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**REPORT No. 112/14**  
**PETITION 1493-05**  
REPORT ON ARCHIVE

MARCOS SANDOVAL ROMAINA  
PERU

Approved by the Commission at its session No. 2016 held on November 7, 2014  
153 Regular Period of Sessions

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November 7, 2014.

**REPORT No. 112/14**  
**PETITION 1493-05**  
REPORT ON DECISION TO ARCHIVE  
MARCOS SANDOVAL ROMAINA  
PERU  
NOVEMBER 7, 2014

ALLEGED VICTIM: Marcos Sandoval Romaina  
PETITIONER: Marcos Sandoval Romaina  
ALLEGED VIOLATIONS: Articles 1(1), 2, 5, 7, 8, 9, and 24 of the American Convention on Human Rights  
DATE PROCESSING BEGAN: September 15, 2008

**I. THE PETITIONER'S POSITION**

1. The petitioner stated that he was detained on July 20, 1992, by members of the Peruvian Navy (Armada Peruana-Marina de Guerra del Perú). He indicated that he was taken to the facilities of a naval base, where he remained for three days, and was subsequently transferred to the prison of the Jefatura Contra el Terrorismo of Callao (JECOTE). He also indicated that he remained at this place for two weeks, during which time he was held incommunicado and tortured. The petitioner asserted that as a result of that torture, he was disabled. He also mentioned that the police drew up an investigative report with serious violations of his judicial guarantees, for his attorney was not allowed to assume his defense during the judicial investigation, nor was he allowed to speak with him in private at any time.

2. The petitioner mentioned that subsequently he was brought before the criminal court of Callao, where the investigation in his case was initiated, and he was convicted and sentenced to life in prison on January 3, 1994, by "faceless" judges. He further stated that as of August 11, 1992, he was held in the Miguel Castro Castro prison, where he was once again subjected to torture, and where he was in a prison regime that included being locked up in his cell for 23½ hours daily, and that during the first year he was not allowed to have any visitors. He also alleged that he did not receive adequate medical care, for he was denied surgery that he needed, and that for this reason he now has a disability.

3. Finally, the petitioner indicated that thanks to a constitutional motion of January 3, 2003, in which the Peruvian Constitutional Court annulled the proceedings that had gone forward in the "faceless judge" courts, the record in his case was remanded to the Specialized Superior Prosecutor for him to issue a new indictment. He alleged that the fact that the new trial included the participation of specialized prosecutors and judges who were not part of the regular jurisdiction meant he was tried in an exceptional jurisdiction, in violation of his right to be tried by a competent, independent, and impartial judge. He also stated that in this new trial he was convicted and given a 17-year prison sentence, which the Supreme Court later increased to 25 years.

**II. THE STATE'S POSITION**

4. The State indicated that the petitioner was initially sentenced to life in prison by a court whose identity was kept secret, on January 13, 1994. It said that thanks to the Legislative Decree that annulled all the proceedings before the military jurisdiction and "faceless-judge" courts, the violations that occurred in such trials had been remedied. As a result, the petitioner was tried once again by the National Criminal Chamber on October 26, 2004, and sentenced to 17 years in prison. The State also argued that the petitioner did not exhaust domestic remedies, for he did not file a motion to annul the guilty verdict; rather it was the representative of the Public Ministry who used this remedy, leading to a decision issued by the

Standing Criminal Chamber of the Supreme Court that ruled that the sentence should be increased to 25 years.

5. The State also declared that the police investigative report was made up of various documents, including the Record of Search of Home, the Record of Arrest that shows the participation of the petitioner in a terrorist attack in which an effort was made to set off a car bomb, a Forensic Medical Certificate attesting to the injuries suffered by the petitioner as a result of that failed explosion and not as a result of the treatment at the hands of members of the Marines as he alleged, and the petitioner's statement in the preliminary investigation (Declaración Instructiva), in which he recognizes the facts that are the subject of the investigation.

6. It noted that in the second trial against the petitioner, in the regular jurisdiction, the principle of having a court previously established by law was respected, for the trial was conducted by regular judges of the judicial career service who had been performing their functions for the Judicial branch from before the establishment of the special courts. It alleged that therefore, the creation of courts and criminal chambers specialized in crimes of terrorism did not violate this right either. The State further noted that the necessary changes were made in the provisions that regulate the statutory definition of the crime of terrorism to bring the provision into line with international human rights standards. The State indicated that the petitioner had a defense attorney who assisted him during the trial, with no restrictions whatsoever. It also said that the petitioner had the opportunity to use challenges available in the law without any restrictions, establishing as evidence of this that his trial concluded on appeal with a judgment from the Supreme Court of the Republic. Therefore, the State argued that the trial of the petitioner in the regular jurisdiction on terrorism charges was conducted in keeping with international human rights standards.

### **III. PROCESSING BEFORE THE IACHR**

7. The initial petition was received on December 29, 2005; it was registered as petition 1493-05. On September 15, 2008, the Commission forwarded the petition to the State, which was given two months to submit its response, in keeping with the IACHR's Rules of Procedure then in force. In a communication of December 5, 2008, the State asked for an extension. On November 2 and 24, 2009, the State's first response was received; it was transmitted to the petitioner on December 2, 2009.

8. Subsequently, the State forwarded updated information on the case on November 10, 2009, which was forwarded to the petitioner on December 9, 2009. Finally, on October 22, 2012, a new communication was received from the State in which it asked that the instant petition be archived due to the lack of procedural impetus by the petitioner for more than six years. Said communication was forwarded to the petitioner on November 8, 2012, in which the IACHR asked him to submit the corresponding observations and updated information, and it told the petitioner that if the information was not sent within one month, the case might be archived. Nonetheless, the IACHR did not receive any response from the petitioner.

### **IV. GROUNDS FOR THE DECISION TO ARCHIVE**

9. Both article 48.1.b) of the American Convention and article 42.1 of the Rules of Procedure of the Inter-American Commission provide that, at any stage of the proceedings, after the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition exist or subsist and, if they do not, will order the petition to be archived.

10. In the instant case, the petitioner filed the last communication with the IACHR on December 29, 2005, and to date has not responded to the various requests for updated information made by the IACHR. Accordingly, in keeping with Article 48(1)(b) of the Convention and Article 42(1)(b) of the Rules of Procedure, and considering that the procedural inactivity without justification on the part of the petitioner, which is a serious indication of lack of interest in processing the petition, the IACHR decides to archive it.

Done and signed in the city of Washington, D.C., on the 7<sup>th</sup> day of the month of November, 2014.  
(Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; Rosa María Ortiz, Paulo Vannuchi, and James L. Cavallaro, Commissioners.