as the alleged victim's representative; acknowledgment of that information was given in a letter dated May 10, 2004. Later, on September 28, 2004, the IACHR received the petitioner's additional comments on the merits, which were forwarded to Peruvian State in a communication of October 27, 2004, with a period of two months for it to return its own additional comments on the merits.

7. On January 24, 2005, the Commission received a letter from petitioner stating his willingness to begin the friendly settlement proceedings as offered by the IACHR, and that information was forwarded to the State in a communication of March 2, 2005. Later, on February 21, 2005, the IACHR received a request from the petitioner asking for a public hearing to be held in connection with his case during the Inter-American Commission's 122nd regular session. The IACHR replied in a letter of February 8, 2005, that, on account of the high number of requests for hearings, his application could not be granted. On April 14, 2005, the Commission received from the State a request for an extension of the deadline for returning its comments. Later, the State submitted its additional comments on the merits in a communication dated May 10, 2005, which were forwarded to petitioner in a communication of May 25, 2005, with a period of one month for returning his comments. The State gave no response to the IACHR's offer to begin the friendly settlement procedure.

8. On June 27, 2005, the IACHR received a communication with the petitioner's comments, along with a request for a public hearing to be held in connection with the case. In a communication of July 6, 2005, the Commission acknowledged receipt of the previous communication and, in a communication of September 19, 2005, it informed the petitioner that it would not be possible for his request to be granted during the IACHR's 123rd regular session.

9. The petitioner filed additional requests for public hearings in communications dated September 12 and December 15, 2005, and January 15 and May 2, 2006, to which the IACHR replied by means of communications dated February 13 and June 21, 2006. In communications dated October 16, 2006, and January 15, 2007, the petitioner asked for a hearing on this case to be held. On July 31, 2007, the IACHR received a letter from the petitioner, which was forwarded to the State in a communication of September 27, 2007. The State requested a one-month extension in a communication dated October 26, 2007, which was granted by the IACHR in a communication of November 5, 2007. In communications of October 29 and November 28, 2007, the petitioner requested that a hearing on the case be held during the IACHR's next period of sessions. The Commission

acknowledged receipt of the petitioner's communication of October 29, 2007, in a communication dated January 16, 2008.

10. The State requested an extension in a communication of December 5, 2007, which the Commission granted on December 11, 2007. The petitioner requested that a hearing be held on the case in a communication of January 3, 2008. The State submitted observations filing by means of a communication of January 21, 2008, which was conveyed to the petitioner for information purposes on February 5, 2008.

11. The petitioner submitted comments on the State's submission in a communication of February 27, 2008, which were forwarded to the State on March 11, 2008, with a one-month deadline for returning its comments. The State requested an extension on March 20, 2008, which was granted by the IACHR in a communication of April 1, 2008, with a deadline of April 17, 2008. The State submitted comments in a communication received on April 23, 2008, which were conveyed to the petitioner for information purposes on April 29, 2008. On June 13, 2008, the Commission received a filing from the petitioner containing comments on the State's submission of April 23, 2008, and asking the Commission to grant him a public hearing to set out the grounds of his complaint. In a communication of September 23, 2008, the IACHR informed both the petitioner and the State that it had decided to convene a hearing for October 23, 2008.

12. The petitioner submitted a filing dated November 3, 2008, which was received on November 17, 2008, and which the Commission, by means of a communication dated February 9, 2009, forwarded to the State for it to return its comments within the following month. The State returned its comments in a communication of March 11, 2009, which was conveyed to the petitioner for his comments by means of a communication dated March 20, 2009. On May 5, 2009, the Commission received the petitioner's comments, which were forwarded to the State by the IACHR in a communication of May 21, 2009, with a deadline of one month for returning its comments. The State returned its comments in a communication of June 24, 2009, which were forwarded to the petitioner by the IACHR in a communication of dated June 29, 2009.

13. The petitioner submitted comments on the State's submission in a communication of August 19, 2009. In a communication of May 18, 2010, the Commission acknowledged receipt of the petitioner's communications of December 9, 2009, and February 1, 2010. The petitioner lodged filings on August 1, September 20, and November 15, 2010, receipt of which was acknowledged by the IACHR on January 11, 2011. On April 19, 2011, the Commission received a submission from the petitioner, which was forwarded to the State for information purposes on June 2, 2011. The petitioner submitted additional filings on June 27 and July 12, 2011, which were forwarded to the State for its comments in a communication of August 12, 2011. On December 22, 2011, the IACHR received a communication from the petitioner, which was conveyed to the State for information purposes on February 6, 2012.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioner

14. The petitioner alleges that on or about September 15, 1994, while Mr. Luis Antonio Galindo Cárdenas was working as a provisional judge of the Superior Court of Justice of Huánuco, he became aware through unofficial sources that his name had been mentioned in a statement given to the police by an alleged member of the subversive group Sendero Luminoso ("Shining Path"), accusing him of being a member of that organization through the Association of Democratic Lawyers.

15. The petitioner states that on October 14, 1994, Mr. Galindo Cárdenas reported to the offices of the Counterterrorism Command (hereinafter "JECOTE") of the Huánuco National Police in order to clarify the situation, where he met with the head of that police unit. Later, at the Huánuco Military Barracks, he met with Army Colonel Eduardo Negrón Montestruque, commanding officer of the Military/Political Command and with the Provincial Criminal Prosecutor of Huánuco, Dr. Ricardo Robles y Coz, who informed him that there was a police investigation for the crime of terrorism in which his first given name and his surname appeared.

16. The petitioner states that at that meeting, which lasted about three hours, Mr. Galindo Cárdenas explained that in 1993, when he was a practicing lawyer, four individuals arrived at his office in the city of Huánuco and asked him, amid threats and in his capacity as an attorney and a friend of the prosecutor in charge of the investigation, to try and secure the release of a fifth person who was being held in custody. The petitioner notes that Mr. Galindo did not assume the defense of the detainee in question and consequently, for reasons of security, he left the city of Huánuco for a prudent length of time and went to Lima where his family lived. He states that he also reported that prior to this incident, in the year 1991 or 1992, two individuals came to his office when he was in private legal practice and asked him to take up the defense of two of their relatives – Juan Santamaría Ramos and Fernando Salinas Solórzano – which he did when those individuals were subject to investigations and had charges made against them. He states that those persons paid him for his professional services and that Mr. Galindo issued the corresponding invoices after defending them in accordance with the law. He notes that those defense services were permissible under the Constitution of Peru.

17. The petitioner indicates that following that meeting, on the very same day, October 14, 1994, Mr. Galindo Cárdenas returned to his work as a judge at the Huánuco Criminal Chamber and attended a session of the plenary at which he explained his reasons for his late arrival.

18. The petitioner indicates that two days later, in the morning of Sunday, October 16, 1994, the head of the Counterterrorism Command (JECOTE) arrived at Mr. Galindo Cárdenas's home to inform him that Col. Negrón wished to speak with him at the Yanac Army Barracks; he proceeded to that military facility, unaware that hours earlier, on a Lima television channel, President of the Republic Alberto Fujimori had accused the president of the Superior Court of Justice of Huánuco and the President of Huánuco University of committing acts of terrorism and had reported that both individuals had been detained in a police operation and had requested that Decree Law No. 25499, the Repentance Law, be applied to them. The petitioner indicates that clarification was later given that the complaint referred to Judge Galindo Cárdenas and not to the president of the Huánuco Superior Court of Justice.

19. The petitioner states that on October 16, 1994, Mr. Galindo Cárdenas was received very cordially at the Huánuco Military Barracks by Col. Negrón and another Army officer, who invited him into a room; there, once inside, the officer locked the door and placed the security chain on it with such speed that Mr. Galindo was unable to react. The petitioner reports that Mr. Galindo was kept in arbitrary and illegal detention at the Huánuco Military Barracks for 31 days. He states that Mr. Galindo's arrest became public knowledge following the accusations that President Alberto Fujimori made on television on Sunday, October 16, 1994.

20. The petitioner says that it was not until October 18, 1994, that Mr. Galindo Cárdenas was allowed to talk to his wife and that, through her, he presented his resignation from his position as a judge on October 19, 1994, noting that his arrest was intended to undermine the reputation of the judiciary in Huánuco.

21. He indicates that while Mr. Galindo was being held at the military barracks, a police statement was taken from him by the JECOTE and the National Antiterrorism Directorate of Lima (DINCOTE–Lima), with the assistant provincial prosecutor in attendance; and that the statement was deliberately misplaced, since it contained the invoices for professional fees that the alleged victim had issued while working as an attorney in private practice. The petitioner states that according to the household search record and its annexes, prepared by police officers from DINCOTE–Lima with the provincial criminal prosecutor of Huánuco in attendance, both personal and professional documents relating to his work as an attorney were found in his home and seized; these included copies of professional fee invoices, including the receipts for payments received for the defense of Juan Santa María Ramos and Fernando Salinas Solórzano. The petitioner contends that if he had been a member of the Association of Democratic Lawyers, he would have received no payment for defending those individuals. Consequently, the petitioner contends that the defense of those persons was provided in accordance with law.

22. The petitioner claims that with the intent of presenting Mr. Galindo to public opinion as a subversive criminal who had invoked the Repentance Law and thereby to give credence to President Fujimori's accusations, a series of untruths were distributed in the country's press and television media: for example, Ministry of Defense official communiqué No. 068/RRPP/F-H, which contradicts police reports No. 24-DECOTE-PMC-HCO and No. 09-DECOTE-PNC-HCO/AD that establish the date and method of his alleged arrest and subsequent investigation.

23. The petitioner contends that there are contradictory police reports of the arrest. He states that while one report states that Mr. Galindo voluntarily requested application of the Repentance Law on October 15 and was therefore not arrested during a police operation, the Ministry of Defense's communiqué of October 17, 1994, reports that Mr. Galindo was detained during an operation and later stated that he wanted to apply for the benefits of the Repentance Law. The petitioner indicates that the evidence drawn from the applicant's statement and from a broadening statement given by the applicant contains utter falsehoods intended to show that Mr. Galindo was appealing to the Repentance Law without meeting the requirements and demands of Law 25499 and Supreme Decree 01593, which regulated the benefits available to people subject to the Repentance Law. Specifically, as evidence that those documents are false, he points to the absence from them of the fingerprints required by Law 25499.

24. As evidence that he did not seek the benefits of the Repentance Law (No. 25499) and its Regulations (D.S. 015/93-JUS; Article 1.II.a and Article 6) and that this law should not have been applied to him, the petitioner points to the nonexistence of the three requirements set by the law for its application: (1) voluntarily provision of timely and truthful information revealing details of terrorist groups or organizations and their functions; (2) identification of leaders, heads, chiefs, and/or main members; (3) information on future terrorist actions for their prevention or neutralization. The petitioner claims that since Mr. Galindo did not provide that information, the resolutions granting him the benefit of exemption from punishment under the Repentance Law violate the principle of legality in that they contain falsehoods. The petitioner contends that Mr. Galindo identified no one, in that the people he spoke of in his statement had already been fully identified by the police and taken into custody. He also states that the alleged information that Mr. Galindo provided was never checked or verified as required by Article 3 of Law 25499, and neither did the provincial prosecutor simultaneously file charges with a criminal judge as required by Article 3.a of the same law.

25. The petitioner alleges that while Mr. Galindo was being illegally held at the Military Barracks, he only had access to drinking water for 10 minutes in the morning and 10 in the evening. He further alleges that during the night, shots were fired at the window of his room and that in the early morning hours he heard the anguished cries of people who were being punished. He also alleges that the authorities permitted incidents to occur in the early morning hours with the aim of driving fear into him and breaking him down, such as the entry

into his cell while he was asleep of the “hooded repentant female terrorist,” who would identify him as the “democratic attorney.” He contends that Mr. Galindo was also psychologically pressured by Col. Eduardo Negrón Montestruque, the military commanding officer in Huánuco, to seek application of the Repentance Law and identify the president of the Superior Court Huánuco and two other judges as members of Shining Path, which he refused to do.

26. The petitioner reports that on October 26, 1994, the Attorney General of the Nation, Dr. Blanca Nélica Colán Maguiña, visited the military barracks and spoke with the detainee; Mr. Galindo informed her of the arbitrary acts and psychological mistreatment he was receiving, but she did nothing about it. The petitioner indicates that although the Human Rights Commission of the Democratic Constituent Congress made two official visits to the city of Huánuco to meet with Mr. Galindo, its members were unable to speak with the alleged victim on the orders of the commanding officer of the Political/Military Command, who was in charge of the military barracks where he was being held. He says that Mr. Galindo Cárdenas was first prevented by the army from being visited by members of the International Red Cross and that no response was forthcoming to the request made by the president of the Huánuco Supreme Court for information on the alleged victim’s legal situation.

27. The petitioner states that on November 4, 1994, the Provincial Prosecutor found that there were no grounds for charging the alleged victim and, 31 days after his arrest, he was released. He notes that the provincial prosecutor’s resolution refers to Article 4 of Decree Law 25475 but fails to specify the subsection describing the form of collaboration with terrorists allegedly committed by Mr. Galindo. In this regard, he states that the formal and unrestricted provision of legal advice does not constitute an act of collaboration (Article 284 of the Organic Law of the Judicial Branch).

28. The petitioner notes that this resolution was upheld by the senior prosecutor, and so he was released on November 16, 1994, but that he was not given a written deed for his arrest, which had gone on longer than the maximum of 15 days allowed for a person to be held in a terrorism investigation. The petitioner indicates that on December 13, 1995, Mr. Galindo Cárdenas asked the prosecutor of the first criminal Prosecutor’s Office of Huánuco, Dr. Ricardo Robles Coz, for certified copies of the investigation that was brought against him, but no reply was given to his request. He states that on December 16, 1994, Mr. Galindo Cárdenas filed a complaint remedy with the senior criminal prosecutor of Huánuco, again without positive results. The petitioner claims that he apprised of the prosecutorial resolutions after a lengthy time spent investigating and demanding they be handed over in order to be able to initiate the corresponding legal actions.

29. The petitioner reports that Mr. Galindo’s family did not pursue legal action while he was being held in custody, since they received threats from the Peruvian Army that were they to do so, he would not be released. In addition, he claims that a state of emergency had been declared in the city of Huánuco and it was therefore under the control of the Political/Military Command, led by Army Colonel Eduardo Negrón Montestruque, the perpetrator of the alleged violations; consequently, the city’s prosecutors and judiciary were subordinate to the Political/Military Command, and so any such remedies would have been ineffective. He also contends that under Article 38 of Law 23506, and in accordance with Article 137.1 of the Constitution, habeas corpus actions were not admissible in areas covered by states of emergency, which rendered the pursuit of any legal action or claim futile.

30. The petitioner alleges that upon regaining his freedom, Mr. Galindo Cárdenas lodged a complaint against the Provincial Prosecutor of Huánuco, Ricardo Robles y Coz, and against the Senior Prosecutor of Huánuco, Carlos Schult Vela, for the crimes of abuse of authority, against the jurisdictional function and malfeasance in office as a consequence of his arbitrary detention. However, he states, in a decision dated May 8, 1998, the Internal Oversight office of the Public Prosecution Service ordered the closing of the complaint file, in application of Article 4 of Amnesty Law No. 26479.

31. The petitioner also reports that Mr. Galindo filed a complaint with the Executive Council of the Judicial Branch, which in a decision of January 16, 1995, resolved to demand from the army a comprehensive

investigation of the case and the punishment of those responsible and to dispatch an official letter to the Attorney General of the Nation and to the Ministry of the Interior to the same end. He alleges that despite that decision, the State has not fulfilled its obligation of conducting a timely and effective investigation. He further alleges that he had made various approaches to the Human Rights Commission of the Democratic Constituent Congress, to the office of the Attorney General of the Nation, and to the Ministry of Defense, all of which were fruitless.

32. The petitioner states that at the time when Mr. Galindo was publicly identified as a repentant terrorist, in violation of the antiterrorist legislation (Regulations to the Repentance Law), his physical and personal integrity was placed in danger, he suffered humiliation in various public venues, and his professional work as an attorney was impaired. He also contends that this situation caused severe pain and suffering to the alleged victim and his family, particularly his wife and his son who, at the time of the incident, was 9 years of age. The petitioner claims that as a consequence of the State's stigmatization of him as a subversive criminal, his professional relationships were blocked; he was therefore forced to sell his house, his car, his wife's business, to change his son to another school, and to provide him with psychological treatment.

33. Regarding the new facts presented by the State at the merits stage – dealing with the Verification Report of January 25, 1995, which indicates that a tradesman applied for the terms of the Repentance Law in connection with incidents that took place in the town of Acomayo in 1990, when members of PC-SL held a People's Assembly and appointed him the military commander of the first sector of San Pedro Acomayo – the petitioner maintains that those facts are unrelated to the case at hand and that it is a false claim that the Peruvian State has never clarified.

34. The petitioner claims that the Peruvian State violated Mr. Galindo's right to personal liberty, in that he was arrested absent a prior court order and without being caught *in flagrante delicto*, as required by Article 24.2.f of the Constitution. He alleges that he was never formally advised of the charges against him, that he was not informed of the reasons for his detention, nor was he given any record of his detention or release. He contends that the period of his unlawful detention exceeded all legal limits, including those provided for crimes of terrorism. He adds that he was held in a detention center that was not authorized by the law.

35. In addition, the petitioner claims that the investigation brought against Mr. Galindo violated the principle of a person's right to be tried by a natural, independent, and impartial judge, in that given his status as a serving judge, a superior criminal prosecutor should have been involved in the investigation and not a provincial criminal prosecutor, who was placed lower than him in the hierarchy and, under Article 191 of the Organic Law of the Judiciary, lacked jurisdiction.<sup>2</sup>

36. Finally, he alleges that the case entails a violation of Article 9 of the Convention, since the characterization of the crime of terrorism in Decree Law No. 25475, pursuant to which the investigation against Mr. Galindo was conducted, is the basis of the characterization established in Decree Law No. 25659, which has been called into question by the Inter-American Court as violating the principle of legality.

37. The petitioner consequently requests: (1) a public apology for Mr. Galindo Cárdenas, through the same channels that offended him; (2) the annulment of the resolutions of the provincial and superior prosecutors of Huánuco, which assigned the alleged victim a legal and criminal status that he never requested and never accepted and were based on false, contradictory, and ambiguous facts; (3) economic compensation and/or redress for the serious material and moral damages caused, which have affected his family life; and (4) guarantees and assurances for his physical and emotional integrity in light of the repentant terrorist status imposed on him by State, which has placed his physical integrity in permanent danger.

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<sup>2</sup> The petitioners cite Article 191 of the Organic Law of the Judicial Branch: "Arrest of Judges. Judges who are members of the judicial career may only be arrested under an order from a competent judge, or *in delicto flagrante* in those cases permitted by law. In the latter situation, the arrested judge must be taken immediately to the office of the competent prosecutor, after notice is served on the president of the corresponding court, using the swiftest channel and under liability."



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

38. The State for its part argues that the petitioner was detained in order to establish his criminal responsibility for the crime of terrorism, since a person covered by the repentance regime had pointed him out as a member of an organization with links to Sendero Luminoso. The State indicates that a statement of this type constitutes sufficient reason to justify a preliminary investigation and provisional detention, particularly in the context of a state of emergency. The State notes that following the accusation that Mr. Galindo had ties to the Shining Path terrorist organization and in accordance with Decree Law No. 25475, the specialized police unit was required to proceed with the corresponding investigation, as a result of which the alleged victim was taken into custody. The State maintains that Decree Law No. 25475, which regulates the crime of terrorism and sets specific rules for police investigations of such crimes, is a body of law that is in force and is applied in investigations and prosecutions for terrorism crimes. It notes that the constitutionality of that legislation has been upheld by the judgment of the Constitutional Court in case No. 010-2002-AI/TC and that under Decree Law 25475 and the Constitution itself, exceptional regimes exist for the arrest of individuals on suspicion of terrorist crimes.

39. The State adds that the petitioner's arrest was governed by the norms laid down in Law No. 24150 and in Decree Law No. 749, which govern police action in zones where states of emergency have been declared, as well as by the provisions contained in the legislation on national pacification.

40. The State notes that according to a report of March 25, 1996, the petitioner gave a statement at the offices of the DECOTE on October 15, 1994, when he applied for the benefits of Decree Law No. 25499, and it states that he was granted the benefits of that law in National Police reports of October 31, 1994, and January 25, 1995, in the resolution of November 4, 1994, Ruling of the Provincial Criminal Prosecutor of Huánuco, which awarded him exemption from punishment, and in the Senior Prosecutor's resolution of November 9, 1994, whereby the proceedings were sent to the archive, which indicates that the proceedings were in order.

41. The State also refers to document No. 1453-95-IN-010600000000 of July 10, 1995, addressed to the President of the Supreme Court of Peru, according to which the investigation of the petitioner's complaint showed that the National Police officer serving as the head of JECOTE-Huánuco was not liable since he had acted in accordance with the relevant laws and since all the police investigations had been carried out in the presence of the representative of the Public Prosecutor's Office. Consequently, the State argues that there was no functional responsibility on the part of the police officers who participated in the acts under investigation.

42. The State contends that in the case at hand, there is no evidence that Mr. Galindo was held at a military base, and so it is based on a false premise. It holds that Mr. Galindo met with the Attorney General at a military base because he was in an area of extreme conflict; consequently, and because of the position held by the Attorney General, a secure location was required for their meeting. Peru states during the all incidents that allegedly constituted violations, Mr. Galindo was accompanied by the Huánuco prosecutor and by specialized antiterrorism officials. It says that Mr. Galindo was arrested and processed as part of a preliminary investigation, which was attended by the local prosecutor in order to verify the legality of the proceedings.

43. It states that according to the police reports, Mr. Galindo reported to the police authorities – specifically, to the Counterterrorism Command (JECOTE) in the city of Huánuco – and not to military authorities, from which it can be deduced that the petitioner remained at the specialized police unit. It notes that Mr. Galindo was visited by his family, by the nation's Attorney General, and by representatives of the International Red Cross.

44. The State claims that Mr. Galindo pursued no domestic remedies, even though he is an attorney and was able to file for habeas corpus. Peru also contends that there is no documentary evidence that Mr. Galindo suffered psychological, moral, or physical mistreatment. It holds that Mr. Galindo is not a person unfamiliar with the law, since he is an attorney and has served as a judge, and so it is incomprehensible for him to deny he sought

the application of the Repentance Law if he signed the two documents referred to. It states that if the petitioner were unaware of the law then there could be reason to suspect intimidation took place, but that was not the case.

45. The State notes that Mr. Galindo acknowledged that he defended members of Shining Path, whom he identified, and that the difference between the documents of October 15 and 29, 1994, is that Mr. Galindo signed them differently. Thus, on the document of October 15 there is one signature, while the October 29 document has a signature that the government has compared to the one on his ID card, to conclude that Mr. Galindo signed both documents. The State notes that report No. 24-DECOTE-PNC-HCO indicates that on October 15, 1994, the applicant identified by means of code A1J054967 voluntarily reported to the offices of the PNP–Huánuco Department against Terrorism and expressed his desire to seek the application of the benefits of the Repentance Law. It states that the applicant declared that:

(...) in late 1992, the Communist Party of Peru–Shining Path – comprised (...) (c) “Mirko,” (c) “Guillermo,” (c) “Yersi,” and (c) “Lida” (...). According to the statement made by applicant A1J054967 after reviewing the photograph album of this DECOTE-PNP-Huánuco, it has been determined that PCP–Shining Path, in the Huánuco area, was composed of (...):

- (c) “Mirko,” identified as Juan SANTAMARÍA RAMOS – INCARCERATED.
- (c) “Beto,” Identified as Eduardo Elí NACIÓN RAMOS – INCARCERATED.
- (c) “Yersi,” Identified as Noemí HUACCHA SÁNCHEZ – INCARCERATED.
- (c) “Guillermo,” Identified as Roberto PILCO PACO – INCARCERATED.
- Fernando SALINAS SOLORZANO – INCARCERATED.
- (c) “Lida,” identified as the wife of Roberto PICO PACO – AT LARGE.

46. Peru indicates that this report states that “the applicant with code A1J054967 agrees to assume the legal defense of the criminal terrorist Juan SANTAMARIA RAMOS (c) ‘Mirko,’ at the request of members of his family, who paid his professional fees,” and that the same report states that in early August 1993, “(...) the aforesaid applicant assumed the defense of the criminal terrorist Eduard Elí NACIÓN RAMOS (c) ‘Beto,’ under investigation by JECOTE-PNC-HUANUCO for terrorism crimes, at the request of the families of the subversives Noemí HUACCHA SÁNCHEZ (c) ‘Yersi,’ Roberto PILCO PACO (c) ‘Guillermo,’ and (c) Lida, who coerced him and threatened to kill him and his family if he did not agree to defend them.”

47. The State notes that in the Public Prosecutor’s Office’s resolutions dated November 4 and 9, 1994, the First Provincial Prosecutor of Huánuco and the Senior Prosecutor, respectively, established that the Repentance Law was applicable in that the applicant had come forward voluntarily and, consequently, they ordered that the case be archived.

48. The State contends that the Shining Path terrorist organization constituted an entire criminal apparatus, within which there was a popular assistance office with an area – known as the “democratic lawyers” – responsible for defending those terrorists who were captured. The State holds that given the prevailing circumstances, it was reasonable to assume that Mr. Galindo had ties to the Shining Path terrorist group, since he was able to identify around six of its members, with their names and aliases. Peru states that while the option of defending terrorists existed, in the case at hand there were reasonable indications of the existence of ties between Mr. Galindo and the “democratic lawyers.”<sup>3</sup>

49. At the merits stage, the State presented additional information on a Verification Report (No. 009-DECOTE-PNC-HCO) of January 25, 1995, in which a person identified by means of a code voluntarily applied for application of the Repentance Law, stating that in Acomayo in the year 1990, when he was working in his store, he was confronted by a Shining Path incursion that, amid threats, appointed him the military commander of the first sector of San Pedro de Acomayo. According to the report, this person gave important information revealing the

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<sup>3</sup> See: Minutes of Hearing No.19, Case 11.568, Luis Galindo Cárdenas, 133rd period of sessions of the Inter-American Commission on Human Rights.

preparation and circumstances of the terrorist actions in which he participated. The State claims that this confession was made by Mr. Galindo, who again on that date applied for the benefits of the Repentance Law.

50. Regarding the alleged violation of the right to personal liberty, the State indicates that Mr. Galindo applied for the Repentance Law, as recorded in the National Police reports of October 31, 1994, and January 25, 1995, and in the prosecutors' resolutions of November 4, and 9, 1994. Consequently, the State contends that there was no violation of Mr. Galindo's right to personal liberty; instead, a formal procedure provided for in law for the granting of a requested benefit was followed. Regarding the contradictions identified by the petitioner, the State notes that "the statements of then-President Alberto Fujimori to the press and the armed forces communiqué on Mr. Galindo's arrest have no legal force or any effect on the proceedings, being merely informative in nature; they may therefore be inexact and subject to rectifications or modifications." The State notes that in Peru, official records of arrests and applications for the Repentance Law are based on police interventions and the proceedings of the Public Prosecution Service. It holds that there is no contradiction between the petitioner voluntarily reporting to the police and subsequently being arrested, in that it reflects the logical sequence of events. It contends that after coming forward and admitting his ties to the Shining Path terrorist organization, pursuant to the terms of Decree Law No. 25475, the specialized police unit was required to open the corresponding investigation, which led to the petitioner's arrest.

51. Regarding the alleged violation of the right to humane treatment, the State claims that the facts described by the petitioner cannot be deemed acts of torture, since there are no single parameters for determining the post-traumatic effects of psychological torture. It notes that psychological torture bears a close relationship with the individual's past, the structure of his personality, his most vulnerable psychological and emotional areas, the methods used, and the violence deployed, which means that an expert examination must be conducted to determine Mr. Luis Galindo's psychological, emotional, and mental state. The State notes that the petitioner submitted no evidence during the processing of the case by the Commission, other than his own narrative, indicating in any way that Mr. Galindo Cárdenas suffered psychological torture. Consequently, the State contends that a presumption against it that Mr. Galindo was in fact tortured cannot be established.

52. Regarding the petitioner's alleged incommunicado detention, the State maintains that as can be seen in the petitioner's claims, Mr. Galindo received visits while in custody – specifically, by his wife and sister, by the Public Prosecution Service, and by members of the International Red Cross. It states that it has not expressly denied that the petitioner might have been kept incommunicado at the start of his arrest since that restriction was in line with the rules for police investigations in force at the time of the alleged victim's arrest. In this regard, the State notes that Article 12.d of Decree Law No. 25475<sup>4</sup> allowed for detainees to be held incommunicado temporarily for reasons of security and confidentiality in the investigation. It states that the subsection in question was later ruled unconstitutional in a judgment of the Constitutional Court of January 3, 2003 (case file No. 010-2002-AI/TC).

53. Regarding the alleged violation of the petitioner's right to a fair trial, the State notes that contrary to the petitioner's contentions, under Article 200 of the 1993 Constitution: "The exercise of habeas corpus and *amparo* actions is not suspended during the states of emergency referred to in Article 137 of the Constitution." The State indicates that in states of emergency the only constitutional rights that may be restricted or suspended are those dealing with personal freedom and security, the inviolability of homes, and freedom of assembly and circulation set forth in sections 9, 11 and 12 of Article 2 and in section 24.f of that article, but that

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<sup>4</sup> The State indicates that pursuant to Article 12 of this Law: "Investigation rules.

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

(...)

d. When the circumstances and the complexity of the investigations so require, in order to cast additional light on the facts under investigation, the detainee may be ordered to be placed in incommunicado detention for up to the maximum period allowed by law, with the knowledge of the Public Prosecution Service and of the corresponding judicial authority."

this does not apply to habeas corpus remedies. The State contends that Mr. Galindo could clearly have filed for *amparo* relief but did not do so.

54. Regarding the complaint that Mr. Galindo lodged with the prosecutor's office, the State claims that the Internal Oversight Office's resolution of May 8, 1998, in case file No. 525-95 indicates that Mr. Galindo's complaint was archived in accordance with Amnesty Laws Nos. 26479 and 26492, which suspended any complaint or judicial proceedings against public officials for the commission of acts related to the antiterrorism effort. The State holds that since the legal effects of these laws were overturned by the Inter-American Court's judgment in the *Barrios Altos* case, there are currently no material or procedural impediments to an investigation being carried out into the alleged violation of the alleged victim's rights during his arrest.

55. The State notes that the petitioner filed no criminal complaints against the military, police, or political authorities purportedly involved in the criminal acts he describes, or any challenge to the senior prosecutor's resolution that approved the application of the Repentance Law to him. The State contends that the petitioner has merely held that in the circumstances surrounding the violations committed against him, the judiciary did not offer the necessary legal guarantees for ending those abridgments of his rights. Regarding the alleged violation of the right to judicial protection, the State notes that the petitioner filed for no remedies, in spite of being both an attorney and a magistrate.

56. Regarding the alleged violation of the principle of legality, the State contends that when Mr. Galindo expressed his commitment to repentance, the judiciary applied Article 1.2.a of Decree Law No. 25499 of May 16, 1992,<sup>5</sup> which establishes the terms whereunder the benefits of sentence reduction, exemption, remission, or attenuation of the penalty are to apply to the perpetrators of terrorist crimes, and Articles 6,<sup>6</sup> 27, 28, and 29 of Supreme Decree No. 015-03-JUS, which regulated the Repentance Law as regards crimes of terrorism.

#### IV. PROVEN FACTS

57. In accordance with Article 43.1 of its Rules of Procedure,<sup>7</sup> the Commission will examine the facts alleged by the parties and the evidence submitted during the processing of this case. In addition, it will take into account knowledge in the public domain, including resolutions by the committees of the universal human rights system, its own reports on petitions and cases and on the general human rights situation in Peru, publications from

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<sup>5</sup> Article 1.2.a of Decree Law No. 25499 of May 16, 1992: "II.A Exemption from punishment: a. When a person involved in a terrorist crime, whether facing a criminal trial or not, voluntarily provides timely, truthful information revealing details of terrorist groups or organizations and their operations, the identities of their leaders, heads, chiefs, and/or main members, and future actions for their prevention or neutralization.

Statements shall be given to the police, in the presence of a representative of the Public Prosecution Service or before the judge in the proceedings, as applicable.

If the person or persons are not subject to a police investigation or criminal trial, their statements shall necessarily be given to the Provincial Prosecutor or Senior Prosecutor in any location of the Republic.

On an exceptional basis, in areas declared under states of emergency or states of siege, the statements referred to in the previous paragraph may be given to the authorities of the Political/Military Command with a representative of the Public Prosecution Service in attendance.

b. When the agent informs the police or judicial authority of a threat situation that would allow harm to be prevented."

<sup>6</sup> Article 6 of the Regulations to the Repentance Law: "The benefit of sentence exemption and waiver shall apply to individuals, whether involved in a criminal trial for terrorist crimes or not, who voluntarily provide timely and truthful information revealing details of terrorist groups or organizations and their functions and fully identifying the leaders, heads, chiefs, or members of the organization, together with the arrest thereof, preventing or neutralizing future terrorist actions, or informing the police or judicial authority of a threat situation that would allow harm to be prevented."

<sup>7</sup> Article 43.1 of the IACHR's Rules of Procedure provides as follows:

The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

nongovernmental organizations, and laws, decrees, and other regulations in force at the time of the facts alleged by the parties.

58. The IACHR will include, in the evidence for this case, the Final Report of the Truth and Reconciliation Commission (hereinafter “the CVR”), published in the city of Lima on August 27, 2003.<sup>8</sup> That document was placed before the three branches of government of the Peruvian State, the Attorney General’s office, and other agencies of the public administration, in compliance with the mandate issued by the President of the Republic in Supreme Decrees 065-2001-PCM and 101-2001-PCM.<sup>9</sup>

59. In the following paragraphs, the IACHR will address the general context surrounding the incidents in the case at hand, the facts already established, and the consequent responsibility of the Peruvian State.

#### A. Context

60. The chapter on “Armed Groups” in the CVR’s Final Report states that in May 1980 the leadership of the group that named itself the Communist Party of Peru – Shining Path embarked on a plan to overthrow the system of democratic and representative government and to impose its own form of political and social organization in Peru.<sup>10</sup> The annihilation of community leaders and local authorities, the personality cult surrounding its founder, Abimael Guzmán Reinoso, the extermination of rural communities that did not support it, the deliberate use of terror and other actions in violation of international humanitarian law were some of the tactics chosen by Shining Path in the construction of its “new state.”<sup>11</sup> According to the CVR, the acts of violence claimed by or attributed to this group caused more than 31,000 deaths (54% of the total fatalities of the armed conflict), tens of thousands of displaced persons, vast economic losses, and a lasting dejection among Peru’s population.<sup>12</sup>

61. After launching its “people’s revolutionary war” in 1984, the Túpac Amaru Revolutionary Movement (MRTA) contributed to the insecurity that prevailed in Peru for several years and to the violations of the basic rights of the Peruvian people. The criminal actions claimed by or attributed to this group included attacks on commercial premises, police stations, and the homes of members of the government, targeted killings of ranking public officials, abductions of business owners and diplomats, executions of indigenous leaders, and some deaths on account of the victims’ sexual orientation or gender identity.<sup>13</sup>

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<sup>8</sup> The CVR’s Final Report has been used by the Commission in a series of cases, as well as by the Inter-American Court of Human Rights in ruling on facts and the international responsibility of the Peruvian State in the following matters: *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202; *Case of Cantoral Huamani and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167; *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162; *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160; *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147; *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136; and *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115.

<sup>9</sup> According to Supreme Decrees 065-2001-PCM and 101-2001-PCM, the CVR’s purpose was to establish the facts and responsibilities of the terrorist violence and human rights violations that were carried out between May 1980 and November 2000 by both the terrorist organizations and the agencies of the State, and to propose initiatives intended to ensure peace and harmony among the people of Peru.

<sup>10</sup> Final Report of the CVR, 2003, Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, pp. 29 and 30, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>11</sup> Final Report of the CVR, 2003, Vol. I, Chapter 1, *The Periods of the Violence*, p. 54; Chapter 3, *Faces and Profiles of the Violence*, pp. 168 and 169; Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, pp. 127 to 130; and Vol. VI, 1.1 *Killings and Massacres*, p. 16, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>12</sup> Final Report of the CVR, 2003, Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, p. 13, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>13</sup> Final Report of the CVR, 2003, Vol. II, 1.4 *The Túpac Amaru Revolutionary Movement*, pp. 387, 389, 392, and 431 to 433; Vol. VII, 2.30 *The Disappearance of the Ashaninka Chief Alejandro Calderón (1989)*, 2.39 *Killing of Nine Inhabitants of Yumbatos, San Martín (1989)*, 2.54 *Abduction and Murder of David Ballón Vera (1992)*, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

62. In its Second Report on the Situation of Human Rights in Peru, the IACHR noted that the acts of violence carried out by Shining Path and the MRTA “led to the loss of life and property... in addition to the pain and suffering caused by the permanent state of anxiety to which Peruvian society, in general, was subjected.”<sup>14</sup>

63. In its reports on individual cases and on the general human rights situation in Peru, the IACHR noted that during the struggle against Shining Path and the MRTA, the police and the military committed illegal acts that led to serious violations of human rights.<sup>15</sup> In addition, it indicated that the security forces carried out arbitrary arrests, torture, rapes, extrajudicial killings, and disappearances, in many cases against people who had no ties to the irregular armed groups.<sup>16</sup> In turn, the Inter-American Court has established that for several years, governmental policy in Peru favored the commission of targeted killings, forced disappearances, and torture of people suspected of belonging to the armed outlaw groups.<sup>17</sup>

### 1. Antiterrorist Legislation and State of Emergency

64. On April 5, 1992, President of the Republic Alberto Fujimori announced a series of measures intended to “streamline the process of [...] national reconstruction,” “modernize the public administration,” “reorganize the judiciary as a whole,” and “bring peace to the country, within a legal framework that severely punishes terrorists.”<sup>18</sup> One of the justifications given for the interruption of the legal order was the alleged complacency of the judiciary in terrorism trials which, in the words of the head of state, had led to “the mass release of convicted and confessed terrorists, through the misuse of the so-called conscience criterion.”<sup>19</sup>

65. By means of Decree Law No. 25418 of April 6, 1992, Alberto Fujimori established the “Emergency and National Reconstruction Government,” temporarily dissolved Congress, and intervened in the judiciary, the Public Prosecution Service, and the office of the Comptroller General of the Republic. The intervention in those institutions was carried out by sending the armed forces to occupy their installations and by placing opposition members of Congress and ranking officials opposed to the suspension of the constitutional order under house arrest.<sup>20</sup>

66. In this context, the Emergency and National Reconstruction Government enacted a series of decree laws that established, within the Peruvian legal system, special procedures for investigating, bringing charges against, and prosecuting people accused of terrorism or treason against the fatherland. On May 5, 1992, Decree Law No. 25475 was enacted (hereinafter “Decree 25475”), which defined the different forms that the crime of terrorism could take.<sup>21</sup>

<sup>14</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Introduction, B. Reference Framework, para. 7, available at [www.cidh.oas.org/countryrep/Peru2000sp/indice.htm](http://www.cidh.oas.org/countryrep/Peru2000sp/indice.htm).

<sup>15</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Introduction, B. Reference Framework, para. 9, available at [www.cidh.oas.org/countryrep/Peru2000sp/indice.htm](http://www.cidh.oas.org/countryrep/Peru2000sp/indice.htm).

<sup>16</sup> IACHR, Report No. 101/01, Case 10.247 and others, *Extrajudicial Executions and Forced Disappearances*, Peru, October 11, 2001, paras. 163 to 179; Report No. 57/99, Case 10.827, *Romer Morales Zegarra and others*; and Case 10.984, *Carlos Vega Pizango*, Peru, April 13, 1999, paras. 28 to 44; Report No. 1/96, Case 10.559, *Julio Apfata Tañire Otavire and others*, Peru, March 1, 1996, section I, Background; and Report No. 37/93, Case 10.563, *Guadalupe Ccalloccunto Olano*, Peru, October 7, 1993, section I, Background.

<sup>17</sup> I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, paras. 83 and 84; *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136, para. 54.1; and *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005, Series C No. 21, para. 60.9.

<sup>18</sup> Museum of the Congress of the Republic of Peru, *Message to the Nation by the President of Peru, H.E. Alberto Fujimori Fujimori, April 5, 1992*, available at [www.congreso.gob.pe/museo/mensajes/Mensaje-1992-1.pdf](http://www.congreso.gob.pe/museo/mensajes/Mensaje-1992-1.pdf).

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

<sup>20</sup> IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section III, The Situation Since April 5, 1992, para. 54, available at [www.cidh.oas.org/countryrep/Peru93sp/indice.htm](http://www.cidh.oas.org/countryrep/Peru93sp/indice.htm).

<sup>21</sup> Decree Law No. 25475 of May 5, 1992, available on the web site of the Congress of the Republic of Peru: [www.congreso.gob.pe/ntley/imagenes/Leyes/25475.pdf](http://www.congreso.gob.pe/ntley/imagenes/Leyes/25475.pdf).

67. To deal with the attacks on the country by members of Shining Path, and to address the danger that those actions posed to democracy, the State decided to declare a state of emergency first in Ayacucho and then, progressively, through much of the nation's territory.<sup>22</sup> In this regard, Article 137.1 of the 1993 Constitution provided as follows:

**Article 137 of the Constitution.** The President of the Republic, with the consent of the Council of Ministers, may decree, for a given period, throughout the nation's territory or in part thereof, and informing Congress or the Permanent Commission, the states of emergency provided for in this article:

1. State of emergency, in the event of a disturbance of the peace or domestic order, of a catastrophe, or of grave circumstances affecting the life of the nation. In such a situation, the exercise of the constitutional rights dealing with personal freedom and security, the inviolability of homes, and freedom of assembly and circulation set forth in sections 9, 11, and 12 of Article 2 and in section 24.f of that article may be restricted or suspended. In no circumstance may any person be exiled.

The duration of the state of emergency shall not exceed sixty days. Any extension shall require a new decree. During a state of emergency, the armed forces shall assume control of law and order, if so ordered by the President of the Republic.

68. The Commission notes that Law No. 24159 of June 6, 1985, in force at the time of the facts, set the rules to be observed during states of emergency in which the armed forces assumed control of law and order in all or part of the nation's territory, establishing for that purpose Political/Military Commands under high-ranking military officers.<sup>23</sup> Thus, the functions and powers of the civilian authorities during the state of emergency were restricted or subordinated to the Political/Military Command.<sup>24</sup> Later, the enactment of Legislative Decree 749 of November 12, 1991, expanded the authority of the Political/Military Commands.<sup>25</sup> That decree gave the officers in charge of Political/Military Commands responsibility not just for coordinating but for leading all government actions at all levels and made available to them economic and logistical resources and personnel.<sup>26</sup>

69. From the enactment of Decree Law 25.659 in August 1992 until November 24, 1993, no guarantee remedies were admissible in cases involving terrorist crimes. Even if the innocence of the defendant had been established, judges were prevented at all times from granting any form of conditional release, *amparo* relief, or habeas corpus. This legislation was amended with the passage of Law 26248 on November 24, 1993. Nevertheless, the amendments made still contained various procedural restrictions.<sup>27</sup>

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<sup>22</sup> Final Report of the Truth and Reconciliation Commission of Peru, Vol. VI, Section Four: Crimes and Human Rights Violations, Chapter 1: Patterns in the Commission of Crimes and Human Rights Violations, 1.6 Violations of Due Process, 1.6.6. State of Emergency, Illegal Arrests, and Guarantee Actions, p. 461.

<sup>23</sup> According to Article 4 of Law No. 24150: "Control of law and order in emergency zones shall be assumed by a Political/Military Command led by a high-ranking officer appointed by the President of the Republic, following a proposal made by the Joint Command of the Armed Forces, who shall perform the functions of that position as established in this law in the area of his jurisdiction, in accordance with the orders and emergency plans issued by the President of the Republic."

<sup>24</sup> Final Report of the Truth and Reconciliation Commission of Peru, Vol. VI, Section Four: Crimes and Human Rights Violations, Chapter 1: Patterns in the Commission of Crimes and Human Rights Violations, 1.6 Violations of Due Process, 1.6.6. State of Emergency, Illegal Arrests, and Guarantee Actions, p. 465.

<sup>25</sup> Final Report of the Truth and Reconciliation Commission of Peru, Vol. VI, Section Four: Crimes and Human Rights Violations, Chapter 1: Patterns in the Commission of Crimes and Human Rights Violations, 1.6 Violations of Due Process, 1.6.6. State of Emergency, Illegal Arrests, and Guarantee Actions, p. 465.

<sup>26</sup> Final Report of the Truth and Reconciliation Commission of Peru, Vol. VI, Section Four: Crimes and Human Rights Violations, Chapter 1: Patterns in the Commission of Crimes and Human Rights Violations, 1.6 Violations of Due Process, 1.6.6. State of Emergency, Illegal Arrests, and Guarantee Actions, p. 465.

<sup>27</sup> Annual Report of the IACHR 1993, OEA/Ser.L/V/II.85, Doc. 8 rev., February 11, 1994, Chapter IV: Situation of Human Rights in Several States, Peru.

## 2. Repentance Law

70. On May 12, 1992, the executive branch of government enacted Decree Law No. 25499, known as the Repentance Law, which regulated the reduction, exemption, remission, or attenuation of punishment of people prosecuted for or convicted of the crime of terrorism who provided information intended to lead to the arrest of the leaders, heads, chiefs, or main members of terrorist organizations (Arts. 1.II.a and 1.III), together with terrorist activities. By means of Supreme Decree No. 015-93-JUS of May 8, 1993, the executive branch enacted the Regulations of the Repentance Law, which provided, *inter alia*, for changing or keeping secret the identity of repentant informants (Articles 8.a and 36). The Repentance Law (Decree Law 25499) expired on October 31, 1994.<sup>28</sup>

71. This Law established the terms whereby a series of “benefits” could be granted to the perpetrators of terrorist crimes who repented, including the reduction or cancellation of their punishments. The Repentance Law concluded by calling on people involved with the outlaw movements to amend their stance and to hand themselves over to the authorities or to military bases, because their security and that of their families – which was fully guaranteed – depended on that, and thereby to “bring about their reincorporation into society as individuals willing to work for national peace and to live within the framework of the law.”<sup>29</sup> The Repentance Law, according to the CVR’s Report, was a severe blow to the outlawed armed groups and fueled mistrust even among the commanders of Shining Path, “who now lead normal lives and maintain that Abimael Guzmán was captured on account of the information furnished by a repentant.”<sup>30</sup>

72. Regarding the Repentance Law, the IACHR stated in its 1993 Annual Report that it had enabled hundreds of people involved in terrorist activities to surrender to the Peruvian authorities, which was a positive development.<sup>31</sup> Nevertheless, the Commission noted that it had:

received several petitions to the effect that the Repentance Law is being used (particularly by members of the Sendero Luminoso and by people whom the security forces have threatened, coerced and made false promises to) to accuse innocent people who are frequently declared guilty by the Peruvian police and court authorities solely on the basis of a statement made by someone who has invoked the Repentance Law.<sup>32</sup>

73. The Commission concluded that: “In practice, innocent people are being arrested and held in custody for long periods because of the Repentance Law. Some of these innocent people are even being convicted.”<sup>33</sup>

74. According to the Final Report of the Truth and Reconciliation Commission, the enforcement of the Repentance Law led to abuses and political bias: for example, a major problem arose in the province of Leoncio Prado when some 4,000 peasant farmers who went *en masse* to register were registered as repentants since, in the words of the mayor, “all the farmers, directly and indirectly, participated in subversive actions.”<sup>34</sup> Similarly, the

<sup>28</sup> UN Doc. E/CN.4/1998/39/Add.1 of February 19, 1998, Report of the Special Rapporteur on the independence of the judiciary and lawyers, Mr. Param Cumaraswamy, Report on the Mission to Peru, para. 65.

<sup>29</sup> Final Report of the Truth and Reconciliation Commission of Peru, Vol. IV, Section Three: The Scenarios of the Violence, Chapter 1: [Violence in the Regions](#), 1.4 The Northeastern Region, 1.4.3.3. Military Offensive and Declining Violence: 1993-2000, p. 362.

<sup>30</sup> Final Report of the Truth and Reconciliation Commission of Peru, Vol. IV, Section Three: The Scenarios of the Violence, Chapter 1: [Violence in the Regions](#), 1.4 The Northeastern Region, 1.4.3.3. Military Offensive and Declining Violence: 1993-2000, p. 324.

<sup>31</sup> Annual Report of the IACHR 1993, OEA/Ser.L/V/II.85, Doc. 8 rev., February 11, 1994, Chapter IV: Situation of Human Rights in Several States, Peru.

<sup>32</sup> Annual Report of the IACHR 1993, OEA/Ser.L/V/II.85, Doc. 8 rev., February 11, 1994, Chapter IV: Situation of Human Rights in Several States, Peru.

<sup>33</sup> Annual Report of the IACHR 1993, OEA/Ser.L/V/II.85, Doc. 8 rev., February 11, 1994, Chapter IV: Situation of Human Rights in Several States, Peru.

<sup>34</sup> Final Report of the Truth and Reconciliation Commission of Peru, Vol. IV, Section Three: The Scenarios of the Violence, Chapter 1: [Violence in the Regions](#), 1.4 The Northeastern Region, 1.4.3.3. Military Offensive and Declining Violence: 1993-2000, p. 363.



United Nations Rapporteur on the independence of judges and lawyers stated, after his 1996 visit to Peru, that reports from lawyers and nongovernmental sources claimed that the law resulted in the unjust and arbitrary detention of many persons who were not involved with the armed opposition.<sup>35</sup> Likewise, in 1996 the Human Rights Committee said that:

The Committee is concerned that this law may have been used by individuals to denounce innocent persons in order to avoid prison sentences or to reduce the duration, a concern that is supported by the fact that there are at least seven draft proposals – one of them from the Ombudsman’s Office (Defensor del Pueblo) and another from the Ministry of Justice – and a Decree Law 26,329 attempting to solve the problem of innocent people being prosecuted or having been convicted under the anti-terrorist laws.<sup>36</sup>

### 3. Substantive Issues Regarding the Antiterrorist Legislation

75. Decree Law No. 25475 of May 6, 1992, expressly abrogated the provisions of the Criminal Code that had applied to terrorism-related crimes since April 1991 and redefined “terrorism” as any act “provoking, creating, or maintaining anxiety, alarm, and fear in the public, or a sector thereof; making attempts to harm the life, body, health, freedom, and safety of the individual, or property, the security of public buildings, modes and means of communication and transportation of any kind, electric towers and power lines, power plants, or any other facility or service, through the use of weapons or explosive devices or substances, or any other means capable of inflicting damage or seriously disrupting the peace or adversely affecting international relations or the security of society and the State” (Article 2).<sup>37</sup>

76. In contrast to cases involving common crimes, the investigation of crimes of terrorism was carried out by a department of the police known as the DINCOTE (National Antiterrorism Directorate), which was authorized to impose incommunicado detention, unilaterally and without consulting a judge, subject to informing a representative of the Public Prosecution Service and a judge that the arrest had been made. The DINCOTE had the power to decide whether the evidence was enough for charges to be brought, what those charges should be, and whether the defendant should appear before a civilian or military court. In addition, there were no restrictions on the length of time that the DINCOTE had for interrogating suspects and preparing the charges.<sup>38</sup>

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

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

- a. Take charge of investigations of terrorism crimes at the national level, deploying its personnel without any restriction set out in its institutional regulations. [...]
- b. Oversee the defense of legality and respect for human rights and for international treaties and conventions. Thus, during this stage of the investigation, the presence of a representative of the Public Prosecution Service shall be requested.

<sup>35</sup> UN Doc. E/CN.4/1998/39/Add.1 of February 19, 1998, Report of the Special Rapporteur on the independence of the judiciary and lawyers, Mr. Param Cumaraswamy, Report on the Mission to Peru, para. 65.

<sup>36</sup> Human Rights Committee, CCPR/C/79/Add.67 of July 25, 1996, Preliminary Observations of the Human Rights Committee, Peru, para. 19.

<sup>37</sup> UN Doc. E/CN.4/1998/39/Add.1 of February 19, 1998, Report of the Special Rapporteur on the independence of the judiciary and lawyers, Mr. Param Cumaraswamy, Report on the Mission to Peru, para. 49.

<sup>38</sup> UN Doc. E/CN.4/1998/39/Add.1 of February 19, 1998, Report of the Special Rapporteur on the independence of the judiciary and lawyers, Mr. Param Cumaraswamy, Report on the Mission to Peru, paras. 50 and 51.

c. Hold suspects for no more than fifteen calendar days, giving notice in writing thereof to the Public Prosecution Service and to the corresponding criminal judge.

d. When the circumstances and the complexity of the investigations so require, in order to cast additional light on the facts under investigation, the detainee may be ordered to be placed in incommunicado detention for up to the maximum period allowed by law, with the knowledge of the Public Prosecution Service and of the corresponding judicial authority. [...]

f. Accused persons shall be entitled to select defense counsel, who may only intervene after the detainee has given his statement to the representative of the Public Prosecution Service. If the detainee does not select defense counsel, the police authority shall assign a public defender, to be provided by the Ministry of Justice.<sup>39</sup>

78. Regarding the exercise of the right of defense by persons facing terrorism charges, in 1993 the Commission said that “while in theory those accused of terrorism have that right, in practice the right to defend oneself is so seriously shackled, it is virtually nonexistent. According to Decree Laws 25475 and 25744, the attorney cannot take part in the proceedings until the accused makes his or her statement in the presence of the prosecutor. The police can hold persons suspected of terrorism in preventive custody for 15 days but where the crimes of terrorism are classified as treason against fatherland, the period of preventive custody can be extended even longer.”<sup>40</sup>

79. This regime remained in place until January 3, 2003, when a series of provisions contained in the terrorism decree laws enacted during the administration of Alberto Fujimori were ruled unconstitutional by the Constitutional Court of Peru.<sup>41</sup>

80. For the definition of the crime of terrorism, the Constitutional Court upheld Article 2 of Decree Law No. 25475 but restricted its application to cases of willfulness and said that the definition had to include the following text: “*intentionally* provoking, creating, or maintaining anxiety, alarm, and fear in the public, or a sector thereof (...).”<sup>42</sup> The Constitutional Court also established certain interpretative parameters for defining an action as the offense described in the provision in question.

#### 4. Substantive Issues Regarding the Repentance Law and its Regulations

81. According to Article 1 of the Repentance Law, its benefits were available to “those who participated or were involved in the commission of the crimes set forth in Decree Law No. 25475,” who could enjoy the waiver of punishment in two situations:

##### II.A Exemption from sentencing:

a. When a person involved in a terrorist crime, whether facing a criminal trial or not, voluntarily provides timely, truthful information revealing details of terrorist groups or organizations and their operations, the identities of their leaders, heads, chiefs, and/or main members, and future actions for their prevention or neutralization.

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<sup>39</sup> Decree Law No. 25475 of May 5, 1992, available on the web site of the Congress of the Republic of Peru: [www.congreso.gob.pe/ntley/imagenes/Leyes/25475.pdf](http://www.congreso.gob.pe/ntley/imagenes/Leyes/25475.pdf).

<sup>40</sup> Annual Report of the IACHR 1993, OEA/Ser.L/V/II.85, Doc. 8 rev., February 11, 1994, Chapter IV: Situation of Human Rights in Several States, Peru.

<sup>41</sup> Resolution of the Constitutional Court of January 3, 2003, Case No. 010-2002-AI/TC, unconstitutionality suit brought by Marcelino Tineo Silva and other citizens.

<sup>42</sup> Resolution of the Constitutional Court of January 3, 2003, Case No. 010-2002-AI/TC, unconstitutionality suit brought by Marcelino Tineo Silva and other citizens. Justification 65.

Statements shall be given to the police, in the presence of a representative of the Public Prosecution Service or before the judge in the proceedings, as applicable.

If the person or persons are not subject to a police investigation or criminal trial, their statements shall necessarily be given to the Provincial Prosecutor or Senior Prosecutor in any location of the Republic.

On an exceptional basis, in areas declared under states of emergency or states of siege, the statements referred to in the previous paragraph may be given to the authorities of the Political/Military Command with a representative of the Public Prosecutor's Office in attendance.

b. When the agent informs the police or judicial authority of a threat situation that would allow harm to be prevented.

82. Article 6 of the Regulations to the Repentance Law (Supreme Decree No. 015-93-JUS) provided that:

The benefit of punishment exemption shall apply to individuals, whether involved in a criminal trial for terrorist crimes or not, who voluntarily provide timely and truthful information revealing details of terrorist groups or organizations and their functions and fully identifying the leaders, heads, chiefs, and/or main members of the organization, together with the arrest thereof, preventing or neutralizing future terrorist actions, or informing the police or judicial authority of a threat situation that would allow harm to be prevented.

83. For the procedure to be followed in cases in which an individual sought the benefits of the Repentance Law, Articles 9 and 11 of the Regulations stated that they must "report voluntarily" to give statements, which must be set down in official records, before any of the following authorities: (a) police; (b) provincial prosecutor; (c) senior prosecutor; (d) criminal judge, mixed-jurisdiction judge, or justice of the peace; (e) military authority; (f) prison authority, if in custody at a detention facility. In all the above cases, pursuant to Article 13 of the regulations, statements must be given in presence of a representative of the Public Prosecutor's Office. According to Article 11 of the Regulations, the official record of the applicant's statement had to contain:

- a) Commitment to repentance and to the voluntary, definitive abandoning of all terrorist activity.
- b) Status and position within the terrorist organization in question.
- c) True confession of the criminal acts in which he/she participated.
- d) Timely, truthful information on the terrorist groups and their leaders, heads, chiefs, and others, at the discretion of the authority.
- e) Information to prevent or neutralize future acts of terrorism or treason against the fatherland.
- f) Applicant's signature and fingerprint of right index finger.

84. Once the applicant's statement was taken, the Public Prosecution Service must immediately instruct the specialized unit of the National Police to proceed to verify the information provided by the applicant, reporting to the corresponding authority within a period of five days, with a possibility of an extension for another five days in cases in which it was duly justified (see Articles 19, 20, and 21 of the Regulations of to the Repentance Law). The information provided by the applicant must allow (Article 12 of the Regulations): (a) the dismantling of terrorist groups or organizations; (b) the capture of criminal terrorists; (c) the identification of terrorist groups' training camps and indoctrination centers; (d) the revealing of criminal terrorists' ties with or infiltration into different sectors of the population; (e) the identification of individuals and organizations that voluntarily support, in different ways, terrorist groups or organizations; (f) the seizure of weapons, explosives, or other materials used by terrorist groups; (g) the release of persons captured and/or abducted by terrorist groups; (h) indication of the method and circumstances of the terrorist actions in which he/she participated; (i) the prevention of terrorist actions and attacks.

85. Regarding the report to be prepared by the specialized unit of the National Police, Article 27 of the Regulations stated that it must either confirm or not the applicant's claims, "and be duly grounded on technical and scientific elements, allowing the Public Prosecution Service or judicial authorities to rule on the admissibility of the benefit sought." In cases in which no criminal trial was brought, the Public Prosecution Service

must rule on the applicability of the benefit sought on the basis of the specialized police unit's report, "informing the corresponding criminal judge of the new facts reported by the beneficiary, in accordance with law, and referring a copy of the proceedings regarding the beneficiary to the ranking senior prosecutor, for him to appoint a senior prosecutor who shall necessarily, within a period of three days, order the definitive closure of the case as regards the beneficiary and report the result to the Evaluation Committee (Article 29 of the Regulations).

86. As regards the security measures that the authorities were required to extend to applicants under the Repentance Law, Article 36 of the Regulations provided that: "Applicants, upon presenting themselves, shall be given the necessary personal security and confidentiality and shall be assigned, as applicable, an identification code, with which he/she shall be identified until the benefit is granted," and that, should there be any "hindrance, delays, or negligence in maintaining the confidentiality that lead to the revelation of the beneficiary's identity, irrespective of the applicable criminal liability, the person responsible shall be punished by dismissal" (see Article 42 of the Regulations).

#### **B. Facts of the case**

87. At the time of the events in this case, Mr. Galindo Cárdenas was serving as Provisional Magistrate on the Huánuco Superior Court. Prior to that, Mr. Galindo had a private law practice in the city of Huánuco, which specialized in advising people on international adoptions.<sup>43</sup> Mr. Galindo was married to Irma Díaz de Galindo, age 33, and the couple had a son age 10.

88. The alleged victim has, since he filed his original complaint, consistently maintained that around September 15, 1994, when he was serving as a Provisional Magistrate on the Huánuco Superior Court, he was unofficially told that his name had appeared in a police statement given by a member of the *Sendero Luminoso* subversive group, who fingered him as a supposed member of that organization, through his membership in the "Association of Democratic Attorneys."<sup>44</sup> The State, for its part, has maintained that Mr. Galindo was under investigation (although it did not indicate on what date the investigation got underway), since a person availing himself of the "Repentance Law" had identified Mr. Galindo Cárdenas as a member of an association having ties with the *Sendero Luminoso*.<sup>45</sup>

#### **The date of and the circumstances surrounding the arrest of the magistrate on the Huánuco Superior Court, Luis Antonio Galindo Cárdenas**

89. The Commission notes that the State and the petitioner differ concerning the circumstances under which Mr. Galindo Cárdenas was detained, the place where he was detained and for how long.

90. According to the petitioner's version, on Friday, October 14, 1994, Mr. Galindo went, of his own free will, to the offices of the Chief of Counter-Terrorism (JECOTE) of the Huánuco National Police to clarify his situation; thereafter, he rejoined the special session of the Plenary of the Huánuco and Pasco Superior Court, which was being held that day. There he explained the reasons for his late arrival.<sup>46</sup> Then, on Sunday October 16, 1994, the Chief of JECOTE appeared at Mr. Galindo's residence to inform him that Colonel Negrón, Head of Huánuco Military-Political Command, wanted to speak with him at the "Yanac" Army barracks. So, in the morning,

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<sup>43</sup> Annex 36. *Horizontes, Edición Nacional e Internacional, Revista de Panorama Cultural, Reconocimiento a la destacada labor en materia de legislación tutelar en el Perú- Adopciones Internacionales*, March 29, 1994. Attachment to the petitioner's brief of January 3, 1996.

<sup>44</sup> IACHR, Admissibility Report No. 14/04 of February 23, 2004, paragraph 9.

<sup>45</sup> IACHR, Admissibility Report No. 14/04 of February 23, 2004, paragraph 26 and the State's allegations during the merits phase.

<sup>46</sup> Annex I. Minutes of the Special Session that the Full Plenary of the Huánuco and Pasco Superior Court held on October 14, 1994. Attachment 7 to the petitioner's brief of January 3, 1996.

he went to the military base, where Colonel Negrón and another officer received him. After inviting him into a room, they locked the door from the outside with a chain.<sup>47</sup>

91. The State, for its part, maintains that at 8:00 p.m. on Saturday, October 15, 1994, the “Applicant’s Declaration” was taken from Mr. Galindo Cárdenas, identified with code A1J054967, in one of the offices of JECOTE-PNP-Hco. in the city of Huánuco. Present were the representative from the Public Prosecutor’s Office, Dr. Ricardo Robles y Coz, and an official of the PNP.<sup>48</sup> The Declaration reads verbatim as follows:

1. As for the applicant’s intention to repent and to voluntarily and forever abandon all terrorist activity, he said the following: I have, of my free will, come to the Huánuco Counter-Terrorism Department on October 15, 1994, asking to avail myself of the benefits of the Repentance Law in connection with the legal advice I provided to members of the PCP-SL, and in order to collaborate with the PNP. I am resolved to help restore peace in the country.

2. As for his situation and position with the PCP-SL terrorist organization, he said the following: Around late 1992 and because I was a lawyer, they requested my professional services to serve as defense counsel for defendant SANTAMARIA RAMOS, known by the criminal terrorists as “(c) Mirko” who was being held in the CRAS [prison] of San Marcos. He came from Tingo María and he was on trial for the crime of terrorism. My services were sought at the request of family members whose names I don’t know; I was paid a portion of my attorney’s fees upfront. Under the new anti-terrorist law, the accused was taken to the Huamancac Prison in the city of Huancayo, whereupon the supposed family members asked me to go there to represent the defendant in the Special Tribunal. I did not agree to their request, because I already had commitments here in this city and in Lima. Therefore, I withdrew from the case. However, after about eight months, two women and a man appeared in my office and demanded that I defend someone being held in custody at JECOTE PNP Huánuco, by the name of Edwar Elí Nación Ramos, who was the common-law husband of one of the two women. They claimed that he was being held unlawfully. From their references to the armed conflict, to the contemptible authorities, I inferred that they were terrorists. Then they mentioned legal advice to Edwar Elí Nación Ramos “(c) Beto” and asked that I advise his son. I hereby declare that the persons who appeared in my office went by the name of “c Yersi”, “c Lida” and “c Guillermo.” They did not assign me a pseudonym and they did not assign me any position or post.

3. As for his truthful confession of the terrorist acts in which he participated, he said the following: I hereby state that when the terrorist criminals came to my office to retain my services to advise (c) “Beto” they knew every detail of my personal life; they knew where my family lived in Lima, and were aware of my professional activities. They knew that I lived alone in this city, they knew all my movements. This shocked me and terrified me, which is how they managed to threaten me into collaborating in the following events:

FIRST. Advising Edward Elí Nación Ramos (c) “Beto” for purposes of his statement to the JECOTE- Huánuco, the Public Prosecutor’s Office and the Huánuco Criminal Presiding Judge, and advising him during his preliminary hearing and during the search of his residence. I was unable to continue representing him because I had to be away from this city; for family and work-related reasons, I had to be in Lima. I was always trying to avoid the surreptitious involvement in his legal defense because I feared for my life. When I ceased advising him, I lost track of the legal situation of (c) “Beto” and his fate; it was his mother who kept coming to my office but didn’t find me there because I was in Lima.

SECOND: At the time they were forcing me to defend (c) “Beto”, they told me that they wanted me to represent a terrorist criminal in Tingo María, whose name and pseudonym I don’t know. At the end of one week, however, they told me that my defense services were no longer needed as it was no longer necessary.

I would like to point out and make very clear that I have come here voluntarily with regard to the first question asked of me; I have volunteered my repentance with regard to the legal assistance I provided to the terrorist criminals; however, I am not confessing to activism in the PCP-*Sendero Luminoso* organization,

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<sup>47</sup> IACHR, Admissibility Report No. 14/04 of February 23, 2004, paragraph 10; IACHR, 133rd regular session; and record of Hearing No. 19, Case 11,568 – Luis Galindo Cárdenas, October 23, 2008.

<sup>48</sup> Annex 32. The Applicant’s Declaration of October 15, 1995. Attachment to the State’s brief of October 17, 2008.

as I never had any post, rank or even a pseudonym within the organization known as the Peruvian Communist Party-*Sendero Luminoso*.<sup>49</sup>

92. The Commission notes that the Declaration is signed by the above-named authorities and by the applicant, whose name is illegible; his fingerprint is not on the statement, even though a fingerprint was required under Article 11(f) of the Regulations governing the Repentance Law.

93. The Commission observes that the petitioner has contested the validity of the above Declaration, at the domestic level since December 1994, and throughout the processing of his case before the IACHR. He asserts that the statement that JECOTE and DINCOTE-Lima took from him in the presence of the Deputy Prosecutor was deliberately misplaced, as it contained the invoices for the professional fees that Mr. Galindo issued when he practiced law. Those invoices were seized at his residence, as recorded in the Search Record attached to his statement and would prove that he was not a member of the Association of Democratic Lawyers.<sup>50</sup> The petitioner observes that in his deposition, he stated that his statement could not be construed as a “declaration of repentance” as he was not part of any terrorist group.<sup>51</sup> The Commission notes that the page that reads “From the Declaration given by Luis Antonio Galindo Cárdenas”, which the petitioner attached and which the authorities allegedly misplaced, is signed by the Public Prosecutor, Víctor Aguirre Visag, and Luis Antonio Galindo Cárdenas; the name of attorney Dr. Jimmy Denegri Martínez appears, but not his signature or a fingerprint.<sup>52</sup>

94. On October 16, 1994, the President of the Republic, Alberto Fujimori, issued a number of statements to the media in which he accused the rector of the Universidad de Huánuco and the President of the Huánuco Superior Court of having ties with the *Sendero Luminoso*. The President announced that both had been placed under arrest in an operation and had applied to avail themselves of the benefits of the Repentance Law.<sup>53</sup>

95. On October 17, 1994, the Ministry of Defense, Frente Huallaga, published an official communiqué in which it announced that the following transpired during the pacification operations that the police conducted on October 14, 1994, in the district, province and department of Huánuco:

At 11:15 a.m., Huánuco DECOTE/PNP personnel, in the presence of the prosecutor on duty, captured the alleged *Sendero Luminoso* terrorist identified as:  
 - Doctor Luis Galindo Cárdenas, magistrate of the Huánuco Superior Court who, following the preliminary investigations, applied to avail himself of the benefits of the Repentance Law. ...<sup>54</sup>

96. On October 18, 1994, the President of the Republic corrected the statements he made on October 16, 1994:

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<sup>49</sup> Annex 32. Applicant’s Declaration of October 15, 1995. Attachment to the State’s brief of October 17, 2008.

<sup>50</sup> See Annex 19. Brief addressed to the Office of the Huánuco First Provincial Criminal Prosecutor, Dr. Ricardo Robles y Coz, dated December 7, 1994, received at the Secretariat of the Huánuco Public Prosecutor’s Office on December 13, 1994. Annex to the petitioner’s brief of January 3, 1996; see also Annex 23. Amplification of the complaint filed by Mr. Galindo on January 18, 1995, with the Office of the Attorney General of the Nation; and Annex 20. Brief addressed to the President of the Board of Supreme Prosecutors of the Public Prosecutor’s Office, stamped ‘received’ by the Office of the Attorney General of the Nation on January 16, 1995. Attachments to the petitioner’s brief of January 3, 1996.

<sup>51</sup> Annex 24. Page six of the deposition by Luis Antonio Galindo Cárdenas (46), signed by the examiner, Public Prosecutor’s Office, Dr. Víctor Aguirre Visag, the attorney-deponent, Luis A. Galindo Cárdenas. Attached to the petitioner’s brief of January 3, 1996.

<sup>52</sup> Annex 24. Page six of the deposition by Luis Antonio Galindo Cárdenas (46), signed by the examiner, Public Prosecutor’s Office, Dr. Víctor Aguirre Visag, the attorney and the deponent, Luis A. Galindo Cárdenas. Attached to the petitioner’s brief of January 3, 1996.

<sup>53</sup> Annex 2. The newspaper *La República*, Peru, Tuesday, October 18, 1994, p. 8 “*Fujimori dice que fue un “lapsus” acusación a presidente de Corte. “Rector y magistrado de Huánuco niegan vínculo con el terrorismo”* [Fujimori says the accusation made against the president of the Court was a “mental slip.” “University rector and Huánuco magistrate deny ties to terrorism”]. Annex 3 to the brief received from the petitioner on July 31, 2007.

<sup>54</sup> Annex 4. Official Communiqué No. 068/RRPP/F-H, Tarapoto, October 17, 1994, Office of Public Relations, Military Political Command, Frente Huallaga. Attachment to the petitioner’s brief of January 3, 1996.

President Alberto Fujimori today made a clarification to the effect that due a mental slip, he had mistakenly accused the President of the Huánuco Superior Court, Humberto Jajahuanca Vásquez, of having ties to the *Sendero Luminoso*.

The head of state explained that the serious accusation was actually being made against a “magistrate of the Huánuco Superior Court (...) He was obviously referring to Dr. Luís Galindo Cárdenas, a member of the Superior Court in that Andean city (...) He added that the “investigations will continue and there were already documents in which both officials –the member of the court and the rector of the university- asked to apply for the Repentance Law.”<sup>55</sup>

...The President added that the intelligence investigation has established their ties to the *Sendero Luminoso* terrorist group. “Both have revealed this in the presence of the Huánuco civil prosecutor. He therefore maintained that “this was more than a mere accusation.” The head of state observed that the member of the Superior Court and the University rector are under investigation, although he did not believe either one was in the upper echelons of the terrorist group. He observed that the Repentance Law has revealed that the *Sendero Luminoso* has infiltrated the higher levels of the judiciary. He emphasized that the Repentance Law would expire next November.<sup>56</sup>

97. The Commission notes that from its March 1996 review of the passive files on record in the DECOTE PNP Hco. Sub Unit, the Huánuco DECOTE concluded that “on October 19, 1994, the person Luis Galindo Cárdenas asked to apply for the benefit of DL No. 25499 (the Repentance Law), and was taken to the [-] 314-Yánac-Huánuco Barracks in custody “FOR SECURITY REASONS”, and was assigned the number A1J054967.”<sup>57</sup>

98. The Commission observes that according to the documents issued by the State, Mr. Galindo Cárdenas was detained under three different scenarios: 1) he was apprehended in a police operation (statements made by the President of the Republic on October 16, 1994; the communiqué from Frente Huallaga, October 17, 1994); 2) he turned himself in voluntarily in order to apply for the Repentance Law (Applicant’s Declaration of October 15, 1994); and 3) based on a preliminary investigation and having been fingered as being a member of the “Association of Democratic Lawyers” by a repentant terrorist (during the processing of the case with the IACHR). The petitioner has consistently maintained that he never applied for the benefits of the Repentance Law.

99. The Commission observes that the State has not provided a uniform date on which Mr. Galindo was deprived of his liberty; furthermore there are conflicting reports regarding the circumstances under which his detention occurred: the first version is the press communiqué issued by Defense Ministry Frente Huallaga, which states that the arrest was made on October 14, 1994, by Huánuco DECOTE/PNP personnel as the police were conducting pacification operations and that “following the preliminary investigations, [he] applied to avail himself of the benefits of the Repentance Law”; the second version is that the “Applicant’s Declaration” dated October 15, 1994, states the following: “I have, of my free will, come to the Huánuco Counter-Terrorism Department on October 15, 1994, asking to avail myself of the benefits of the Repentance Law in connection with the legal advice I provided to members of the PCP-SL”. Yet a third version was put forward to the effect that a review of DECOTE Huánuco’s passive files found that on October 17, 1994, Mr. Galindo asked to apply for the Repentance Law. Also, as the case was being processed with the IACHR, the State has maintained that he was taken into custody on the basis of a preliminary investigation, as the result of the fact that a repentant terrorist informed on him and named him as being a member of the association of “Democratic Lawyers.”

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<sup>55</sup> Annex 2. The newspaper *La República*, Peru, Tuesday, October 18, 1994, p. 8 “*Fujimori dice que fue un “lapsus” acusación a presidente de Corte. “Rector y magistrado de Huánuco niegan vínculo con el terrorismo”* [Fujimori says the accusation made against the president of the Court was a “mental slip.” “University rector and Huánuco magistrate deny ties to terrorism”]. Annex 3 to the brief received from the petitioner on July 31, 2007

<sup>56</sup> Annex 5. *Expreso*: “*Un vocal de la Corte Superior de Huánuco es el arrepentido*” [Huánuco Superior Court magistrate a repentant], Tuesday, October 18, 1994, p. A4. Attachment to the petitioner’s brief of January 3, 1996.

<sup>57</sup> Annex 35. Report No. 9- DECOTE-PNP-HCO./AD of March 25, 1996, signed by PNP Captain Alberto A. Campos Robles and Examiner Marciano Albarado León. Attachment to the State’s brief of August 6, 2002.

100. The Commission observes that from the time that Mr. Galindo was arrested, he told the national authorities (deposition signed on the occasion of the visit from the Attorney General of the Nation on October 26, 1994) and the international authorities (written statement to the International Committee of the Red Cross dated November 9, 1994), and the IACHR during the processing of his case, that he was arrested on October 16, 1994, in the Yánac military zone, after coming there to speak with the Head of the Huánuco Military-Political Command, at the latter's request..

101. The State has not informed the Commission of whether any investigation was conducted to clarify these contradictions and to explain the October 15, 1994 Declaration's failure to comply with the legal requirements. All the State has said is that "the statements made by then President Alberto Fujimori to the press and the communiqué from the armed forces concerning Mr. Galindo's arrest, have no legal value or effect whatever on the case, as they are merely informative in nature; hence, they may be inaccurate and subject to correction or amendment." It noted that in Peru, the official record of the detention and application for the benefits of the Repentance Law is established on the basis of the police intervention and the action taken by the Public Prosecutor's Office.

102. As for the burden of proof when the State's failure to comply with certain guarantees provided for in Article 7 of the Convention is alleged, the Commission is reminded of the case law of the Inter-American Court, which holds that the burden of proof rests with the State:

(...)the victim has no available means of proving this fact. His allegation is of a negative nature, and indicates the inexistence of a fact. The State declares that the information about the reasons for the arrest was provided. This is an allegation of a positive nature and, thus, susceptible of proof. Moreover, if it is recalled that, on other occasions, the Court has established that "in proceedings on human rights violations, the defense of the State cannot be based on the impossibility of the plaintiff to provide evidence that, in many cases, cannot be obtained without the cooperation of the State, this leads to the conclusion that the burden of proof on this point corresponds to the State."<sup>58</sup>

103. The victim in this case has no available means of proving when he was arrested. The State, however, cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation. Furthermore, the State has not explained the different dates given for Mr. Galindo's arrest. Therefore, the Commission considers that Mr. Galindo's detention occurred on October 16, 1994, when he went to the Yánac military zone to speak with the Head of the Huánuco Military Political Command. The Commission has found that Mr. Galindo's fingerprint does not appear on the Declaration of Repentance dated October 15, 1994, as was required under the Regulations Governing the Repentance Law and which calls into question that Declaration's authenticity.

**Measures taken and actions filed to inquire about the legal situation of Huánuco Superior Court Magistrate Luis Galindo**

104. On October 17, 1994, Mr. Galindo's sister, María Luisa Galindo Cárdenas, traveled with Mr. Galindo's wife to the city of Huánuco, after a number of news reports to the effect that Mr. Galindo was mixed up in terrorist activities. In Huánuco, they learned that Luis Antonio Galindo Cárdenas was being held at a military barracks; they were permitted to visit him briefly.<sup>59</sup>

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<sup>58</sup> I/A Court H.R.. *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 73.

<sup>59</sup> Annex 12. Sworn statement bearing the notarized signature of María Luisa Galindo Cárdenas, dated October 30, 2008. Attachment to the petitioner's brief of November 3, 2008.



105. On October 17, 1994, the Huánuco Pasco Superior Court, in the person of its President, sent a memorandum to Colonel Eduardo Negrón Montestruque, Head of the Military-Political Command, asking for an explanation of the various versions that appeared in the media to the effect that the President of that Court had applied for the benefits of the Repentance Law and “whether some magistrate or other person affiliated with that Court had applied for the benefits of the Repentance Law.”<sup>60</sup>

106. On October 18, 1994, the President of the Huánuco Superior Court sent the Chief Superior Prosecutor of Huánuco and Pasco a memorandum asking to inform him of Magistrate Galindo’s situation, based on the information published in the official communiqué released by the Ministry of Defense.<sup>61</sup>

107. On October 19, 1994, the President of the Huánuco-Pasco Superior Court sent the Head of the Military-Political Command of Frente Huallaga a memorandum asking him to reply to its memorandum of October 17, 1994 and to report on the situation of Magistrate Luis Galindo, based on the official communiqué released by the Office of Public Relations of the Frente Huallaga Military-Political Command on October 17, 1994.<sup>62</sup> Also, on October 19, 1994, the media published a new item to the effect that the Armed Forces had not permitted the president of the Supreme Court, Luis Serpa Segura, to communicate in any way with Magistrate Galindo, who was being held in detention at a military facility.<sup>63</sup>

108. On October 20, 1994, the head of the Military-Political Command, Colonel Negrón, sent a memorandum of reply to the President of the Huánuco-Pasco Superior Court to the effect that the latter should direct any questions to the Head of the Military-Political Command of Frente Huallago-Tarapoto or, failing that, “to the Office of Public Relations of the Central Command of the Armed Forces-Lima.”<sup>64</sup>

109. On October 20, 1994, the Administrative Secretariat of the Huánuco-Pasco Superior Court received a letter signed by Luis Galindo Cárdenas in which he requests to be relieved of his post and tenders his resignation “because I am under police investigation on false and mendacious charges; that investigation compromises my dignity and honor as a citizen and a professional; I do not want the investigation being conducted against me to lead to conjectures that would be prejudicial to the Judiciary.”<sup>65</sup> On October 24, 1994, the President of the Huánuco Superior Court issued a memorandum accepting Mr. Galindo’s resignation effective October 21, 1994, as a Provisional Magistrate on that Court’s Second Criminal Chamber.<sup>66</sup>

110. In application of Article 66(9) of the Organic Law of the Public Prosecutor’s Office,<sup>67</sup> at 4:00 p.m. on October 26, 1994, the Attorney General of the Nation, Blanca Nélica Colán Maguiño, visited Counter-Subversive

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<sup>60</sup> Annex 3. Memorandum No. 1457-94-PCSJH, dated October 17, 1994, signed by Humberto Cajahuana Vásquez, Huánuco-Pasco Superior Court. Attachment to the petitioner’s brief of January 3, 1996.

<sup>61</sup> Annex 6. Memorandum No. 1464-94-PCSJH, dated October 18, 1994, sent to Dr. Carlos Schult Vela, Chief Superior Court Prosecutor for Huánuco-Pasco. Attachment to the petitioner’s brief of January 3, 1996.

<sup>62</sup> Annex 7. Memorandum No. 1465-94-PCSJH, addressed to Peruvian Army Colonel Eduardo Negrón Montestruque, Head of the Military-Political Command, signed by Humberto Cajahuana Vásquez. Attachment to the petitioner’s brief of January 3, 1996.

<sup>63</sup> Annex 9. The newspaper *La República*: “Serpa confirma detención de vocal Galindo” [Serpa confirms arrest of magistrate Galindo], October 19, 1994, Nacional/11. Attachment to the petitioner’s brief of January 3, 1996.

<sup>64</sup> Annex 8. Memorandum No. 250/JPM-HCO of October 20, 1994. Attachment to the petitioner’s brief of January 3, 1996.

<sup>65</sup> Annex 10. Brief signed by Luis Galindo Cárdenas, Superior Court Magistrate, sent to the President of the Huánuco-Pasco Superior Court, October 19, 1994. Attachment to the petitioner’s brief of January 3, 1996.

<sup>66</sup> Annex 41. Memorandum No. 1491-94-PCSJ of October 24, 1994, signed by the President of the Huánuco-Pasco Superior Court, Humberto Cajahuana Vásquez. Attachment to the petitioner’s brief of January 3, 1996.

<sup>67</sup> Annex 66. Organic Law of the Public Prosecutor’s Office: “The functions of the Attorney General shall be: [...] 9. To visit, either periodically or whenever he/she deems necessary, the Offices of the Public Prosecutors of the Republic to confirm that they are properly performing the functions that the law establishes for prosecutors and their staff. To that end, he/she may request from the judges and courts, public officials and government offices, such information and documents as he/she deems necessary. He/she may also hear from attorneys, other professionals or the associations that represent them as well as litigants or other persons, when they request hearings to inform him/her

Battalion Barracks No. 314-Yánac, officers' quarters, together with the Provincial Prosecutor from the Huánuco First Provincial Prosecutor's Office. There she met with Mr. Luis Antonio Galindo Cárdenas, who told the Attorney General that he had been detained there since Sunday, October 16, 1994.<sup>68</sup> During the visit, a record was made of the fact that at the time of the visit, Mr. Galindo was dressed in "yellow pajamas under a striped robe;" he was being held in a room with a bed and a desk and that he was sharing "a bathroom with Ing. Abner Chávez Leandro", Rector of the University of Huánuco.<sup>69</sup> When asked by the Attorney General whether he had been mistreated or threatened, he answered that "not physical mistreatment, but the psychological mistreatment that comes with incarceration." When asked if the Provincial Criminal Prosecutor had been present when he gave his Declaration, he answered in the affirmative.<sup>70</sup> When asked if he had a lawyer, Mr. Galindo said that he did not think it advisable since "he is an attorney and the case has been magnified and has been prejudicial to both him and his family."

111. As the record shows, Mr. Galindo Cárdenas told the Attorney General that the facts would prove that he "was absolutely not guilty of belonging to any terrorist organization", since his actions were taken because he was being threatened by three or four subversives:

The people who appeared in my office when I was a practicing attorney were there to get me to represent a terrorist criminal being held prisoner or in custody at the police station; I realized that I and my family were in physical danger, because they knew everything about my family and my professional life. I went to the police station two or three times, knowing all the while that they were surreptitiously watching me; I helped the person in custody with his police statement. Everything I did was above board. Then, two days later I returned to Lima for family and professional reasons. I did not continue to advise this individual, but returned to this city after ten or twelve days. I no longer assisted this individual with his defense. However, at the request of his mother, I was present for the search of his residence.<sup>71</sup>

112. Three congressmen, among them Deputy Roger Cáceres Velázquez, twice traveled to Huánuco where they attempted to speak with Mr. Galindo while he was being held at the Military Barracks; however, they were not permitted to speak with him on the pretext that the only person who could authorize such a visit was the highest ranking military official there, who had not been in Huánuco for several days.<sup>72</sup>

113. On November 9, 1994, Luis Antonio Galindo Cárdenas received a visit from representatives of the International Committee of the Red Cross at the Huánuco Military Base. The record made on that occasion stated that Mr. Galindo had been detained since October 16, 1994.<sup>73</sup>

#### **Application of the Repentance Law while the alleged victim was under arrest**

114. On October 29, 1994, the "Amplified Declaration from Applicant" code number A1J054967 was taken in the offices of DECOTE-PNP-Hco. Present for the occasion was the representative from the Public

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of the performance of any Public Prosecutor's Office under investigation. Statement of April 26, 1994, signed by Attorney General Blanca Nélica Colan Maguiño.

<sup>68</sup> Annex 11. Public Prosecutor's Office-Office of the Attorney General of the Nation, April 26, 1994. Statement signed by Attorney General Blanca Nélica Colan Maguiño. Attachment to the petitioner's brief of January 3, 1996.

<sup>69</sup> Annex 11. Public Prosecutor's Office-Office of the Attorney General of the Nation, April 26, 1994 Statement signed by Attorney General Blanca Nélica Colan Maguiño. Attachment to the petitioner's brief of January 3, 1996.

<sup>70</sup> Annex 11. Public Prosecutor's Office-Office of the Attorney General of the Nation, April 26, 1994 Statement signed by Attorney General Blanca Nélica Colan Maguiño. Attachment to the petitioner's brief of January 3, 1996.

<sup>71</sup> Annex 11. Public Prosecutor's Office-Office of the Attorney General of the Nation, April 26, 1994 Statement signed by Attorney General Blanca Nélica Colan Maguiño. Attachment to the petitioner's brief of January 3, 1996.

<sup>72</sup> Annex 13. Testimony of Dr. Roger Cáceres Velázquez, Attachment to the petitioner's brief of November 3, 2008, not refuted by the State.

<sup>73</sup> Annex 14. Certification by the International Committee of the Red Cross, dated March 15, 2004. Attachment to the petitioner's brief of November 3, 2008.

Prosecutor's Office, Dr. Ricardo Robles y Coz, and a PNP officer.<sup>74</sup> The text of the Declaration states that the applicant pointed out that he was unaware of "the structure of the organs created by the PCP-SL" but that he had learned "through media reports –both verbal and written–about the work done by the 'Democratic Lawyers' to defend the terrorists, as these attorneys dedicated themselves to fervently defending the subversive elements associated with the *Sendero Luminoso*."<sup>75</sup> When asked whether he could identify the roles performed by the PILCO PACO terrorist criminals known as (c) "Guillermo", Noemí Huaccha Sánchez (c) "Yersi", and the wife of "Guillermo" known as (c) "Lida", he said the following: "That he knew that they belonged to the sinister organization known as *Sendero Luminoso*, because they said as much; however, they didn't specify either their position or rank within that organization."<sup>76</sup> When asked which subversive groups linked to the PCP-SL movement of popular artists (MAP) he had advised, he answered as follows: "He had partially advised Fernando Salinas Solórzano, who was linked to the group whose façade was "Semilla Amor," according to the police accusation that was part of a criminal case brought in the courts; he clarified that "my advisory services were confined to the police stage of the proceedings."<sup>77</sup>

115. The Commission notes that, as it observed in the case of the Declaration dated October 15, 1994, the Declaration dated October 29, 1994 is signed by the police authority and by the representative of the Public Prosecutor's Office, who are identified by name and position; it is also signed by the applicant, whose signature is illegible; there is no fingerprint taken from the applicant's forefinger, as required under Article 11(f) of the Regulations Governing the Repentance Law.

116. The State alleges that the difference between the declaration given on October 15 and the declaration given October 29, 1994, is that Mr. Galindo signed the two documents differently. It points out that the October 15 declaration has his rubric, whereas the October 29 declaration bears a signature that the Government has compared with the signature on the person's identification document, and has concluded that Mr. Galindo signed both documents. Nevertheless, the State has failed to explain why Mr. Galindo's fingerprint is not on the document. The State has not advanced any opinion on the authenticity of Mr. Galindo's signature on the statement that was allegedly misplaced, which also bears the signature of the Public Prosecutor and the print taken of the forefinger.<sup>78</sup>

117. On October 31, 1994, the Declaration of Repentance of applicant code number A1J05467 was issued (Verification report number 24-DECOTE-PNP-HCO).<sup>79</sup> The document states that on October 15, 1994, applicant code number A1J05467 came, of his own free will, to the offices of the PNP-Huánuco Counter-Terrorist Department, "asking to avail [him]self of the benefits of the Repentance Law."<sup>80</sup> The report also states that the applicant was being held in "special quarters and being provided with security to safeguard his personal integrity."<sup>81</sup>

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<sup>74</sup> Annex 33. Amplified Declaration from the Applicant, dated October 29, 1994. Signed by the police authority (identified by name and signature), the representative of the Public Prosecutor's Office (identified by name and signature), and the applicant (identified by a signature). Attachment to the State's brief of October 17, 2008.

<sup>75</sup> Annex 33. Amplified Declaration from the Applicant, dated October 29, 1994. Signed by the police authority (identified by name and signature), the representative of the Public Prosecutor's Office (identified by name and signature), and the applicant (identified by a signature). Attachment to the State's brief of October 17, 2008.

<sup>76</sup> Annex 33. Amplified Declaration from the Applicant, dated October 29, 1994. Signed by the police authority (identified by name and signature), the representative of the Public Prosecutor's Office (identified by name and signature), and the applicant (identified by a signature). Attachment to the State's brief of October 17, 2008.

<sup>77</sup> Annex 33. Amplified Declaration from the Applicant, dated October 29, 1994. Signed by the police authority (identified by name and signature), the representative of the Public Prosecutor's Office (identified by name and signature), and the applicant (identified by a signature). Attachment to the State's brief of October 17, 2008. Anexo 33.

<sup>78</sup> Annex 24. Page six of the statement by Luis Antonio Galindo Cárdenas (46), signed by the examiner, Public Prosecutor's Office, Dr. Víctor Aguirre Visag, the attorney deponent, Luis A. Galindo Cárdenas. Attached to the petitioner's brief of January 3, 1996.

<sup>79</sup> Annex 17. DECOTE-PNP-HCO Verification Report No. 24 of October 31, 1994. Attachment to the State's brief of January 11, 2008.

<sup>80</sup> Annex 17. DECOTE-PNP-HCO Verification Report No. 24 of October 31, 1994. Attachment to the State's brief of January 11, 2008.

<sup>81</sup> Annex 17. DECOTE-PNP-HCO Verification Report No. 24 of October 31, 1994. Attachment to the State's brief of January 11, 2008.

Summarizing, the Declaration states that the applicant asserts that the following terrorist criminals were members of the Peruvian Communist Party *Sendero Luminoso*: (c) "Mirko", (c) "Guillermo", (c) "Yersi" and (c) "Lida". The report also states that the applicant:

[a]s defense counsel to members of the PCP-SL who were detained and imprisoned in the CRAS-San Marcos in the city of Huánuco, claims to have no knowledge of the terrorist activities of the terrorist criminals in this city.

118. As for future terrorist activities, the application states that "he has no knowledge of such terrorist activities"; as for certain dangers, the applicant claims that "he has no knowledge of any dangerous situations that subversive elements might cause."<sup>82</sup> Concerning the terrorist activities in which the applicant participated, the Report indicates the following:

Applicant code number A1J054967 has confessed to providing support to the PCP-SL in the following way:

DEC92.

Toward the end of the year in question, applicant code ... confesses to having served legal defense counsel in the case prosecuted against criminal terrorist Juan SANTAMARIA RAMOS (c) "Mirko", at the request of the latter's family members, who paid his professional fees.

AUG93.

Early this month, the applicant in question undertook to defend criminal terrorist Eduardo Elí NACION Ramos (c) "Beto", whom JECOTE-PNP-Huánuco had under investigation for the crime of terrorism. Applicant's services were retained at the request of family members and subversives Noemí Huaccha Sánchez (c) "Yersi", Roberto Pilco Paco (c) "Guillermo" and (c) "Lida", who coerced the applicant and threatened to kill him and his family if he refused to defend the person under investigation.<sup>83</sup>

119. As for the findings, the Report states that "the information supplied by the applicant has made the following possible: a) to know the identity of the members of the PCP-*Sendero Luminoso* who were engaging in terrorist activities in this city of Huánuco; and b) to identify, locate and subsequently capture other members of the terrorist cell within the jurisdiction of Huánuco."<sup>84</sup> The only signatures that appear on the report are those of two members of the Peruvian National Police, Office of the Chief of Counter-Terrorism.<sup>85</sup>

120. On November 4, 1994, the Provincial Prosecutor from the Office of the Huánuco-Pasco First Provincial Prosecutor's Office, Ricardo M. Robles y Coz, issued a decision regarding applicant code number A1J054967, in which he granted him the benefit of extinguishment of the penalty and referred the proceedings to the Chief Superior Prosecutor for the Huánuco-Pasco Judicial District, to take the action he deemed appropriate.<sup>86</sup> According to the November 4, 1994 decision, on October 15, 1994 the applicant code number A1J054967 had expressed his desire to avail himself of the benefits of the Repentance Law; accordingly, the corresponding Declaration was taken in the presence of a representative from the Public Prosecutor's Office. According to that Declaration, the person identified by that code confessed to having provided support to the PCP-SL in the following manner:

In December 1992, the applicant admits to have served as defense counsel in the criminal case prosecuted against the terrorist criminal Juan Santamaría Ramos (c) "Mirko". He also confessed to having served as defense counsel in August 1993 to criminal terrorist Eduardo Elí Nación Ramos (c) "Beto", having been

<sup>82</sup> Annex 17. DECOTE-PNP-HCO Verification Report No. 24 of October 31, 1994. Attachment to the State's brief of January 11, 2008.

<sup>83</sup> Annex 17. DECOTE-PNP-HCO Verification Report No. 24 of October 31, 1994. Attachment to the State's brief of January 11, 2008.

<sup>84</sup> Annex 17. DECOTE-PNP-HCO Verification Report No. 24 of October 31, 1994. Attachment to the State's brief of January 11, 2008.

<sup>85</sup> Annex 17. DECOTE-PNP-HCO Verification Report No. 24 of October 31, 1994. Attachment to the State's brief of January 11, 2008.

<sup>86</sup> Annex 15. Applicant code number A1J054967, Decision of November 4, 1994, signed by the Provincial Prosecutor of the Huánuco First Criminal Prosecutor's Office, Ricardo M. Robles y Coz. Attachment to the petitioner's brief of January 3, 1996.

retained by family members and subversives Noemí Huaccha Sánchez (c) “Yersi”, Roberto Pilco Paco (c) “Guillermo” and (c) “Lida”. This was true and accurate information that made possible the full identification of the following terrorist criminals: Juan Santamaría Ramos (c) “Mirko”, Eduardo Elí Nación Ramos (c) “Beto”, Noemí Huaccha Sánchez (c) “Yersi”, Roberto Pilco Paco (c) “Guillermo”, and Fernando Salinas Solórzano (c) “Víctor”; it has also been confirmed that (c) “Lida” has applied for the benefits of the Repentance Law, and is identified by code number A2J054965. She, too, subsequently supplied accurate, timely and truthful information enabling identification of the members of the afore-mentioned PCP-*Sendero Luminoso* cell that operates in this city. Applicant A1J054967 also expressed his commitment to repent and his decision to permanently sever his ties to the *Sendero Luminoso* terrorist organization. The events in which applicant A1J054967 participated constitute acts of collaboration provided for and punishable under Article 4 of Decree Law 25,475; in this context, he qualifies for the benefit of exemption from the punishment contemplated under Article 1(II)(a) of Decree Law 25,499 and Article 6 of Supreme Decree No. 015-23-JUS, based on these considerations and in accordance with articles 27, 28 and 29 of the aforementioned Supreme Decree governing the Repentance Law.<sup>87</sup>

121. The Commission observes that nothing in the preceding decision suggests that terrorist criminal “Lida” had denounced Mr. Galindo to the authorities in order to avail herself of the Repentance Law.

122. On November 9, 1994, Superior Prosecutor 200699 decided to close the case concerning the beneficiary identified by code number A1J054967, based on Counter-Terrorism Verification Report No. 24-DECOTE-PNP-Hco., dated October 31, 1994, and the exemption from penalty granted by the First Prosecutor.<sup>88</sup> According to these decisions, the Provincial Prosecutor and the Superior Prosecutor deemed that “The events in which applicant A1J054967 participated constitute acts of collaboration provided for and punishable under Article 4 of Decree Law 25,475”. However, they do not indicate precisely which of the acts contemplated in that article Mr. Galindo was alleged to have committed.<sup>89</sup> The Commission observes that to undertaken the legal defense of “terrorist criminals” is not listed as an act of collaboration under the article in question.

#### Place of detention and its duration

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<sup>87</sup> Annex 15. Applicant code number A1J054967, Decision of November 4, 1994, signed by the Provincial Prosecutor of the Huánuco First Criminal Prosecutor’s Office, Ricardo M. Robles y Coz. Attachment to the petitioner’s brief of January 3, 1996.

<sup>88</sup> Annex 16. Huánuco, November 9, 1994, signed by Superior Prosecutor 200699. Attachment to the petitioner’s brief of January 3, 1996.

<sup>89</sup> Article 4.- Collaboration with terrorism. Anyone who voluntarily obtains, seeks, gathers, or facilitates any type of good or means or performs any acts of collaboration of any kind that aids and abets the commission of the crimes covered under this decree law or the accomplishment of a terrorist group’s ends shall face imprisonment for no less than twenty years.

The following are acts of collaboration:

- (a) providing documents and information concerning persons and assets, installations, public and private buildings and anything else that specifically aids or facilitates the activities of terrorist elements or groups.
- (b) turning over or using any type of housing or other means capable of hiding or being used to store weapons, explosives, propaganda, food supplies, medications or other property belonging to terrorist groups or their victims.
- (c) Knowingly transporting members of terrorist groups or persons associated with their criminal activities, and providing any type of assistance to help them escape.
- (d) Organizing indoctrination or training courses or centers for indoctrination and training of terrorist groups that operate under any cover;
- (e) The manufacture, acquisition, possession, theft, storage and provision of arms, ammunition, explosives, asphyxiating, toxic or flammable substances or any other item or substance that can cause death or injury. The possession or concealment of arms, ammunition, or explosives belonging to the Peruvian Armed Forces or National Police shall constitute an aggravating circumstance.
- (f) Any form of economic activity, assistance or mediation done of one’s own free will, for the purpose of financing the activities of terrorist elements or groups.

123. As for the length of time and place where the alleged victim was deprived of his liberty, here again the Commission notes the contradictions between the State's version and the petitioner's version. Whereas the petitioner states that Mr. Galindo was held at the Yanac military base for 31 days, the State contends that in the instant case, there is no proof that Mr. Galindo was held at a military base. It argues that Mr. Galindo's meeting with the Attorney General was held at the military base for security reasons, given the troubles in the area. It alleges that because Mr. Galindo, of his free will, turned himself in to the police authorities, specifically the Office of the Chief of Counter-Terrorism (JECOTE) in the city of Huánuco, and not the military authorities, Mr. Galindo would have allegedly remained in custody at the specialized police unit.

124. The Commission observes that under Article 12(a) of Decree 25475, "In those places where the Peruvian National Police does not have facilities, the Armed Forces shall apprehend and detain persons implicated in these crimes and shall immediately turn them over to the nearest police department for the appropriate investigations." The Commission notes that the State admits that the city of Huánuco had a specialized police department.

125. In this connection the Commission observes that the State has not reported whether any reply was ever given to the October 17, 1994 request from the PNP Major who was Chief of DECOTE-Hco. that he be given custody of Mr. Galindo Cárdenas, who was then in the custody of the colonel who was commander of the Yanac Counter-Subversive Base. It also observes that on November 2, 1994, DECOTE informed the Prosecutor's Office that Mr. Galindo was in "special quarters for security reasons," although it did not specify precisely where he was being held.

With Memorandum No. 1186-DECOTE PNP Hco, dated October 17, 1994, the PNP Major who was Chief of DECOTE Hco. asks the Peruvian Army Colonel in command of Counter-Subversive Base No. 314 Yanac to give him custody of Abner Chávez Leandro and Luis Galindo Cárdenas, on the grounds that both individuals had asked to apply for the benefits of the Repentance Law.

Furthermore, in Memorandum No. 1235-DECOTE PNP-Hco., dated November 2, 1994, Verification Report No. 24 on applicant code number. A1J054967 was forwarded to Office of the First Provincial Criminal Prosecutor of Huánuco. The applicant so identified was Luis Galindo Cárdenas. The memorandum also advised that the applicant was being held in special quarters for reasons of his physical safety.<sup>90</sup>

126. The Commission notes, too, that based on the facts established in the preceding paragraphs: 1) the sister and the wife of Mr. Galindo visited him on October 17, 1994, when he was detained at the Yanac military barracks; 2) on October 26, 1994, the Attorney General visited Mr. Galindo at the barracks of Counter-Subversive Battalion 314-Yanac, officers' quarters, in the company of the Provincial Prosecutor from the Office of the First Provincial Criminal Prosecutor of Huánuco. The record of the visit shows that Mr. Galindo was wearing "yellow pajamas under a striped robe," was in a room "with a bed and a desk," and shared a bathroom with the rector of the Universidad de Huánuco. According to the record signed by the Attorney General on October 26, 1994, Mr. Galindo told her that he had been held in that room since Sunday, October 16, 1994, and 3) according to the record of the International Committee of the Red Cross, Mr. Galindo was visited on November 9, 1994, at the Huánuco Military Base by two representatives of the Committee; according to their records, he was taken into custody on October 16, 1994.

127. Furthermore, on October 19, 1994, the press carried a report to the effect that the Armed Forces had not allowed the President of the Supreme Court, Luis Serpa Segura, to communicate in any way with magistrate Galindo, who was being detained at a military base; three congressmen –among them deputy Roger Cáceres Velázquez, traveled twice to Huánuco to speak with Mr. Galindo, but without success; they were told that the person who had to authorize the visit was the highest-ranking military commander at the base, who had not been in Huánuco for several days.

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<sup>90</sup> Annex 35. Report No. 9- DECOTE-PNP-HCO./AD of March 25, 1996, signed by PNP Captain Alberto A. Campos Robles and Examiner Marciano Albarado León. Attachment to the State's brief of August 6, 2002.

128. The Commission observes that while the State denies that Mr. Galindo was held in detention at military facilities and claims that he was held at the Office of the Chief of Counter-Terrorism (JECOTE), it has provided no proof to corroborate its claim. In Verification Report No. 24-DECOTE-PNP-HCO, dated October 31, 1994, a statement is made to the effect that the applicant was being held in “special quarters and being provided with security to safeguard his personal integrity.” However, neither this memorandum nor the memorandum that DECOTE-PNP sent to the Huánuco Provincial Prosecutor on November 2, 1994 specifies precisely where Mr. Galindo was being held. Therefore, and inasmuch as the burden of proof is on the State, the Commission considers that Mr. Galindo was in fact being held at the Yanac Military Base.

129. Furthermore, the Commission observes that while Mr. Galindo Cárdenas has consistently stated that he was released on November 16, 1994, the State has not provided any proof, such as a release order, indicating when Mr. Galindo was released and when he was notified of the prosecutor’s November 9, 1994 decision to exempt him from criminal liability in application of the Repentance Law. The Commission therefore concludes that Mr. Galindo was detained for 31 days at the Yanac Military Base.

#### **Measures attempted by former magistrate Galindo Cárdenas once he was released**

130. On November 21, 1994, Mr. Galindo filed a request with the Minister of State for the Interior asking that personal guarantees be provided for himself and his family members, given the events that transpired between October 16 and November 15, 1994.<sup>91</sup> He repeated that request, in writing, on March 13, 1995.<sup>92</sup> The Commission has no record of the State having responded to these requests.

131. On November 30, 1994, Mr. Galindo Cárdenas asked the Human Rights Commission of the Constituent Congress to investigate the conduct of Peruvian Army Colonel Eduardo Negrón Montestruque, Head of the Military-Political Command of the city of Huánuco, Peruvian National Police Major Agustín Quezada Sánchez, Chief of JECOTE-Huánuco and the Huánuco Provincial Prosecutor, Dr. Ricardo Robles y Coz, for their “misconduct in the performance of their functions” in the police investigation to which he had voluntarily agreed to undergo and for which he was detained for 31 days at the Army base located in Yánac-Huánuco.<sup>93</sup> Mr. Galindo filed this complaint a second time by way of a January 19, 1995 brief addressed to the Chair of the Human Rights and Pacification Commission of the Democratic Constituent Congress of Peru.<sup>94</sup>

132. On December 13, 1994, Mr. Galindo Cárdenas filed a request with the Huánuco Provincial Prosecutor of First Instance, Ricardo M. Robles y Coz, asking for certified copies of the police-military investigation to which he was subjected and in which the Provincial Prosecutor himself participated. The investigation had been for the alleged crime of terrorism; Mr. Galindo Cárdenas had been detained on suspicion of the crime of terrorism, and was released without being told “what the authorities’ decision had been in his case.”<sup>95</sup>

133. In his request, Mr. Galindo also complained that: 1) he was never formally notified of the charge against him or of the reasons for his detention, which was done after the President of the Republic told the media about his case and his detention, even though he was still at liberty; 2) his detention was arbitrary both in terms of

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<sup>91</sup> Annex 28. Request for Personal Guarantees, addressed to the Minister of the Interior, Peruvian Army Division General Juan Briones Dávila, November 21, 1994. Attachment to the petitioner’s brief of January 3, 1996.

<sup>92</sup> Annex 29. Brief dated March 13, 1995, addressed to the Minister of the Interior Peruvian Army Division General Juan Briones Dávila, subject: Personal guarantees requested. Attachment to the petitioner’s brief of January 3, 1996.

<sup>93</sup> Annex 21. Mr. Luis Antonio Galindo Cárdenas’ brief to the members of the Human Rights Commission of the Democratic Constituent Congress, dated November 30, 1994. Attachment to the petitioner’s brief of January 3, 1996.

<sup>94</sup> Annex 30. Brief addressed to the Chair of the Commission on Human Rights and Pacification of the Peruvian Democratic Constituent Congress, dated January 19, 1995. Attachment to the petitioner’s brief of January 3, 1996.

<sup>95</sup> Annex 19. Brief addressed to the Office of the Huánuco First Provincial Criminal Prosecutor, Dr. Ricardo Robles y Coz, dated December 7, 1994, received at the Secretariat of the Huánuco Public Prosecutor’s Office on December 13, 1994. Attachment to the petitioner’s brief of January 3, 1996.

procedure and substance; it exceeded the time period allowed under the law as he was held for 31 days but never brought before a competent judge; 3) the fact that he was a serving magistrate on the Huánuco Superior Court was not respected, as required under Article 191 of the Organic Law of the Judiciary; 4) he was held in confinement on a military base where he initially suffered psychological torture and isolation; 5) information was circulated to the effect that he had applied for the Repentance Law, which was false and tendentious; 6) the deposition he gave “in the presence of members of DINCOTE-LIMA who were investigating [his] case at Yanac military base” was replaced and “the findings misrepresented to portray [him] as having repented in a statement [he] never made; [he] never gave in to their demands or the demands of the police and military.”<sup>96</sup>

134. On January 16, 1995, a brief from Mr. Luis Antonio Galindo Cárdenas was received at the Office of the Attorney General of the Nation. It was addressed to the Chair of the Board of Supreme Prosecutors of the Public Prosecutor’s Office and complained of the irregularities denounced on December 13, 1994, against Provincial Prosecutor Ricardo M. Robles y Coz; the complaints were also directed at the Chief Superior Prosecutor of Huánuco, Dr. Carlos Shultz Vela. The brief also stated that Mr. Galindo had not yet been provided with the copies he had requested of the pertinent decisions and had not received a reply to his formal request. He again requested that he be given personal guarantees, on the grounds that:

Since being released and in response to the repeated statements I made on television and in the press to clarify my legal situation so as to protect my honor and dignity, as I was compelled to do, I have learned that the head of the Huánuco military-political command and officials at the Public Prosecutor’s Office who had a hand in the investigation to which I was subjected have made public statements in the city of Huánuco to the effect that they would arrest me again on the same grounds. Their attitudes were menacing ...<sup>97</sup>.

135. On January 17, 1995, based on a document sent by Mr. Galindo Cárdenas, former Magistrate on the Huánuco-Pasco Superior Court, in connection with his arrest while serving in that judicial post<sup>98</sup> and considering that the facts exposed therein appeared to be “serious accusations against authorities in the Huánuco Military-Political Command, the Public Prosecutor’s Office and the Office of the Chief of Counter-Terrorism – JECOTE- in Huánuco”, which if not investigated by the competent authorities could establish a serious precedent detrimental to the country’s judicial authorities, the Executive Council of the Judicial Branch resolved the following pursuant to Article 82(4) of the Organic Law of the Judiciary:

First.- To send the current records to the Office of the General Commander of the Army, informing him that this organ of the Judicial Branch is troubled by the facts that occurred in this instance and is demanding an exhaustive investigation and punishment of those responsible; Second.- To send a memorandum to the Attorney General of the Nation so that, following an investigation into the officials with the Public Prosecutor’s Office who are mentioned in the report in question, she will impose the sanctions she deems pertinent; and Third - To send a memorandum to the authorities of the Ministry of the Interior so that, following an investigation, they impose whatever sanctions they deem appropriate, and report to this branch of government.<sup>99</sup>

136. On January 18, 1995, the Office of the Attorney General received another brief from Mr. Luis Antonio Galindo Cárdenas, who elaborated upon his complaint and, as evidence, supplied a copy of the last page (page 6) of the deposition which he gave in the presence of a member of the DINCOTE-Lima specialized police and

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<sup>96</sup> Annex 19. Brief addressed to the Office of the Huánuco First Provincial Criminal Prosecutor, Dr. Ricardo Robles Coz, dated December 7, 1994, received at the Secretariat of the Huánuco Public Prosecutor’s Office on December 13, 1994. Attachment to the petitioner’s brief of January 3, 1996.

<sup>97</sup> Annex 20. Brief addressed to the President of the Board of Supreme Prosecutors of the Public Prosecutor’s Office, stamped ‘received’ by the Office of the Attorney General of the Nation on January 16, 1995. Attachment to the petitioner’s brief of January 3, 1996.

<sup>98</sup> Annex 25. Aide Memoire-Report of Dr. Luis Antonio Galindo Cárdenas to Dr. Carlos Ernesto Giusti Acuña, Member of the Supreme Court of the Republic, Chief of the Office of Internal Control of the Judicial Branch, December 22, 1994. Attachment to the petitioner’s brief of January 3, 1996.

<sup>99</sup> Annex 22. Executive Council of the Judiciary. Resolution of January 17, 1995, signed by Moisés Pantoja Rodulfo, President, and by Sylvia Astete Benavides, Secretary General of the Supreme Court of the Republic. Attachment to the petitioner’s brief of January 3, 1996.



the Deputy Provincial Prosecutor, Dr. Aguirre Visag, at the facilities of the Yáñac-Huánuco Army base and that according to Mr. Galindo was replaced in the investigation prosecuted against him so as to claim that he had given a “repentant statement that he never” made or ever agreed to make, despite the pressure that the Head of the Military-Political Command, Peruvian Army Colonel Negrón Montetrusque, the Provincial Prosecutor in charge of the investigation, and the chief of JECOTE P.N.P, Major. Agustín Quezada Sánchez ,exerted on him to do just that.<sup>100</sup> According to page 6 of the deposition, which Luís Antonio Galindo had enclosed with his previous brief, Mr. Galindo states that the title of the “Declaration of Repentance” is subjective, since what matters is the substance of the document.

Consequently, as I was not a member of that terrorist group, I could hardly make a declaration of repentance – because it could then be called a Declaration of Repentance or any other name.<sup>101</sup>

When asked if, as a magistrate, he had been an adjudicator in any terrorism case, Mr. Galindo answered that he never had.<sup>102</sup>

137. On January 25, 1995, Verification Report No. 009 DECOTE-PNP-HCO was issued concerning the request made by the person identified by the code number AIJ054998 to avail herself of the benefits of the Repentance Law and its Regulations. The Commission notes that the code number allegedly used to identify Mr. Galindo in the Declaration of October 15, 1994 is A1J054967 and not AIJ054998. Hence, the Commission will not take the content of that report as proven fact,<sup>103</sup> as the State has not indicated how it relates to the instant case and any such relationship is not self-evident.

138. On March 6, 1995, the Ministry of Defense received a complaint from Mr. Luis Antonio Galindo Cárdenas against Peruvian Army Colonel Eduardo Negrón Montestruque, Head of the Huánuco Military-Political Command for the detention and other hardships he suffered between October 16 and November 16, 1994;<sup>104</sup> on March 11, 1995, Mr. Galindo filed another complaint with the Inspector General of Peru’s Ministry of Defense.<sup>105</sup>

139. On May 8, 1998, the Public Prosecutor’s Office decided to close the record on the complaint that Mr. Galindo brought against Drs. Ricardo Robles y Coz, former Provincial Prosecutor from the Office of the Huánuco Combined Provincial Prosecutor, and Carlos Schult Vela, former Chief Superior Prosecutor of Huánuco, for the crimes of abuse of authority, abuse of public office and breach of public duty, based on Law No. 26479 and Law No 26492, the Amnesty Law.<sup>106</sup>

140. The Commission has not been told of any investigations into the complaints filed by Mr. Galindo seeking an investigation into the conduct of the various authorities involved in his detention and the alleged application of the Repentance Law against his will. Nor has the Commission been informed that the Attorney

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<sup>100</sup> Annex 23. Brief addressed to the Chair of the Board of Supreme Prosecutors of the Public Prosecutor’s Office, stamped ‘received’ on January 18, 1995, by the Office of the Attorney General of the Nation, General Secretariat, Registry Office for Incoming Communications. Attachment to the petitioner’s brief of January 3, 1996.

<sup>101</sup> Annex 24. Page six of the deposition by Luis Antonio Galindo Cárdenas (46)., signed by the examiner, Public Prosecutor’s Office, Dr. Víctor Aguirre Visag, the attorney-deponent, Luis A. Galindo Cárdenas. Attached to the petitioner’s brief of January 3, 1996.

<sup>102</sup> Annex 24. Page six of the deposition by Luis Antonio Galindo Cárdenas (46)., signed by the examiner, Public Prosecutor’s Office, Dr. Víctor Aguirre Visag, the attorney - deponent, Luis A. Galindo Cárdenas. Attached to the petitioner’s brief of January 3, 1996.

<sup>103</sup> Annex 34. Verification Report No. 009 DECOTE-PNP-HCO. Confirmation of the information supplied by applicant code number AIJ054998 on the applicant’s Declaration dated October 25, 1994, and Amplification thereof dated January 24, 1995, signed by the Examiner and Commander of the PNP. Attachment to the State’s brief of January 21, 2008.

<sup>104</sup> Annex 26. Brief sent to the Minister of Defense, Peruvian Army Division General Víctor Malca Villanueva, dated February 27, 1995. Attachment to the petitioner’s brief of January 3, 1996.

<sup>105</sup> Annex 27. Brief addressed to the Inspector General of the Ministry of Defense of Peru, Subject: Complaint filed against Peruvian Army Colonel Eduardo Negrón Montestruque alleging criminal acts, March 7, 1995. Attachment to the petitioner’s brief of January 3, 1996.

<sup>106</sup> Annex 31. Public Prosecutor’s Office, file No. 525-95, Resolution No.462 of May 8, 1998. Attachment to the petitioner’s brief of June 2, 2008.

General of the Nation has taken any measures to investigate and punish, where appropriate, the officials of the Public Prosecutor's Office alleged to have been involved in the facts, as the Executive Council of the Judiciary requested on January 17, 1995, and as was requested of the Office of the Commander of the Army and the authorities at the Ministry of the Interior. Furthermore, the State has not informed the Commission of whether Mr. Galindo was provided with the certified copies of the police-military investigation to which he was subjected, or informed of the grounds on which the authorities decided his case. That information was requested from the Office of the Attorney General on December 13, 1994, and again on January 16, 1995.

141. The Commission therefore concludes that the various efforts made by Mr. Galindo to challenge the validity of the declarations were never investigated nor did they elicit any response from the State.

#### **Psychological effects on the members of Mr. Galindo's family**

142. A psychological evaluation was issued on November 16, 1994 concerning Mr. Galindo's wife, Mrs. Irma Díaz de Galindo, and stated the following:

...she gives the impression of being older than her years, which is explained by the severe emotional problems she is experiencing.

At the time of the evaluation, her intellectual capacity is being diminished by the interference of emotional factors, because on the Wais scale she is of average intelligence.

As for affective life, she is currently depressed and very insecure, and her clinical profile borders on a depressive neurosis, with strong elements of anxiety. This is generating physical reactions typical of these pathological profiles.

She has aggressive impulses which tend to emerge when she feels threatened, and a very damaged ego.

RECOMMENDATIONS: Given the characteristics of her clinical profile, the recommendation is that she remains in constant and prolonged therapy, with emotional and cathartic support backed up by the appropriate drugs.<sup>107</sup>

143. Subsequently, on February 17, 1995, a report was issued by a psychiatrist indicating that Mrs. Irma Díaz de Galindo's therapy "has been progressing favorably during all the sessions of psychotherapy; she has demonstrated better control and acceptance of her internal drives. However, as she is now 20 weeks' pregnant, the prognosis has deteriorated, as this situation is a constant source of tension and could affect her pregnancy and her emotional recovery at this stage in her treatment." The report recommends: continued psychotherapy for an indefinite period, use of the drug treatment indicated by the evolution and status of her pregnancy, reinforce the emotional security that her husband and the persons around her must provide.<sup>108</sup>

144. As for Mr. Galindo Cárdenas' son, who was 10 years old at the time of the events and was in 3<sup>rd</sup> grade, the medical psychological report of November 21, 1994 cites infantile depressive neurosis as the diagnosis and states that:

...Furthermore, one notes slowness and asthenia in the patient's actions; his intelligence is high average, but his performance is currently very limited because of the emotional shock he has experienced in relation to his father's image; this attitude manifests itself in the form of constant whining and complaints during the interviews.

He harbors a great deal of worry that carries him into an emotional depressive state; he feels great anxiety over the uncertainty of his family situation, causing him to question the meaning of the paternal image, which until recently was idealized. All this has triggered depressive emotional reactions, including auto-

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<sup>107</sup> Annex 37. Psychological medical report dated November 16, 1994, signed by José S. Córdova Zárate, surgeon. Attachment to the petitioner's brief of January 3, 1996.

<sup>108</sup> Annex 38. Psychological medical report dated February 17, 1995, signed by José S. Córdova Zárate, surgeon. Attachment to the petitioner's brief of January 3, 1996.

aggressive reactions, despite the psychological and pharmacological support he has received throughout four 45-minute sessions. We are also concerned that he may lose the school year.<sup>109</sup>

145. Later, a February 15, 1995 psychological report done on Mr. Galindo's son states that "this patient has made progress on the emotional problems provoked by the trauma of his father's incarceration. What we have now is a child who occasionally experiences night-time fears that are the product of his fear of separation from his father. He also displays some reactive aggression against other children and adults. The report recommends that the psychotherapy treatments continue and that their frequency be increased, focusing on guidance, attitude and increased emotional support; the psychotherapy sessions with the family should continue. It points out that if these recommendations cannot be followed, "the undersigned cannot take responsibility for the negative consequences that this may cause to the patient's personality."<sup>110</sup>

## V. THE LAW

146. In Admissibility Report No. 14/04, the Commission considered the petition admissible with respect to the alleged violations of articles 5, 7, 9, 8 and 25 of the American Convention, read in conjunction with articles 1 and 2 thereof. Therefore, this section will examine those articles of the Convention in light of the facts established and the allegations of the parties.

### **A. The right to personal liberty (articles 7(1), 7(2), 7(3), 7(4) and 7(5) of the American Convention, read in conjunction with articles 8(2)(b) and (c), 1(1) and 2 thereof**

147. Paragraphs 1, 2, 3, 4, and 5 of Article 7 of the American Convention read as follows:

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

148. Article 8(2)(b) and (c) of the American Convention provide that:

(...)

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d.

(...)

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

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<sup>109</sup> Annex 39. Psychological medical report dated November 21, 1994, signed by José S. Córdova Zárate, surgeon. Attachment to the petitioner's brief of January 3, 1996.

<sup>110</sup> Annex 40. Psychological medical report on a ten-year-old boy, the son of Mr. Galindo, dated February 15, 1995, signed by José S. Córdova Zárate, surgeon. Attachment to the petitioner's brief of January 3, 1996.

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

150. Article 2 of the American Convention provides that:

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

151. Under Article 2(24)(f) of Peru's 1993 Constitution:

No one shall be arrested without a written warrant issued by a judge for cause or by police order in case of *flagrante delicto*. The arrested person shall be placed at the disposal of the proper court within twenty-four hours or within the time limit dictated by the distance.

These time limits shall not apply in cases of terrorism, espionage and illicit drug trafficking.

The police authorities may hold the suspects in such cases in custody for no more than fifteen calendar days. They must inform the Public Prosecutor's Office and the judge, who shall take jurisdiction before that time period has expired

152. As for the guarantees that must attend every detention or arrest, the Inter-American Court has held that:

Article 7 of the American Convention [...] contains two types of regulations, highly differentiated, one general and one specific. The general one is contained in the first subparagraph: "[e]very person has the right to personal liberty and security." While the specific one is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Art. 7(2)) or in an arbitrary manner (Art. 7(3)), to be informed of the reasons for the detention and the charges brought against him (Art. 7(4)), to judicial control of the deprivation of liberty (Art. 7(5)), and to contest the lawfulness of the arrest (Art. 7(6)). Any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof.<sup>111</sup>

153. For its part, the Commission has written that Article 7 of the American Convention upholds the guarantees of the right to personal liberty that the States Parties have undertaken to respect and ensure. Principally, any deprivation of liberty must be done in accordance with pre-established law; hence, "no one shall be subject to arbitrary arrest or imprisonment." A person detained must be informed of the reason and promptly notified of any charge against him. A detainee must be presented promptly before a judge, and must be tried within a reasonable time or released pending the continuation of proceedings. Further, any person deprived of liberty is entitled to judicial recourse, to obtain, without delay, a determination of the legality of the detention.<sup>112</sup> The United Nations Human Rights Committee has pointed out that "remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances."<sup>113</sup>

154. The Commission is well aware of the climate prevailing in Peru when the anti-terrorist legislation was enacted in 1992, a time when repeated incursions by illegal armed groups provoked a constant state of alarm

<sup>111</sup> I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220. Paragraph 79. Citing *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 54; and *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, paragraph 116.

<sup>112</sup> IACHR, *Report on the Situation of Human Rights in Ecuador. 1997*. OEA/Ser.L/V/II.96. Doc. 10 rev. 1. April 24, 1997. Chapter VII.

<sup>113</sup> *Case of Van Alphen v. The Netherlands*, communication No. 305/1998, July 23, 1990.

in the population. A state of exception had been declared in several departments, which *prima facie* appeared justified in order to combat these illegal armed groups.<sup>114</sup> The Commission observes, however, that despite the *prima facie* legitimacy of this measure, the power to detain is not an unlimited power for the security forces, which they can use to take persons into custody arbitrarily. Suspending the requirement that a court order be obtained before taking a person into custody or arresting a person does not mean that public officials are no longer subject to the legal requirements necessary for ordering such a measure or that judicial oversight of the way in which the detentions are conducted is suspended.<sup>115</sup>

### Article 7(2) and 7(3) of the American Convention

155. The Inter-American Court has written that Article 7(2) of the Convention “recognizes the main guarantee of the right to physical liberty: the legal exception, according to which the right to personal liberty can only be affected by a law.”<sup>116</sup> It has also held that “[t]he legal exception must necessarily be accompanied by the principle of legal definition of the offense (*tipicidad*), which obliges the States to establish, as specifically as possible and “beforehand,” the “reasons” and “conditions” for the deprivation of physical liberty. Hence, Article 7(2) of the Convention refers automatically to domestic law. Accordingly, any requirement established in domestic law that is not complied with when depriving a person of his liberty will cause this deprivation to be unlawful and contrary to the American Convention.”<sup>117</sup>

156. As for Article 7(3) of the American Convention, the Court has held that “no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.”<sup>118</sup> When addressing the arbitrary nature of a detention, the Court has reaffirmed that “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.”<sup>119</sup>

157. Specifically on the subject of subparagraphs 2 and 3 of Convention Article 7, the Court has written the following

[a]ccording to the first of these regulatory provisions [Article 7(2) of the Convention], no one shall be deprived of his personal liberty except for reasons, cases or circumstances specifically established by law (material aspect) but, also, under strict conditions established beforehand by law (formal aspect). In the second provision [Article 7(2) of the Convention], we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that – although qualified as legal – may be considered incompatible with respect for the fundamental rights of the individual, because they are, among other matters, unreasonable, unforeseeable or out of proportion.<sup>120</sup>

<sup>114</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Chapter II. ADMINISTRATION OF JUSTICE AND RULE OF LAW, paragraph 83.

<sup>115</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Chapter II. ADMINISTRATION OF JUSTICE AND RULE OF LAW, paragraph 84.

<sup>116</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Ñiquez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. Paragraph 56.

<sup>117</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Ñiquez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. Paragraph 57.

<sup>118</sup> I/A Court H.R., *Case of Gangaram Panday v. Suriname*. Judgment of January 21, 1994. Series C No. 16, paragraph 47; and I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, paragraph 66.

<sup>119</sup> I/A Court H.R.. *Case of Chaparro Álvarez and Lapo Ñiquez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 92.

<sup>120</sup> I/A Court H.R. *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, paragraph 57; I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 98; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 83.

158. The United Nations' Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that "[a]rrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose" and that "[a]ny form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority."<sup>121</sup>

159. The Commission notes that at the time of the events in this case, Decree 25,475 of May 5, 1992 was in effect. A law on the crime of terrorism, its Article 12(c) provided that a person suspected of being involved in the crime of terrorism could be held in detention on remand for a period of no more than 15 calendar days, and the public prosecutor and criminal judge were to be advised within 24 hours.<sup>122</sup>

160. The Final Report of Peru's Truth and Reconciliation Commission points out that under the 1993 Political Constitution, a person may only be constitutionally detained if one of two conditions is present: a court order has been issued or the person is caught *in flagrante*. These two conditions, which are the general maxims within the rule of law, were bent when a state of emergency was decreed under the authority of the Constitution, in that the right to personal liberty was suspended or restricted.<sup>123</sup> The Final Report of the Truth and Reconciliation Commission also points out that emergency legislation led to a mentality in which measures to restrict a suspect's liberty were routine tools of criminal policy.<sup>124</sup>

161. In the instant case, the petitioner alleges that when the State deprived Mr. Galindo of his liberty on October 16, 1994, it violated his right to personal liberty, as he was detained without a prior court order and was not caught *in flagrante*, as required under Article 2(24)(f) of the Constitution, and his special status as a Magistrate on Huánuco's Superior Court was ignored.

162. The State, for its part, contends that the petitioner was taken into custody in order to establish his criminal responsibility for the crime of terrorism, since a person taking advantage of the repentance regime had informed on him and named him as being a member of an organization with ties to the *Sendero Luminoso*. The State argues that a declaration of this type is sufficient grounds to justify a preliminary investigation and detention on remand, especially when one considers that the scene of these events was under a state of emergency; the state of emergency meant that the petitioner's detention was done pursuant to the provisions of Law 24150 and Decree Law No. 749, which dictate police business in areas declared under a state of emergency, and the provisions contained in the National Pacification Legislation (Decree Law 24475, governing the crime of terrorism).

163. The Commission observes that from the facts established in this case, the State has not submitted any evidence indicating that a repentant terrorist accused Mr. Galindo of being a member of the *Sendero Luminoso*. The Commission has taken as fact that it was Mr. Galindo who, of his own free will, went to the Yánc Military Base at the request of the Head of the Military-Political Command who under the emergency legislation in effect at the time, performed all government functions at every level and everywhere in the zone. Under that emergency legislation, the functions and authorities of civilian officials were subordinate to the

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<sup>121</sup> UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the U.N. General Assembly in its resolution 43/173, December 9, 1988, principles 2 and 4, respectively..

<sup>122</sup> See, in general, I/A Court H.R. *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, paragraph 73.

<sup>123</sup> Final Report of Peru's Truth and Reconciliation Commission, VOLUME VI, Section four: crimes and human rights violations, Chapter 1: Patterns in the perpetration of crimes and human rights violations, 1.6 Violation of Due Process, 1.6.6 State of emergency, unlawful detentions and petitions for relief, p. 468.

<sup>124</sup> Final Report of Peru's Truth and Reconciliation Commission, VOLUME VI, Section four: crimes and human rights violations, Chapter 1: Patterns in the perpetration of crimes and human rights violations, 1.6 Violation of Due Process, 1.6.1. ANALYSIS OF THE LAW ON SUPPRESSION OF THE CRIME OF TERRORISM IN PERU, p. 386.

authority of the Head of the Military-Political Command. The Commission has also taken as fact that Mr. Galindo was held in detention at the Yánac Military Base for 31 days, despite the fact that under Decree Law 25475, 15 days was the maximum a person could be held in detention on remand and, under its Article 12(a) the person was to be in the custody of the Peruvian National Police.

164. The Commission also observes that at the time of the events Mr. Galindo Cárdenas was serving as a Provisional Magistrate on the Huánuco Superior Court; hence, under Article 191 of the Organic Law of the Judiciary in force at that time, he could only be detained by court order or if caught *in flagrante*. If caught *in flagrante*, once the respective court was notified the magistrate should have been taken directly to the Public Prosecutor's Office via the most rapid route and under the responsibility of the arresting authority.<sup>125</sup>

165. The Commission notes also that it is uncontested fact that the Provincial Prosecutor had knowledge of Mr. Galindo's detention from the outset. However, the State has not provided any evidence indicating that once Mr. Galindo was taken into custody, the Huánuco Superior Court was advised of his detention. The Commission has taken as proven fact that although the Huánuco Superior Court, in the person of its President, sent a number of memoranda to the Head of the Military-Political Command and to Huánuco's Chief Superior Prosecutor to obtain information on the legal situation of Magistrate Galindo, that information was not provided. Moreover, the President of the Supreme Court was not allowed to communicate with Magistrate Galindo in any way.

166. The Commission has already made reference to the powers given to the police under Law 25475, under which they are not subject to judicial review; also, the procedures that the law authorizes the police to use in their investigations into crimes of terrorism have the effect of severely restricting fundamental rights and the civilian officials' authorities to control police activity.<sup>126</sup>

167. In its Second Report on the Situation of Human Rights in Peru, the Commission observed the following:

The suspension of some of the attributes of the right to personal liberty, authorized by Article 27 of the American Convention for certain cases, is not absolute. There are principles underlying every democratic society that the security forces must observe in order to make a lawful arrest, even under a state of emergency. The legal conditions for an arrest are obligations that the state authorities must respect, pursuant to the international commitment to protect and respect human rights, acquired under the Convention.

In addition, based on the foregoing principles, the police or military detention, as a precautionary measure, should have as its sole purpose preventing the flight of a person suspected of a criminal act, and thereby ensuring his or her appearance before a competent judge, to be judged within a reasonable term or, as the case may be, released.(...).<sup>127</sup>

168. On the question of the length of the detention, the Commission observes that while Article 27 of the American Convention allows certain aspects of the right to personal liberty to be suspended in a state of emergency and permits the State to hold individuals in preventive detention for longer periods than would be

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<sup>125</sup> Article 191 of the Organic Law of the Judiciary, June 3, 1993 – Detention of Magistrates: Magistrates protected by the judicial career service may only be detained by order of a competent judge or *in flagrante delicto* where the law so requires. If a magistrate is caught *in flagrante*, he or she is to be taken immediately to the Prosecutor's Office with jurisdiction, with the knowledge of the President of the respective court, by the most rapid route and under the responsibility of the arresting officer.

<sup>126</sup> Annual Report of the IACHR 1993, OEA/Ser.L/V/II.85, Doc. 8 rev. 11 February 1994, Chapter IV: Status of human rights in several countries, Peru.

<sup>127</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, CHAPTER II. ADMINISTRATION OF JUSTICE AND RULE OF LAW, paragraphs 85 and 86, available at: PACION DE JUSTICIA Y ESTADO DE DERECHO, paragraphs 85 and 86, available at: <http://www.cidh.org/countryrep/Peru2000en/TOC.htm>.

allowed under normal circumstances, in order to adopt this measure the State must show that the prolonged detention is strictly necessary given the state of emergency.<sup>128</sup>

169. Therefore, based on the facts established and following the above reasoning, the Commission concludes that Mr. Galindo was not arrested *in flagrante* and no warrant had been issued by a competent judge ordering his arrest; instead, he was detained solely as part of a terrorism investigation and held for 31 days in a facility not authorized by law for detentions; his detention exceeded the legal and reasonable limit that the law established. Furthermore, the Huánuco-Pasco Superior Court was not advised of his legal situation despite the fact that such notice is required by law. Therefore, the State of Peru violated articles 7(1), 7(2) and 7(3) of the Convention, read in conjunction with articles 1(1) and 2 thereof, to the detriment of Luis Antonio Galindo Cárdenas.

**Article 7(4) of the American Convention, read in conjunction with articles 8(2)(b), 8(2)(c) and 2 thereof**

170. The Court has written that under Article 7(4) of the American Convention, the information about the “motives and reasons” for a detention is to be provided at the time the detention is made, as a means of avoiding unlawful or arbitrary detentions from the very moment that the person is deprived of his liberty; it also serves to ensure the individual’s right of defense.<sup>129</sup> The Court has also held that the arresting officer must, in simple language, free of technicalisms, explain the essential legal grounds and facts on which the arrest is based. Article 7(4) of the Convention is not satisfied by the mere mention of the legal grounds.<sup>130</sup> More recently, the Inter-American Court has written that article 7(4) of the Convention refers to two aspects: i) the information, whether in oral or written form, on the time of the detention and ii) the notification, which must be served in writing, of the charges.<sup>131</sup>

171. In the instant case, the petitioner alleges that he was not told the reasons for his detention or the charges against him. The State, for its part, contends that Mr. Galindo was never criminally prosecuted; instead, during the investigation conducted against him, he was allowed to avail himself of a rewards-based mechanism of criminal law –in this case the Repentance Law- the direct result of which was his release and exemption from any criminal sanction.

172. The Commission notes that based on the facts established in this case, for the duration of the time that Mr. Galindo was held in detention and subsequent to his release, he was never informed of the charge he was alleged to be facing in the terrorism investigation that targeted him. The State, for its part, has provided no documentary supports that would allow one to conclude that this guarantee had been respected; it has failed to meet its burden of proof.

173. The concept of due process embodied in Article 8 of the American Convention should be understood to apply essentially to all the judicial guarantees protected under the American Convention, even

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<sup>128</sup> See IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Paragraphs 139 and 140.

<sup>129</sup> I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220. Paragraph 105. Citing *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99. Paragraph 82; and *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180. Paragraph 107.

<sup>130</sup> I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220. Paragraph 105. Citing I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. Paragraph 71; and *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180. Paragraph 107.

<sup>131</sup> I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220. Paragraph 106.



under the ‘suspension of guarantees’ provision in Convention Article 27.<sup>132</sup> The Commission observes that the case law of the Inter-American Court holds that Article 8(2)(b) of the Convention, which protects an accused person’s right to prior notification, in detail, of the charges against him, applies even before the “charges”, in a strict sense, are filed. For this right to satisfy its inherent purposes, notification must take place before the accused gives his first statement<sup>133</sup> before any public authority.<sup>134</sup>

174. The Commission would also draw attention to how Convention articles 7(4) and 8(2)(b) and (c) are interrelated; they uphold the right to representation by counsel, since if a person is not informed of the reasons for his detention, he can hardly exercise his right of defense. The Inter-American Court has held the following in this regard:

If the right to defense arises as of the moment in which an investigation into an individual is ordered (...), the accused must have access to a legal representation from that moment onwards, especially during the procedure in which his statement is rendered. To prevent the accused from being advised by counsel means to strictly limit the right to defense, which leads to a procedural imbalance and leaves the individual unprotected vis-à-vis the punitive authority.<sup>135</sup>

175. The Commission notes that Article 12(f) of Decree Law 25,745 on terrorism provides that “persons being prosecuted have a right to appoint their defense counsel, who may only intervene from the point at which the detainee makes his statement in the presence of a representative from the Public Prosecutor’s Office. If he does not appoint his legal counsel, the police authority shall designate a defense attorney *ex officio*, who shall be provided by the Ministry of Justice.” Based on the facts established in this case, the Declaration given by Mr. Galindo on October 15, 1994 indicates that no defense counsel was present; furthermore, during her visit with Mr. Galindo at the Yanac Military Base, the Attorney General of the Nation learned that Mr. Galindo was not represented by counsel, and no such counsel had been either appointed or offered for that purpose. Specifically, based on the facts established, the Commission notes that when the Attorney General asked Mr. Galindo if he was represented by counsel, Mr. Galindo answered that he did not think it advisable, inasmuch as he was himself an attorney and the case had been magnified out of proportion. The foregoing notwithstanding, the Commission finds no record of Mr. Galindo having formally waived his right to be represented by an attorney.

176. Given that Mr. Galindo was not informed of the reasons for his detention or of the charges he was allegedly facing, at the time of his conversation with the Attorney General he could hardly have been aware of just how serious the charges against him could be. The Commission believes that the law was very clear in establishing that if a detainee did not appoint a defense counsel, the police authority had a responsibility to assign one *ex officio*; the Attorney General of the Nation did not do what the law required of her, which was to order that his statement be taken again, this time in the presence of an attorney.

177. With specific reference to the guarantee protected in Article 8(2)(b) of the American Convention, the Court has written that to be in compliance with that provision,

the State must notify the accused not only of the charges against him, that is, the crimes or offenses he is charged with, but also of the reasons for them, and the evidence for such charges and the legal definition of the facts. The defendant has the right to know, through a clear, detailed and precise description, all the

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<sup>132</sup> *Judicial guarantees in states of emergency* (arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9.

<sup>133</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Paragraph 30, citing I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004, Series C No. 114, paragraph 187, and I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 21, 2005. Series C No. 135, paragraph 225.

<sup>134</sup> I/A Court H.R., I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Paragraph 30.

<sup>135</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Paragraph 62.

information of the facts in order to fully exercise his right to defense and prove to the judge his version of the facts. The Court has considered that timely compliance with Article 8(2)(b) is essential for the effective exercise of the right to defense.<sup>136</sup>

178. The Commission also observes that the right to have time and means to prepare one's defense, protected under Article 8(2)(c) of the Convention, also includes observance of the principle of rebuttal, thereby guaranteeing that the defendant will have an opportunity to examine the evidence against him.<sup>137</sup> The petitioner has consistently claimed that he never asked to avail himself of the Repentance Law. The Commission notes that the procedure applied to Mr. Galindo (the Repentance Law) meant that once a person announced that he wanted to avail himself of the benefits of that law, he had to make a statement before the competent authority and the prosecutor was to refer that statement to the specialized unit of the National Police, which was to verify whether what the applicant had stated was true. "The technical and scientific elements had to be duly substantiated to enable the Public Prosecutor's Office or the Judicial Authority to decide whether the applicant had met the conditions to qualify for the benefit applied for." In those cases in which there was no criminal case prosecuted, as happened in the instant case, the Prosecution's decision as to whether the applicant qualified for the benefit had to be based on a report prepared by the Specialized Unit of the Police. Here, the Commission notes that the procedure established in this law did not give the accused an opportunity to refute or rebut the evidence obtained and presented by the Police; it was up to the Prosecutor to decide whether to exempt the applicant from punishment. This system could give rise to abuse, since it did not protect the right of defense in the full sense of the expression; other rights were also in jeopardy.

179. Consequently, by failing to notify Mr. Galindo Cárdenas of the reasons for his detention and by failing to afford him the opportunity to exercise his right of defend himself against the crime of which the Prosecutor's Office accused him, the Commission concludes that in the instant case, the State of Peru violated Article 7(4) of the Convention, read in conjunction with articles 8(2)(b) and (c) and 1(1) thereof, to the detriment of Mr. Galindo.

**Article 7(5) of the American Convention, read in conjunction with Article 2 thereof**

180. Both the Inter-American Court and the European Court have underscored how important prompt judicial control of detentions is. A person deprived of his liberty without judicial control must be either released or brought immediately before a judge.<sup>138</sup>

181. As for the guarantee protected in Article 7(5) of the Convention and its relationship to security of person, the IACHR has held that the right to personal liberty also includes the guarantee of prompt and effective judicial oversight of detentions, in order to protect the well-being of detainees at a time when they are wholly within the control of the state and therefore particularly vulnerable to abuses of authority.<sup>139</sup>

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<sup>136</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Paragraph 28. Citing: *Cfr. Case of López Álvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, paragraph 149; *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, paragraph 225; *Case of Acosta Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, paragraph 118, and *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, paragraph 187.

<sup>137</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Paragraph 54.

<sup>138</sup> I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 115, I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 95, and I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paragraph 73. See also, Eur. Court H.R., Brogan and Others, judgment of 29 November 1988, Series A no. 145-B, paragraphs 58-59; Kurt v Turkey, No. 24276/94, paragraphs 122, 123 and 124, ECHR 1998-III.

<sup>139</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Paragraph 121. Citing: IACHR. Case 11.205, Report No. 2/97, Jorge Luis Bronstein *et al.* (Argentina), Annual Report of the IACHR 1997, paragraph 11. See, analogously, Case 12.069, Report No. 50/01, Damion Thomas (Jamaica), Annual Report of the IACHR 2000, paragraphs 37, 38.

182. For its part, the Inter-American Court has written that the first part of Article 7(5) of the Convention states that any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. Here the Court has held that prompt judicial oversight is intended to prevent abuse or violations of the law in detentions, since in the rule of law, it is up to the judge to ensure the rights of the detainee, authorize the adoption of precautionary or coercive measures when strictly necessary, and to endeavor, in general to ensure that the accused is treated in a manner commensurate with the principle of presumption of innocence.<sup>140</sup>

183. As for the right to be brought promptly before a judicial authority, the IACHR observes that Article 12(c) of Decree Law 25475, provided that the judge had to be informed when a person was ordered detained in DINCOTE. The Commission must point out that observance of the guarantee provided for in Article 7(5) of the Convention is not satisfied simply by informing the judicial authority of the arrest. This provision means that the person detained must be brought physically before the judicial authority. Consequently, the Commission observes that the fact that the Public Prosecutor's Office was present when Mr. Galindo's statement was taken did not protect his right to be brought before an official authorized by law to exercise judicial power, since the Prosecutor did not have the authority to order the release of the person under investigation.

184. The Court has also addressed Article 12(c) of Law 25475 on terrorism, and has repeatedly held that provisions of this kind contradict the Convention, which states "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power."<sup>141</sup> In its Second Report on the Situation of Human Rights in Peru, the Commission held that Article 12(c) of Decree Law No. 25475 is clearly incompatible with Article 7(5) of the American Convention.<sup>142</sup>

185. The Commission also notes that even though the President of the Huánuco-Pasco Superior Court sent a memorandum on October 17, 1994 to the Head of the Huánuco Military-Political Command seeking an answer as to whether some magistrate or member of that Court's staff had availed himself of the Repentance Law, as some news outlets had reported, the Head of the Huánuco Military-Political Command did not provide that information; instead, on October 20, 1994, he told the President of the Huánuco Superior Court that he should direct his inquiry to the Head of the Military-Political Command of Frente Huallaga-Tarapoto or, failing that, to the Office of Public Relations of the Central Command of the Armed Forces-Lima." The Commission also finds nothing to suggest that the Huánuco-Pasco Chief Superior Prosecutor answered the memorandum sent to him by the President of the Huánuco Superior Court asking to be informed about Magistrate Galindo's situation because of the information reported in the Defense Ministry's official communiqué of October 17, 1994. The Commission thus concludes that Mr. Galindo was not brought before a competent judicial authority while detained and that the authorities who had him in custody did not answer the instructions from the President of the Huánuco-Pasco Superior Court.

186. The Report of Peru's Truth and Reconciliation Commission states that the anti-terrorist legislation introduced a new logic into the initial phase of a criminal proceeding and clearly established a demarcation separating the jurisdictional activity reserved for judges; the proceedings had all the guarantees typical of an adversarial proceeding, but in the phase of preliminary investigations the courts played no role at all. It was controlled by administrative authorities. The effect was to endow police institutions with a coercive power over personal liberty that had nothing to do with the commission of a criminal offense; the idea that the

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<sup>140</sup> I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220. Paragraph 93; *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, paragraph 129; and *Case of Bayarri v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, paragraph 63.

<sup>141</sup> I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, paragraph 73; I/A Court H.R., *Case of Castillo Petrucci et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, paragraph 110.

<sup>142</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Chapter II, C. The Civilian Jurisdiction: the Anti-terrorist Legislation, paragraph 88.

preliminary phase would inevitably be followed by criminal prosecution and trial was not a given.<sup>143</sup> Consequently, the new framework of anti-terrorist legislation imposed in 1992 put the police in control of the preliminary investigation into the crime of terrorism; the police had broad legal authorities, with no legal or jurisdictional oversight.<sup>144</sup>

187. The Report of Peru's Truth and Reconciliation Commission addresses still another violation, which is the failure to report a detention to the competent authority, even though this was expressly stipulated in Peru's 1979 and 1993 Constitutions;<sup>145</sup> it also singled out the special laws enacted to govern the counter-subversive struggle.<sup>146</sup>

188. The Commission therefore concludes that inasmuch as Mr. Galindo was not brought before a competent judicial authority, the State of Peru violated Article 7(5) of the American Convention, read in conjunction with articles 1(1) and 2 thereof, to the detriment of Luis Antonio Galindo Cárdenas.

#### **B. Violation of articles 7(6) and 25(1) of the Convention**

189. Under Article 25 of the Convention,

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

190. Article 7(6) of the American Convention provides that:

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

191. Article 25(1) of the American Convention is a general provision that embodies the procedural institution known as "*amparo*," which is a simple and prompt remedy designed for the protection of all the rights recognized by the constitutions and laws of the States Parties and by the Convention. Since "*amparo*" can be

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<sup>143</sup> *Informe Final de la Comisión de la Verdad y Reconciliación de Perú, TOMO VI, Sección cuarta: los crímenes y violaciones de los derechos humanos, Capítulo 1: Patrones en la perpetración de los crímenes y de las violaciones de los derechos humanos, 1.6 La Violación del Debido Proceso, 1.6.1. ANÁLISIS DE LA LEGISLACIÓN RELATIVA A LA REPRESIÓN PENAL DEL TERRORISMO EN EL PERU* [Final Report of Peru's Truth and Reconciliation Commission, VOLUME VI, Section four: crimes and human rights violations. Chapter 1: Patterns in the perpetuation of crimes and human rights violations, 1.6 Violation of Due Process, 1.6.1. ANALYSIS OF THE LEGISLATION ENACTED FOR SUPPRESSION OF THE CRIME OF TERRORISM IN PERU], p. 386.

<sup>144</sup> *Informe Final de la Comisión de la Verdad y Reconciliación de Perú, TOMO VI, Sección cuarta: los crímenes y violaciones de los derechos humanos, Capítulo 1: Patrones en la perpetración de los crímenes y de las violaciones de los derechos humanos, 1.6 La Violación del Debido Proceso, 1.6.1. ANÁLISIS DE LA LEGISLACIÓN RELATIVA A LA REPRESIÓN PENAL DEL TERRORISMO EN EL PERU* [Final Report of Peru's Truth and Reconciliation Commission, VOLUME VI, Section four: crimes and human rights violations. Chapter 1: Patterns in the perpetuation of crimes and human rights violations, 1.6 Violation of Due Process, 1.6.1. ANALYSIS OF THE LEGISLATION ENACTED FOR SUPPRESSION OF THE CRIME OF TERRORISM IN PERU], p. 396.

<sup>145</sup> Like the constitution that preceded it, the 1993 Constitution made it mandatory to inform a judge and the public prosecutor's office when a person was detained (Article 2, paragraph 24, subparagraph f).

<sup>146</sup> Legislative Decree 046, the first law enacted to combat the armed subversive movement, provided that preventive detention could last for no more than 15 calendar days and that the Public Prosecutor's Office and the Examining Judge were to be advised immediately and in writing, within 24 hours from the time of the detention or the time necessary given the distance. This formula was kept in successive anti-terrorist laws: Law 24700 (Article 2); Law 25031 (Article 2); Decree-Law 25475 (Article 12, subparagraph c).

applied to all rights, it is clear that it can also be applied to those that are expressly mentioned in Article 27(2) as rights that are not subject to derogation even in emergency situations.<sup>147</sup>

192. The Commission is reminded that the case law of the Court has held that Article 25(1) of the Convention establishes, in broad terms, the States' obligation to provide to all persons subject to their jurisdiction an effective judicial remedy against acts that violate their fundamental rights.<sup>148</sup> Accordingly, the Court has held that for a Court to be in compliance with Article 25(1) of the Convention, it is not enough for the remedies to exist formally; instead, they must be effective;<sup>149</sup> in other words, they must offer the person the real possibility of filing a simple and prompt recourse to secure, where necessary, the required judicial protection. Time and time again the Court has held that "the existence of these guarantees is one of the basic mainstays, not only of the American Convention, but also of the rule of law in a democratic society in the sense set forth in the Convention."<sup>150</sup>

193. On the subject of *habeas corpus*, the Court has written that this judicial remedy directly protects personal freedom or physical integrity against arbitrary detentions; it does this by means of a judicial decree ordering the appropriate authorities to bring the detained person before a judge so that the lawfulness of the detention may be determined and, if appropriate, the detainee ordered released.<sup>151</sup>

194. The Commission is reminded that the petition of *habeas corpus* is a fundamental right intimately linked to the right to personal liberty. The Court has written that:

... the judicial guarantees essential for the protection of the human rights not subject to derogation, according to Article 27(2) of the Convention, are those to which the Convention expressly refers in Articles 7(6) and 25(1), considered within the framework and the principles of Article 8, and also those necessary to the preservation of the rule of law, even during the state of exception that results from the suspension of guarantees.<sup>152</sup>

195. In the instant case, the petitioner is alleging that he did not file a petition of *habeas corpus* because as a state of emergency had been declared in the city of Huánuco, it was under the control of the Military-Political Command, whose highest-ranking official was Colonel Negrón; hence, the city's organs of justice and control were subordinate to him. Therefore, a petition of *habeas corpus* would have been ineffective. The petitioner further alleges that under Article 38 of Law 23506, consistent with Article 137(1) of the Constitution, petitions of *habeas corpus* were out of order in areas declared under a state of emergency, which made any legal action futile.

196. The State, for its part, alleges that under Article 200 of the 1993 Constitution, exercise of petitions of *habeas corpus* and *amparo* is not suspended during enforcement of the states of exception referred to in Article 137(1) of the Constitution. Therefore, the State alleges that Mr. Galindo could have filed a petition of *amparo* but did not.

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<sup>147</sup> I/A Court H.R., *Habeas corpus in emergency situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraph 32.

<sup>148</sup> I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paragraph 116; I/A Court H.R., *Case of Cantos*. Judgment of November 28, 2002. Series C No. 97, paragraph 52, and I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 130.

<sup>149</sup> I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paragraph 117; I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, paragraph 121, and I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 131.

<sup>150</sup> I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 131.

<sup>151</sup> I/A Court H.R., *Habeas corpus in emergency situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraph 33.

<sup>152</sup> I/A Court H.R., *Judicial guarantees in states of emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*, Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 38.

197. The Commission notes that as the State points out, under Article 200 of Peru's 1993 Constitution,<sup>153</sup> the petition of *habeas corpus* is a constitutional guarantee that "is admissible vis-à-vis any action or omission on the part of any authority, civil servant or individual who violates or threatens individual liberty or the related constitutional rights." Exercise of the petition of *habeas corpus* cannot be restricted under Article 137(1) of the Constitution. The Commission notes also that under Law No. 26248, published on November 25, 1993, petitions of *habeas corpus* were again permissible in cases involving crimes of terrorism and treason. The only exceptions are petitions "based on the same facts or causes of action that are the subject of a proceeding already underway or resolved."<sup>154</sup> Therefore, at the time of the events in this case, a petition of *habeas corpus* was allowable under the law.

198. Nevertheless, as the Court observed in the *Case of Castillo Petrucci v. Peru*, Law No. 26248 (which allowed the petition of *habeas corpus* in cases involving crimes of terrorism and treason effective November 25, 1993),

... did nothing to improve the juridical situation of the accused, since its Article 6.4 stipulated that "writs of *habeas corpus* based on the same facts or grounds [that are] the subject of a proceeding that is under way, or a proceeding that is already resolved, are not admissible."<sup>155</sup>

199. The case law of the Inter-American Court is that:

...the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.<sup>156</sup>

... the above conclusions are generally valid with respect to all the rights recognized by the Convention. But it must also be understood that the declaration of a state of emergency -- whatever its breadth or denomination in internal law-- cannot entail the suppression or ineffectiveness of the judicial guarantees that the Convention requires the States Parties to establish for the protection of the rights not subject to derogation or suspension by the state of emergency. Therefore, any provision adopted by virtue of a state of emergency which results in the suspension of those guarantees is a violation of the Convention".<sup>157</sup>

200. The Commission notes that at no time during his time in detention was Mr. Galindo brought before a judge or informed of his legal situation. He had no way to file a petition of *habeas corpus*. Furthermore, the IACHR observes that despite the fact that on October 17, 1994, the Huánuco-Pasco Superior Court, in the

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<sup>153</sup> Article 200 of the 1993 Constitution provides that: "[...] Exercise of the petition of *habeas corpus* and the petition of *Amparo* is not suspended during the enforcement of the states of emergency referred to in Article 137 of the Constitution. When petitions of this nature are filed with regard to restricted or suspended rights, the corresponding jurisdictional body examines the reasonability and proportionality of the restriction. The judge is not entitled to challenge the declaration of a state of emergency or a state of siege."

<sup>154</sup> Article 6 of Decree Law 25659, which governs petitions of *habeas corpus* for crimes of this type, was amended by Law 26248, published November 25, 1993: "Article 6.- The petition of *Habeas Corpus* is proper procedure under the conditions stipulated in Article 12 of Law No. 23506, on behalf of persons detained, suspected of or prosecuted for the crimes of terrorism and treason. The following procedural rules must be observed: 1) the Criminal Judge Specializing in Terrorism is competent to hear the petition of *habeas corpus*; in the absence of such a judge, a regular criminal judge may also hear the petition (...) 4) petitions of *habeas corpus* based on the same facts and causes of action that are the subject of a proceeding already in progress or resolved shall not be admissible"

<sup>155</sup> I/A Court H.R., *Case of Castillo Petrucci et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, paragraph 181.

<sup>156</sup> I/A Court H.R., *Judicial guarantees in states of emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 24.

<sup>157</sup> I/A Court H.R., *Judicial guarantees in states of emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraphs 25 and 26.

person of its President, asked the Head of the Military-Political Command to inform him of the legal situation of then Magistrate Galindo Cárdenas and that on October 18, 1994 he made the same request of Huánuco-Pasco Chief Superior Court Prosecutor, he never received any reply:

(...) it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.<sup>158</sup>

201. Therefore, based on the allegations of the parties, the facts established and the context in which the events occurred, the Commission concludes that the State of Peru violated Article 7(6) of the American Convention, read in conjunction with Article 25(1) and the guarantees recognized in Article 1(1) thereof, to the detriment of Mr. Luis Antonio Galindo Cárdenas.

**C. The right to humane treatment (Article 5(1) and 5(2) of the American Convention, read in conjunction with Article 1(1) thereof<sup>159</sup>)**

202. The pertinent parts of Article 5 of the American Convention read as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

203. Concerning the rights protected under articles 5(1) and 5(2) of the Convention, the Commission is reminded that the American Convention prohibits the use of torture or cruel, inhuman or degrading treatment or punishment against any person, irrespective of the circumstances. The Inter-American Court has held that the injuries, suffering, afflictions or harm sustained by an individual while he is deprived of liberty may become a form of cruel punishment when, owing to the circumstances of his imprisonment, there is a deterioration in his physical, mental and moral integrity, which is strictly prohibited by Article 5(2) of the Convention.<sup>160</sup>

204. In the instant case, the petitioner alleges that although he was detained on October 16, 1994, his wife was unable to visit him until October 18, 1994 and, during his 31 days in detention, the only other visits he received were from the Attorney General of the Nation on October 26, 1994, and from two representatives of the International Committee of the Red Cross on November 9, 1994. He states that although members of the Human Rights Commission of the Democratic Constituent Congress traveled to the city of Huánuco on two separate occasions, they were not allowed to see him by order of the head of the Military-Political Command, who was the officer in command of the military base where he was being held. He also states that initially, the International Committee of the Red Cross was not permitted to visit Mr. Galindo and that the requests that the President of the Huánuco Superior Court made of the head of the Military-Political Command and of the Chief Superior Prosecutor of Huánuco seeking information concerning his circumstances went unanswered.

205. The State, for its part, contends that as is evident from the petitioner's own allegations, as a detainee Mr. Galindo received visits from his sister and wife, from the Attorney General's Office, and from

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<sup>158</sup> I/A Court H.R., *Judicial guarantees in states of emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 24; I/A Court H.R., *Case of Cantoral Benavides v. Peru*, Judgment of August 18, 2000, Series C No. 69, paragraph 164.

<sup>159</sup> Article 1(1) of the American Convention provides that: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

<sup>160</sup> I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, paragraph 101.

members of the International Committee of the Red Cross. The State “does not expressly deny” that Mr. Galindo may have been held incommunicado at the start of his detention, as such a measure was allowed under the rules of police investigation in force at the time of his detention. It reports that under Article 13(d) of Decree No. 25475, a detainee could be held temporarily incommunicado for the sake of security and the confidentiality of the investigation. It states that this subparagraph of Article 13 was declared unconstitutional by the Constitutional Court on January 3, 2003. The State alleges that while the case was being processed with the IACHR Mr. Galindo did not present evidence –apart from his own story- of the alleged psychological torture he claims to have suffered.

206. With regard to this last allegation by the State, the Commission recalls that under the case law of the Inter-American Court, “[i]n contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.”<sup>161</sup>

207. The Commission notes that incommunicado detention is an exceptional measure whose purpose is to prevent any interference in the investigation into the facts and “must be limited to the period of time expressly established by law. Even in that case, the State is obliged to ensure that the detainee enjoys the minimum and non-derogable guarantees established in the Convention and, specifically, the right to question the lawfulness of the detention and the guarantee of access to effective defense during his incarceration.”<sup>162</sup> The Court has also written that holding a detainee incommunicado must be an exceptional measure because such detention causes moral suffering and psychological trauma, making the person vulnerable and increasing the risk of abuse in prisons and jails<sup>163</sup> and because it puts strict observance of due process of law in jeopardy.<sup>164</sup>

208. The Commission must now determine whether the acts referred to constitute torture or cruel, inhuman or degrading treatment, which would be violations of Article 5(2) of the American Convention. Whatever the nature of the acts in question, they are behaviors strictly prohibited under the international law of human rights.

209. From the facts established, the Commission notes that Mr. Galindo was detained on October 16, 1994 and could not receive visitors until October 17, when he was visited by his sister and wife. The Commission notes, too, that while on October 26, 1994, the Attorney General visited Mr. Galindo at the military base and was told by him that he had been detained in that room since October 16 -10 days, in other words- and that although he had not suffered physical mistreatment, he had suffered “the psychological mistreatment that comes with incarceration,” the Attorney General did not take any action in this regard. The Commission observes that between October 26 and November 9 –the date on which he was visited by two representatives from the Red Cross- he was held completely isolated from the outside world; and again from November 9 to the date of his release on November 16, 1994, in other words another 7 days.

210. The Commission notes that the State has admitted that it held Mr. Galindo Cárdenas incommunicado initially, although it does not indicate for how long; it also admits that thereafter he was allowed only three visits. Based on the facts established, the Commission observes that the Armed Forces did not allow the President of the Supreme Court to communicate in any way with Mr. Galindo; on two different occasions, three congressmen who had made the trip to Huánuco were not permitted to speak with Mr. Galindo.

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<sup>161</sup> I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No 4, paragraphs 135-136; *Case of Godínez Cruz*, Judgment of January 20, 1989, Series C No 5, paragraphs 141-142; *Case of Neira Alegría et al.*, Judgment of January 19, 1995, Series C No. 20, paragraph 65.

<sup>162</sup> I/A Court H.R., *Case of Suarez Rosero*, Judgment of November 12, 1997, Series C No. 35, Paragraph 51.

<sup>163</sup> I/A Court H.R., *Case of Cantoral Benavides*, Judgment of August 18, 2000, Series C No. 69, paragraph 82; and *Case of the “Street Children” (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, Paragraph 164

<sup>164</sup> I/A Court H.R., *Case of Bulacio v Argentina*. Judgment of September 18, 2003, Series C No. 100, paragraph 127.



211. The petitioner also states that while Mr. Galindo was deprived of his liberty at the military base, he had access to drinking water for only 10 minutes in the morning and 10 minutes in the afternoon; at night measures were taken to intimidate him and soften him up, such as having the “hooded repentant terrorist” enter his cell to point him out as being the “democratic lawyer”; the head of the Huánuco Military-Political Command tried to exert psychological pressure on him to get him to apply for protection under the Repentance Law and to get him to accuse the President of the Huánuco Superior Court and two other judges of being members of the *Sendero Luminoso*, which he refused. The State did not present any argument on this point.

212. The Report of Peru’s Truth and Reconciliation Commission states that the prohibition and subsequent restriction of the use of petitions of *habeas corpus*, the legal authorization given to hold a person incommunicado, and the denial of access to an attorney until the first statement was made to the prosecutor were major contributing factors to the widespread practice of torture in police establishments.<sup>165</sup> According to the Final Report of the Truth and Reconciliation Commission, confessions and other self-incriminating statements were used on a mass scale to support indictments and win convictions for terrorism and treason.<sup>166</sup> Absent any control over the actions of police during pretrial investigation, the Truth and Reconciliation Commission underscored the fact that certain administrative practices were instrumental in institutionalizing torture starting in 1992, such as promoting police officers who got detainees to apply for the Repentance Law, make self-incriminating statements and inform on or finger third parties.<sup>167</sup>

213. From the facts established the Commission notes that on October 16 and 19, 1994, the then president of the Republic, Alberto Fujimori, made statements to the press in which he accused a number of people –Mr. Galindo among them- of having ties with the *Sendero Luminoso*. He also claimed that they had asked to avail themselves of the benefits of the Repentance Law (which ceased to have effect on November 1, 1994). His purpose was to demonstrate how the *Sendero Luminoso* had infiltrated the upper echelons of the Judicial Branch. The Commission notes that during the time that Mr. Galindo was deprived of his liberty, prosecutorial decisions were issued on November 4 and 9, 1994, granting Mr. Galindo the exemption from punishment under the Repentance Law. The supposed beneficiary of the exemption was not notified of these decisions, and has consistently maintained that he never applied for the Repentance Law.

214. Furthermore, the Commission notes that while the November 4 decision indicates that one of the alleged terrorists identified by Mr. Galindo had also applied for the Repentance Law, it does not specify whether the application came before or after Mr. Galindo’s detention.

215. Given the circumstances and from the facts established, the Commission notes that the purpose of Mr. Galindo’s 31-day detention was to get him to apply for the Repentance Law, and to that end, to break down his will, which was why he was initially held incommunicado and was not informed of the reasons for his detention or of the charges he was facing; he was put beyond the reach of the law (as no judge was informed of his detention) and beyond any jurisdictional control over his detention (as the Huánuco Pasco Superior Court was not provided the information it had requested), in a context in which the police and military forces used torture against persons suspected of being members of or collaborating with outlaw groups.

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<sup>165</sup> Final Report of Peru’s Truth and Reconciliation commission, 2003, Volume VI, 1.4 *torture and cruel, inhuman or degrading treatment*, page 221, available [in Spanish] at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php). See also Human Rights Watch, *Peru: The Two Faces of Justice*, July 1, 1995, Prosecution of Terrorism and Treason Cases, Interrogation and Torture, available at: [www.unhcr.org/refworld/docid/3ae6a7ed4.html](http://www.unhcr.org/refworld/docid/3ae6a7ed4.html). See also, Amnesty International, *Human Rights in a Time of Impunity*, May 1996, Section 2. *The Anti-Terrorism Laws: A Violation of International Standards – Widespread Torture*. Available at:

<http://www.amnesty.org/en/library/asset/AMR46/001/1996/en/571c6b89-eb0f-11dd-aad1-ed57e7e5470b/amr460011996en.html>

<sup>166</sup> Final Report of Peru’s Truth and Reconciliation commission, 2003, Volume VI, 1.4 *torture and cruel, inhuman or degrading treatment*, page 215, available [in Spanish] at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>167</sup> Final Report of Peru’s Truth and Reconciliation Commission, 2003, Volume II, 1.2 *The Police Forces*, page 232, available [in Spanish] at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

Through reports on *in loco* visits and follow-up reports on the situation of human rights in Peru, the IACHR established that during the internal armed conflict in Peru, the police and military forces used torture against persons suspected of being members of or collaborating with insurgent groups.<sup>168</sup> The Commission found that during that period various criminal cases for terrorism and treason were prosecuted using police statements obtained through torture and coercion.<sup>169</sup> The Inter-American Court, for its part, has taken as fact that the general context in Peru in 1993 was one in which police investigations for treason and terrorism were conducted through the use of torture and other cruel, inhuman and degrading treatment.<sup>170</sup>

In July 1995, the United Nations Committee against Torture made public its concern over the existence of so many complaints, coming from non-governmental organizations and international bodies or commissions, reporting the widespread practice of torture in the investigation of terrorist acts and the impunity that the torturers enjoyed.<sup>171</sup>

As a result, the victim's detention in incommunicado conditions initially and of the uncertainty and irregularity of it, in the context above mentioned would have provoked to Mr. Galindo suffering and distress.

216. The European Court of Human Rights has established that the mere possibility of the commission of one of the acts prohibited in Article 3 of the European Convention is sufficient to consider that said article has been violated, although the risk must be real and imminent. In line with this, to threaten someone with torture may constitute, in certain circumstances, at least "inhuman treatment." That same Tribunal has decided that, for purposes of determining whether Article 3 of the European Convention on Human Rights has been violated, not only physical suffering, but also moral anguish, must be considered.<sup>172</sup>

217. The Inter-American Court of Human Rights has stated that:

The violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation. The European Court of Human Rights has declared that, even in the absence of physical injuries, psychological and moral suffering, accompanied by psychic disturbance during questioning, may be deemed inhuman treatment. The degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance. That situation is exacerbated by the vulnerability of a person who is unlawfully detained. Any use of force that is not strictly necessary to ensure proper behavior on the part of the detainee constitutes an assault on the dignity of the person, in violation of Article 5 of the American Convention. The exigencies of the investigation and the undeniable difficulties encountered in the anti-terrorist struggle must not be allowed to restrict the protection of a

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<sup>168</sup> IACHR, *Report on the situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section I. Background, C. Human rights problems identified by the Commission, paragraphs 18 and 19, available at <http://www.cidh.org/countryrep/Peru93eng/background.htm#C>. Human rights problems identified by the Commission.

<sup>169</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights 1996*, Chapter V, Human Rights Developments in the Region, Peru, Section II, The State of Emergency, paragraph 7, and section VIII. Recommendations, paragraph 1(b). Available at: <http://www.cidh.org/annualrep/96eng/chap.5c.htm>.

<sup>170</sup> I/A Court H.R., *Case of Loayza Tamayo*. Judgment of September 7, 1997. Series C No. 33, paragraph 46, and *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, paragraph 63..

<sup>171</sup> Report of the Committee against Torture, Office of the United Nations High Commissioner for Human Rights, *Compilación de observaciones finales del Comité contra la Tortura sobre países de América Latina y el Caribe (1988-2005)* [available in Spanish only], Chapter 14. Peru, Report on the 40th Session. Official Records of the Fiftieth Session, Supplement No. 44 (A/50/44), July 26, 1995, paragraph 67, available at: <http://www.un.org/documents/ga/docs/50/plenary/a50-44.htm>

<sup>172</sup> I/A Court H.R., *Case of Cantoral-Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 102; Eur. Court HR, *Campbell v. Cosans*, Judgment of 25 February 1982, Series A Vol. 48, para. 26.

person's right to physical integrity.<sup>173</sup>

218. Therefore, given the set of circumstances surrounding this case and the context in which the events occurred, the Commission considers that the method and circumstances of Mr. Galindo Cárdenas' detention in violation of article 7(2), 7(3), 7(4), 7(5) and 7(6) of the American Convention, can be classified as cruel, inhuman or degrading treatment. Mr. Galindo was deprived of his liberty for 31 days in a place not authorized by law for detention and without judicial control, in order to break down his mental resistance to applying for the Repentance Law and which had the effect of causing him to resign his position as Provisional Magistrate on the Huánuco-Pasco Superior Court. The Commission therefore finds that the State violated, to the detriment of Mr. Galindo Cárdenas, article 5(1) and 5(2) of the American Convention, read in conjunction with articles 1(1) and 2 thereof.

#### **D. Freedom from *Ex Post Facto* Laws (Article 9 of the American Convention)**

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

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

220. Under Article 1(1) of the American Convention,

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

221. Article 2 of the American Convention provides that:

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

222. The Inter-American Court has written that under the rule of law, the principles of legality and non-retroactivity govern the actions of all bodies of the State in their respective fields, particularly when the exercise of its punitive power is at issue.<sup>174</sup> It has also held that in a democratic system greater precautions must be taken to ensure that such measures are adopted with absolute respect for the basic rights of individuals, and subject to careful verification to check for unlawful conduct.<sup>175</sup>

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<sup>173</sup> I/A Court H.R., *Case of Loayza-Tamayo v. Peru*. Merits. Judgment of September 17, 1997. Series C No. 33, para. 57; Eur. Cour H.R., *Case of Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, para. 167; Eur. Court HR, *Ribitsch v. Austria judgment of 4 December 1995*, Series A no. 336, para. 36.

<sup>174</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, paragraph 177; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, paragraph 107; I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 80; I/A Court H.R., *Case of Fermín Ramírez*. Judgment of June 20, 2005. Series C No. 126, paragraph 90; and I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 187.

<sup>175</sup> I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, paragraph 106; Citing, *inter alia*, Eur. Court H.R., *Ezelin*, judgment of 26 April 1991, Series A no. 202, para. 45; and Eur. Court H.R., *Müller and Others*, judgment of 24 May 1988, Series A no. 133, para. 29. See also, I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 81; and I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 189.

223. The principles recognized in Article 9 of the Convention of *nullum crimen sine lege* and *nullum poena sine lege*, prohibit states from prosecuting or punishing persons for acts or omissions that did not constitute criminal offenses, under applicable law, at the time they were committed.<sup>176</sup>

224. The Commission understands that in the exercise of its criminal policy and based on its history, social and other considerations, it is, in principle, up to a State to determine which behaviors will be classified as crimes over which the State can exercise its punitive authority. However, certain elements can be extrapolated from Article 9 of the American Convention that the States must observe when exercising their power to determine what constitutes a crime. As it pertains to this case and as the case law of the inter-American system has established, the principle of legality has a corollary, which is that criminal law must be drafted without ambiguities and in rigorous, precise and unequivocal language that clearly defines the behaviors being classified as punishable offenses, while also stating what the elements and factors are that distinguish one behavior from other behaviors that are not punishable offenses or are punishable as other criminal offenses.<sup>177</sup>

225. The Commission has written that compliance with the principle of legality in criminal law allows individuals to pattern their conduct to conform to the law.<sup>178</sup> As the IACHR has held, “[t]he principle of legality has a specific role in the definition of crimes; on the one hand, it guarantees individual liberty and safety by pre-establishing the behavior that is penalized clearly and unambiguously and, on the other hand, it protects legal certainty.”<sup>179</sup>

226. The Court itself wrote that the description of a crime must be in clear, exhaustive and precise language and drafted beforehand, especially inasmuch as criminal law is the most restrictive and severe means to establish responsibilities for unlawful conduct, and considering that the legal system must afford the citizenry legal certainty.<sup>180</sup>

227. The Court has also written that when enforcing criminal law, the criminal court judge must strictly adhere to the provisions of the law and practice the greatest rigor to ensure that the behavior of which the defendant is accused is a specific type of crime, so as to ensure that the accused is not punished for acts that are not punishable under the legal system.<sup>181</sup>

228. As for the risks created by imprecision in the description of crimes, the Inter-American Court noted that “[a]mbiguity in describing offenses creates doubts and the opportunity for abuse of power, which is

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<sup>176</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, paragraph 225.

<sup>177</sup> IACHR, *Report on the situation of human rights in Peru* (2000), OEA/Ser.L/V/II.106, Doc. 59 rev. 2, June 2, 2000, paragraphs 80, 168; IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, paragraph 225; I/A Court H.R., *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999 (Merits, Reparations and Costs), Series C No. 52, paragraph 121; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, paragraph 157; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, paragraph 174; I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 79; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 188; I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55.

<sup>178</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, paragraph 225, and Executive Summary, paragraph 17.

<sup>179</sup> IACHR, Application and arguments filed with the Inter-American Court of Human Rights in the case of De la Cruz Flores v. Peru; referenced in: I/A Court H.R., *Case of De la Cruz Flores v. Peru*, Merits, Reparations and Costs. Judgment of November 18, 2004 Series C. No. 115, paragraph 74.

<sup>180</sup> I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55; and I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, paragraph 63.

<sup>181</sup> I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 82; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, paragraph 190.

particularly undesirable when determining the criminal liability of an individual and punishing the latter with penalties that severely affect fundamental attributes such as life or freedom.”<sup>182</sup>

229. In application of the above principles, the Inter-American Court has decided a number of cases by concluding that the principle of legality was violated due, for example, to the existence of descriptions of crimes that were so imprecise that the criminal behavior could qualify as one crime, but it could also qualify as another crime.<sup>183</sup> The Court drew special attention to the problems created by ambiguities of this type, because what may be at stake are greater restrictions on due process guarantees depending on whether the crime is one or the other; this, in turn, can dictate what penalty will be imposed.<sup>184</sup> The Court also indicated that in these situations, there is no certainty as to the criminalized behaviors, the elements used to perpetrate the crimes, the objects or goods against which the crimes are directed, and the effects on society.<sup>185</sup>

230. The Inter-American Commission has also had occasion to assess the precision with which crimes are described, irrespective of how they are connected to other crimes. Thus, for example, in reference to the crime of *injuria* in Chile and Venezuela, it wrote that the description is vague and ambiguous and does not specify clearly the context where that criminal behavior would typically occur, which could lead to broad interpretations that would allow certain behaviors to be punished under the heading of that crime.<sup>186</sup> Specifically, in the Usón Ramírez case, the Inter-American Court pointed out that the willful nature of the conduct is not part of the definition. In the words of the Court, by failing to indicate that the conduct had to be willful or intentional, the law allows the aggrieved party’s subjectivity to determine whether a crime exists, even though the active subject of the crime may not have intended to harm, offend, or slander the passive subject.<sup>187</sup>

231. In the instant case, the petitioner is alleging that Article 9 of the American Convention was violated because the description of the crime of terrorism contained in Decree Law 25475, which was the definition used to conduct the investigation, is the basis of the description established in Decree Law No. 25659 on treason, which the Inter-American Court has already held to be a violation of the principle of legality.

232. The State, for its part, observes that at the time Mr. Galindo pledged to repent, the law applied was Article 12(a) of Decree Law 25499 of May 16, 1993, which establishes the conditions for granting the benefits of a reduction, exemption, remission or softening of a penalty incurred in the commission of a crime of terrorism and articles 6, 27, 28 and 29 of Supreme Decree No. 015-03-JUS which regulates the Repentance Law.

233. The Commission is mindful of the fact that in combating the scourge of terrorism, the State has an obligation to investigate, prosecute and punish those persons found to be responsible for using violent, indiscriminate methods against the population for the purpose of causing alarm and inflicting harm.

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<sup>182</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 121; and I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, paragraph 174.

<sup>183</sup> In reference to articles 1, 2 and 3 of Decree Law No. 25.659, and Articles 2 and 3 of Decree Law No. 25.475, Articles 2 and 3, which describe the crimes of treason and terrorism, respectively, in Peru; there is no way to distinguish when a person is committing one crime, and when he is committing the other.

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

<sup>184</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 119; and I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, paragraphs 119.

<sup>185</sup> I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, paragraph 117.

<sup>186</sup> I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 56; and I/A Court H.R., *Case of Palamara Iribarne V. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 92.

<sup>187</sup> I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 56.

As this Commission has frequently declared, international law obliges member states to take the measures necessary to prevent terrorism and other forms of violence and to guarantee the security of their populations.<sup>188</sup>

234. This obligation of the State must be couched within the legal parameters that make it possible to conduct such proceedings without affecting the liberty of those persons who are unrelated or have nothing to do with the facts at issue; when the persons alleged to be responsible are identified, the State must, during the investigation and prosecution, be able to afford them the guarantees recognized in the international instruments that the State has undertaken to respect.

In undertaking these initiatives, however, member states are equally obliged to remain in strict compliance with their other international obligations, including those under international human rights law and international humanitarian law.<sup>189</sup>

235. From the facts established, the Commission notes that on October 18, 1994, President Fujimori made statements to the press in which he accused Mr. Galindo Cárdenas “of having ties with the *Sendero Luminoso*”; then a communiqué released by the Ministry of Defense on October 17, 1994, accused him of “being an alleged terrorist criminal from the *Sendero Luminoso*.” The Commission observes that the first time Mr. Galindo’s alleged criminal conduct was identified was after his detention, in the November 4, 1994 decision of the Provincial Prosecutor from the Huánuco First Provincial Criminal Prosecutor’s Office. In that decision, Mr. Galindo is granted an exemption from punishment. This decision was delivered after he had been in detention for 18 days. According to the decision, “the facts in which the applicant has participated constitute criminal acts of collaboration punishable under Article 4 of Decree Law 25475,” for having agreed to serve as legal defense counsel in the criminal case brought against a number of terrorist criminals. The IACHR observes that under Article 4, the following are acts of collaboration that carry a penalty of imprisonment for up to 20 years:

Anyone who voluntarily obtains, seeks, gathers, or facilitates any type of good or means or performs any acts of collaboration of any kind that aid and abet the commission of the crimes covered under this decree law or the accomplishment of a terrorist group’s ends shall face imprisonment for no less than twenty years.

The following are acts of collaboration:

- (a) providing documents and information concerning persons and assets, installations, public and private buildings and anything else that specifically aids or facilitates the activities of terrorist elements or groups.
- (b) turning over or using any type of housing or other means capable of hiding or being used to store weapons, explosives, propaganda, food supplies, medications or other property belonging to terrorist groups or their victims.
- (c) Knowingly transporting members of terrorist groups or persons associated with their criminal activities, and providing any type of assistance to help them escape.
- (d) Organizing indoctrination or training courses or centers for indoctrination and training of terrorist groups that operate under any cover;
- (e) The manufacture, acquisition, possession, theft, storage and provision of arms, ammunition, explosives, asphyxiating, toxic or flammable substances or any other item or substance that can cause death or injury. The possession or concealment of arms, ammunition, or explosives belonging to the Peruvian Armed Forces or National Police shall constitute an aggravating circumstance.
- (f) Any form of economic activity, assistance or mediation done of one’s own free will, for the purpose of financing the activities of terrorist elements or groups.

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<sup>188</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, paragraph 3. See also, IACHR, *Ten Years of Activities, 1971-1981*, at 339; Case 11.182, Report No. 49/00, Asencios Lindo *et al.* (Peru), Annual Report of the IACHR 2000, paragraph 58.

<sup>189</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, paragraph 4.

236. First, the Commission observes that Article 4 of Decree Law No. 25,475 describes numerous and varied criminal behaviors that constitute the crime of collaboration with terrorism. Nevertheless, in his decision the Provincial Prosecutor failed to specify which of these behaviors the alleged victim committed that qualified him to be deemed responsible for the crime.

237. The Commission notes that Article 4 of Decree Law No. 25475 does not list practicing or undertaking the legal defense of alleged criminal terrorists as a crime of collaboration. Furthermore, under Article 27(2) of the American Convention, the right of defense is not subject to derogation in emergency situations; hence, practicing or undertaking the legal defense of an alleged terrorist cannot be made a punishable criminal offense.

The concept of due process of law expressed in Article 8 of the Convention should be understood as applicable, in the main, to all the judicial guarantees referred to in the American Convention, even during a suspension governed by Article 27 of the Convention.<sup>190</sup>

238. Peru's 1993 Constitution, which is pre-eminent over any other Peruvian domestic law, provides in its Article 2(18) that every person has the right to keep private his political, philosophical, religious or any other convictions and to maintain professional confidentiality. Article 141 of the Code of Criminal Procedure states that "the following shall not be forced to make statements: 1) clerics, attorneys, physicians, notaries and obstetricians, regarding the secrets that have been disclosed to them in the practice of their profession."

239. In its Second Report on the Situation of Human Rights in Peru (2000), the Commission pointed out that "the legal defense of individuals accused of having supported the armed dissident groups can in no case be considered by the authorities as an offense, but as part of a process provided for in the American Convention, and presumably in domestic law, for judging those who are effectively accused of violating the law."<sup>191</sup>

240. As for right of defense exercised by attorneys representing persons accused of the crime of terrorism, in its 2000 Report on the Situation of Human Rights in Peru the Commission observed that it had received information indicating that human rights defenders were frequently "victims of all types of attacks and harassment, including legal actions brought to intimidate them." It also noted that some of these legal proceedings had not been initiated to determine rights and responsibilities pursuant to the purposes of the law, but as reprisal against defense counsel for persons accused of the crime of terrorism.<sup>192</sup>

In addition, the Commission has learned that after the promulgation of Law No. 25,475, the Anti-Terrorism Act, criminal proceedings have been brought against defense attorneys for the crimes of rebellion or forming illegal groups, leading to their detention. The Commission has received numerous complaints consistently indicating that far from being undertaken based on relevant evidence, such proceedings have apparently been sponsored by sectors of the security forces for the purpose of intimidating attorneys willing to defend persons accused of terrorism.<sup>193</sup>

241. After his visit to Peru in 1996, the United Nations Special Rapporteur on the Independence of Judges and Lawyers made the following comment

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<sup>190</sup> *Judicial guarantees in states of emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*, Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 29.

<sup>191</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, CHAPTER II. ADMINISTRATION OF JUSTICE AND RULE OF LAW, paragraph 137, available at: <http://www.cidh.org/countryrep/Peru2000en/TOC.htm> .

<sup>192</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, CHAPTER II. ADMINISTRATION OF JUSTICE AND RULE OF LAW, paragraph 134, available at: <http://www.cidh.org/countryrep/Peru2000en/TOC.htm>.

<sup>193</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, CHAPTER II. ADMINISTRATION OF JUSTICE AND RULE OF LAW, paragraph 136, available at: <http://www.cidh.org/countryrep/Peru2000en/TOC.htm>.

The situation of lawyers defending victims of human rights violations or persons accused of terrorist-related activities or treason is reported to be particularly difficult. The Special Rapporteur was informed that in the past, many lawyers have been prosecuted for membership of the Democratic Lawyers' Association, alleged to be an organ of *Sendero Luminoso*. If true, these prosecutions would be in breach of principle 18 of the Basic Principles on the Role of Lawyers which provides that "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions". The Special Rapporteur was furthermore informed about the circulation of lists with the name of lawyers whose backgrounds were being investigated by the military or civilian authorities, merely because they were defending persons accused of the crimes described. The investigation of lawyers by military or civilian authorities constitutes an act of intimidation forbidden by principle 16 of the Basic Principles on the Role of Lawyers.<sup>194</sup>

242. Recently, the Commission in its Second Report on the Situation of Human Rights Defenders in the Americas has stated expressly that: "The activities related to the defense of human rights of persons who belong to groups named as terrorist should not be criminalized".<sup>195</sup>

243. Given the foregoing considerations, the Commission finds that the decision delivered by the Provincial Prosecutor on November 4, 1994, and confirmed by the Superior Prosecutor on November 9, 1994, was to exempt Mr. Galindo from punishment for having committed acts of terrorist collaboration, without specifying which of the behaviors criminalized in Article 4 of Decree Law 25.475 the alleged victim was said to have committed to make him guilty of the crime; in so doing, the State violated Article 9 of the American Convention, to the detriment of Mr. Galindo Cárdenas.

**E. The rights to a fair trial and to judicial protection, and the obligation to investigate the detention of Mr. Luís Antonio Galindo Cárdenas (articles 8 and 25 of the American Convention, read in conjunction with articles 1 and 2 thereof)**

244. Article 8(1) of the American Convention provides the following:

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

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

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

246. Under Article 1(1) of the American Convention,

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

247. Article 2 of the Convention reads as follows:

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<sup>194</sup> UN Doc. E/CN.4/1998/39/Add.1 of February 19, 1998, Report of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Param Cumaraswamy, Report on the Mission to Peru, paragraph IV.2.

<sup>195</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, II. Obstacles faced by Human Rights Defenders. F.2. Restrictions to the registration and operation of civil society organizations, para. 178.



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

248. The Court has written that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”<sup>196</sup> The Court has also held that:

From Article 8 of the Convention it is evident that the victims of human rights violations, or their next of kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.<sup>197</sup>

249. The Court has also held that the victims and their next of kin have the right to expect, and the States the obligation to ensure, that what befell the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin redressed.<sup>198</sup>

250. From the foregoing it follows that once the State authorities learn of an act that violates human rights, including the rights to humane treatment and personal liberty,<sup>199</sup> they have an obligation to undertake *ex officio* and without delay, a serious, impartial and effective investigation,<sup>200</sup> which is to be conducted within a reasonable period of time.<sup>201</sup>

251. The IACHR has maintained that “in light of the general obligation of the States party to respect and ensure the rights of all persons under their jurisdiction, contained in Article 1(1) of the American Convention, the State has the duty to immediately and *ex officio* begin an effective investigation to identify, try, and punish those responsible, when there is a complaint or there are grounds to believe that an act of torture has been committed in violation of Article 5 of the American Convention.”<sup>202</sup>

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<sup>196</sup> I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz*, Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 124; I/A Court H.R., *Case of the La Rochela Massacre*. Judgment of May 11, 2007. Series C No. 163, paragraph 145; I/A Court H.R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006. Series C No. 160, paragraph 381; and I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, paragraph 106.

<sup>197</sup> I/A Court H.R., *Case of García Prieto et al.*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. Paragraph 102; I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. Paragraph 227; and I/A Court H.R., *Case of the Serrano Cruz Sisters*. Merits, Reparations and Costs. Judgment of March 01, 2005. Series C No. 120, Paragraph 63.

<sup>198</sup> I/A Court H.R., *Case of García Prieto et al.*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. Paragraph 103; I/A Court H.R., *Case of Bulacio*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, Paragraph 114; and I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160. Paragraph 382.

<sup>199</sup> I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Paragraph 100.

<sup>200</sup> I/A Court H.R., *Case of García Prieto et al.*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. Paragraph 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110. Paragraphs 146; I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz*, Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Paragraph 130.

<sup>201</sup> I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100. Paragraph 114; I/A Court H.R., *Case of the La Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163. Paragraph 146; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160. Paragraph 382.

<sup>202</sup> IACHR, Report No. 88/08, Case 12.449, *Teodoro Cabrera García and Rodolfo Montiel Flores*, October 30, 2008, paragraph 158.

252. Along this same line of reasoning, the Inter-American Court has held that:

based on the general obligation to guarantee every person subject to its jurisdiction the human rights set forth in Article 1(1) of the Convention, together with the right to personal integrity set forth in Article 5 (Right to Personal Integrity) of the treaty, the State has the obligation to immediately initiate *ex officio* an effective investigation to identify, prosecute and punish perpetrators when a complaint has been filed or when there are sufficient reasons to believe that an act of torture has been committed.<sup>203</sup>

253. Based on the facts established in the instant case, the Commission observes that Mr. Galindo filed a complaint with the Provincial Prosecutor of First Instance on December 13, 1994, regarding the military-police investigation to which he had been subjected for the alleged crime of terrorism and during which he had been held in custody and then released without ever knowing “how the authorities had decided his case.” Mr. Galindo also complained that: 1) he was never formally notified of the charge against him or of the reasons for his detention, a detention that happened after the President of the Republic had already told the media about his case and his detention, even though he was at the time not yet in custody; 2) his detention was arbitrary both procedurally and substantively and had exceeded the legal limit, as he was held for 31 days without ever being brought before the competent judge; 3) his position as a provisional magistrate on the Huánuco Superior Court was not respected as required under Article 191 of the Organic Law of the Judiciary; 4) he was held in confinement on a military base where he initially suffered psychological torture and was held incommunicado; 5) reports were circulated to the effect that he had claimed the benefits of the Repentance Law, which was a false and tendentious assertion; 6) the statement he made to members of DINCOTE-LIMA who were investigating his case at the Yanac military base was replaced and the findings from the clarifications had been misrepresented to attribute to him a repentance that he never expressed nor admitted to. In his complaint, Mr. Galindo Cárdenas requested certified copies of the earlier investigation.

254. Then, on January 16, 1995, Mr. Galindo submitted a brief to the Office of the Attorney General of the Nation in which he filed his complaints regarding the earlier events and reported that as of that day he had still not been given the certified copies he had requested or any answer to the complaint he filed. Mr. Galindo also asked the Attorney General to give him personal guarantees, as he had learned that in response to his repeated complaints, the head of the Huánuco military-political command and officials at the Public Prosecutor’s Office who participated in his investigation, had made public statements in Huánuco to the effect that he would be arrested again on similar grounds. On January 18, 1995, Mr. Galindo sent another brief to the Attorney General’s Office, amplifying his complaint. The Commission has not been informed as to whether any action was ever taken on that complaint.

255. Based on the facts established in this case, the Commission observes that the State has not undertaken any investigation since the time Mr. Galindo filed his first complaint in late 1994, despite having knowledge of the earlier complaints and of others that Mr. Galindo filed with the Ministry of Defense of Peru and the Inspector General of the Ministry of Defense, and with the Human Rights Commission of the Democratic Constituent Congress. Nor has the Commission been informed by the State that the Attorney General of the Nation has undertaken an investigation based on the request made by the Executive Council of the Judiciary on January 17, 1995.

256. The Commission also notes that on May 8, 1998, the Public Prosecutor’s Office decided to close the record on the complaint that Mr. Galindo brought against the former Provincial Prosecutor of the Huánuco Combined Provincial Prosecutor’s Office and the former Chief Superior Prosecutor of Huánuco, for the crimes of abuse of authority, abuse of public office and breach of public duty, based on the Amnesty Law.

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<sup>203</sup> I/A Court H.R., *Case of Baldeón García*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, paragraph 156; *Case of Gutiérrez Soler*. Merits, Reparations and Costs. Judgment of September 12, 2005. Series C No. 132, paragraph 54; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 159 and *Case of Ximenes Lopes*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, paragraph 148. See also, *Eur.C.H.R., Assenov and others v. Bulgaria*, no. 90/1997/874/1086, Judgment of 28 October 1998, par. 102 and *Eur.C.H.R., İlhan v. Turkey* [GC], no. 22277/93, Judgment of 27 June 2000, paras. 89-93.

257. The Commission observes that in the *Case of Barrios Altos v. Peru*, the Court examined the content and scope of amnesty laws No. 26.479 and No. 26.492. In its judgment on the merits, dated March 14, 2001, it held that those laws “are incompatible with the Convention [...] [and therefore] “lack legal effect.”<sup>204</sup> The Court’s interpretation was that “enactment of a law that is manifestly incompatible with the obligations undertaken by a State Party to the Convention is *per se* a violation of the Convention for which the State incurs international responsibility [and] given the nature of the violation that Amnesty Laws No. 26479 and No. 26492 constitute, the effects of the decision in the judgment on the merits of the Barrios Altos Case are general in nature.”<sup>205</sup>

258. Given the circumstances, the Commission considers that the failure thus far to undertake an investigation into the facts, constitutes clear noncompliance with the duty to guarantee the rights to humane treatment and personal liberty.<sup>206</sup> Furthermore, that failing has created a situation of impunity and a denial of justice with respect to these events, which persists to this day.

259. Based on the foregoing considerations, the Commission concludes that the State of Peru violated the rights to judicial guarantees and to judicial protection recognized in articles 8(1) and 25(1) of the American Convention, read in conjunction with the obligations established in Article 1(1) and Article 2 thereof, to the detriment of Luis Antonio Galindo.

**F. Right to humane treatment (Article 5 and Article 1(1) of the American Convention on Human Rights) of the victim’s next of kin.**

260. Article 5(1) of the American Convention, which recognizes the right to personal integrity, provides that “[e]very person has the right to have his physical, mental, and moral integrity respected.” The Commission has observed the following in this regard:

Among the fundamental principles upon which the American Convention is grounded is the recognition that the rights and freedoms protected thereunder are derived from the attributes of their human personality. From this principle flows the basic requirement underlying the Convention as a whole, and Article 5 in particular, that individuals be treated with dignity and respect.<sup>207</sup>

261. The case law of the Inter-American Court is that the next of kin of victims may be victims of violations of their right to mental and moral integrity.<sup>208</sup> The Inter-American Court has reasoned that the right to mental and moral integrity of the victims’ next of kin is violated based on the additional suffering they have

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<sup>204</sup> I/A Court H.R., *Case of Barrios Altos v. Peru*. Merits. Judgment of March 14, 2001. Series C No. 75, paragraphs 41-44 and operative paragraph four.

<sup>205</sup> I/A Court H.R., *Case of Barrios Altos v. Peru*. Interpretation of the Judgment on the Merits. Judgment of September 3, 2001. Series C No. 83, paragraph 18 and operative paragraph two.

<sup>206</sup> I/A Court H.R., *Case of González et al. “Cotton Field”*. Judgment of November 16, 2009. Paragraph 287; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140. Paragraph 142.

<sup>207</sup> IACHR. Report No. 38/00, Case 11.743, Merits, Rudolph Baptiste, Grenada, April 13, 2000, paragraph 89.

<sup>208</sup> I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, paragraph 101; *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, paragraph 206, and *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, paragraph 163.

undergone as a consequence of the specific circumstances of the violations committed against their loved ones<sup>209</sup> and based on the subsequent actions or omissions of state authorities regarding these facts.<sup>210</sup>

262. The petitioner states that when the President of the Republic publicly labeled Mr. Galindo a repentant terrorist, in violation of the terrorism legislation, Mr. Galindo's physical and personal integrity was imperiled, he was exposed to harassment from various sectors of the government and his professional work as an attorney was adversely affected. The petitioner alleges that this did severe moral injury to Mr. Galindo and his family, especially his wife and eldest child, who was ten years old at the time of the events. The petitioner states that as a consequence of being branded a subversive criminal by the State, his professional associations were cut off and he was forced to sell his home, his car and his wife's business, change his son to a different school and get him psychological treatment.

263. The Commission notes that as a consequence of his detention on October 16, 1994, Magistrate Galindo Cárdenas tendered his resignation from his position as a magistrate on the Huánuco-Pasco Superior Court on October 20, 1994. It has also been established that on November 21, 1994, Mr. Galindo requested personal guarantees from the Minister of the Interior, both for himself and his family members and that on January 16, 1995, he applied to the Office of the Attorney General of the Nation requesting that he be granted personal guarantees inasmuch as the Head of the Huánuco Military-Political Command and officials from the Public Prosecutor's Office who participated in the investigation to which he was subjected had threatened him that they could throw him back in jail on the same grounds. The Commission has not been informed whether the authorities had answered or taken any measures in this regard.

264. In its Final Report, Peru's Truth and Reconciliation Commission states that: "In addition to the death and disappearance of loved ones, there are other losses that, although not irreparable, have painful effects, especially where children are concerned. We are referring to the lost or diminished capacity of adults to offer their children protection and security."<sup>211</sup>

265. Based on the psychiatric reports submitted, the Commission has taken as fact that Mr. Galindo's wife, Irma Díaz de Galindo, and their son endured suffering as a consequence of the detention of her husband and the father of their son. It has also taken as fact that the wife suffered a depressive neurosis and the son an infantile depressive neurosis that necessitated psychological and pharmacological treatment as a result of Mr. Galindo having to resign his office as magistrate on the Huánuco-Pasco Superior Court and being branded a terrorist criminal by the President of the Republic in statements to the media, and the assertion that he had claimed the benefit of the Repentance Law.

266. The Commission observes that given the complaints that Mr. Galindo filed concerning his unlawful and arbitrary detention, the State had an obligation to guarantee the right of his next of kin to personal integrity through an effective investigation; the absence of an effective recourse constituted an added source of suffering and anguish for the victims, one of whom was a child at the time of the events. Here, the Report of the Truth and Reconciliation Commission pointed out that:

Injustice and impunity have a dispiriting effect. Because the public does not have the assurance of a system that guarantees a fair trial that, in end, will punish those guilty of crimes, the public can end up feeling defeated. As we previously commented, the sense of a loss of protection does not come solely from the loss of loved ones or property; people can also feel that they are not being defended by the institutions

<sup>209</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 335; *Case of Vargas Areco v. Paraguay*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 153, paragraph 96.

<sup>210</sup> I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, paragraph 195.

<sup>211</sup> Final Report of the Truth and Reconciliation Commission, 2003, PART THREE: THE AFTERMATH OF THE VIOLENCE, Chapter 1: The psycho-social aftereffects, 1.2.1.5. Lack of protection and care, p. 194, available [in Spanish] at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

whose purpose is to protect them and ensure that they get justice. For many people, this lack of protection instilled in them a sense of resignation and hopelessness borne of the certainty, learned from experience, that no one would listen to and acknowledge their complaint, that the institutions were not going to take any action, and that they would again be mistreated.<sup>212</sup>

267. Consequently, the Commission concludes that in the instant case, the right to personal integrity recognized in Article 5 of the American Convention, read in conjunction with Article 1(1) thereof, was violated to the detriment of the wife and son of Mr. Galindo Cárdenas.

## VI. CONCLUSIONS

268. Based on the considerations of fact and of law set forth throughout this report, the Inter-American Commission concludes that the Peruvian State is responsible for violation of the rights to humane treatment, personal liberty, judicial guarantees, freedom from *ex post facto* laws and non-retroactivity of the law, and judicial protection, recognized in articles 5, 7, 8, 9 and 25 of the American Convention, read in conjunction with the obligations established in articles 1(1) and 2 thereof, to the detriment of Mr. Luí Antonio Galindo Cárdenas, and for violation of Article 5, to the detriment of his wife and son..

## VII. RECOMMENDATIONS

269. Based on the above considerations,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IS RECOMMENDING TO THE PERUVIAN STATE THAT IT:**

1. Order that full reparations be made to Mr. Luis Antonio Galindo Cárdenas for the human rights violations found in the present report. These reparations should include pecuniary and non-pecuniary damages. If the victim so desires, order the necessary measures of rehabilitation for his and his family members' mental health.
2. Conduct an impartial and effective investigation within a reasonable period of time, to fully clarify the facts that constitute violations of the American Convention, to identify the intellectual and material authors of those violations and imposed the corresponding sanctions.
3. Order the corresponding administrative, disciplinary or criminal measures with respect to the actions or omissions of the state officials who had a hand in denying justice in this case and allowing the facts of the case to go unpunished.
4. As the Commission has established that the case against then judge Galindo was illegal and arbitrary and based on facts that could not engender criminal liability, the Commission is recommending to the State that it nullify the Declaration of Repentance and all its legal effects.

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<sup>212 212</sup> Final Report of the Truth and Reconciliation Commission, 2003, PART THREE: THE AFTERMATH OF THE VIOLENCE, Chapter 1: The psychosocial aftereffects, 1.3.4.3. Indignation and despair in the face of impunity, p. 246 [Translation ours].