Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 34/00; Case 11.291
Title/Style of Cause:	Carandiru v. Brasil
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Decided by:	First Vice-Chairman: Claudio Grossman; Second Vice-Chairman: Juan Mendez; Commissioners: Marta Altolaguirre, Robert K. Goldman ,Peter Laurie and Julio Prado Vallejo Helio Bicudo, a Brazilian national, who is a member of the Commission, did not take part in the discussion or in the voting in this case in accordance with Article 19(2)(a) of the Regulations of the Commission.
Dated:	13 April 2000
Citation:	Carandiru v. Brasil, Case 11.291, Inter-Am. C.H.R., Report No. 34/00

I. SUMMARY

1. The present petition concerns events that took place on October 10, 1992 at the Carandirú detention center in São Paulo, and was filed by Americas Watch, CEJIL, and the Teotonio Vilela Commission against the Federative Republic of Brazil (hereinafter called the State or Brazil). It relates to a prison riot in which 111 prisoners (84 of whom had not been sentenced) were killed and others seriously wounded in actions allegedly committed by the São Paulo military police on October 2, 1992. It is requested that the State be sanctioned for violations of Articles 4, 5, 8, 25, and 1(1) of the American Convention on Human Rights ("the Convention") for violations of the right to life and personal integrity, due process, and judicial protection, all in keeping with the State's obligation to respect and ensure enjoyment of such rights (Article 1(1)). According to the original complaint, the investigation was still bogged down 16 months after the events occurred and proceedings had not been instituted against those allegedly responsible; in fact some of the officers involved had been promoted. In later submissions, complaints were lodged over the persisting impunity and the absence of compensation for the victims.

2. The State, for its part, while generally acknowledging that violations of the right to life and personal integrity occurred during the riot, maintains that it has taken serious and significant steps to improve prisons conditions in the state of São Paulo. Also, proceedings had been instituted to prosecute the agents responsible and to seek compensation and continue in different jurisdictions in accordance with procedural guarantees. It further asserts that the cases of voluntary manslaughter by members of the police were transferred to the civil courts in accordance with Law 9299-96 (Bicudo Act). Consequently, domestic remedies have not been exhausted and the petition does not satisfy the conditions of admissibility. The attempt to seek a

friendly solution proposed by the Commission to both parties on various occasions has not been successful.

3. The Commission concludes that the petition is admissible. After analyzing the facts and the law, the Commission finds that what took place was a massacre in which the State violated the rights to life, and personal integrity, and in subsequent proceedings violated the rights to due process and judicial protection (Articles 4, 5, 8, and 25) with respect to Article 1 of the Convention. Also, it recommends that the events be investigated, those responsible punished, the victims given compensation, and steps be taken at the national and state level to avoid a repetition of violations of this kind.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On February 22, 1994, the petition was filed with the Commission, which forwarded it to the State on May 11, 1994, with a request for the latter's comments. Additional information was received from the petitioner on September 16, 1994. The State initially responded on August 8, 1994, with information on the progress of the legal proceedings, with a request for an extension in order to answer more fully. An extension to November 4, 1994, was granted. The petitioner replied to the State's response on August 14, 1995.

5. Throughout this period, both parties furnished additional information on the progress of the domestic remedies. The petitioner responded on October 3 and 10, 1995, and on January 15, 1996. The State provided fresh information on September 7, 1995. In addition, during its on-site visit to Brazil in December 1995, the Commission obtained information on the case from the military courts of the state. The State provided new information on the implementation of the prison reform in São Paulo on August 4, 1999.

6. Hearings for the case were held on four occasions -- September 8, 1995, February 23, 1996, October 7, 1996, and October 8, 1997. In the first hearing, the Commission made itself available to the parties in seeking a friendly solution. This proposal was reiterated unsuccessfully on other occasions, including during the visit to Brazil in July 1997 by the Commission's Rapporteur for matters in Brazil.

7. The State presented a report at the hearing of October 7, 1996, on the steps that were being effectively taken to close down the Carandirú prison complex. At the hearing, the Commission "decided to suspend consideration of the case until such time as the Supreme Court ruled on the conflict of jurisdictions[FN1]", clarifying that the case was not being dismissed but would continue its normal course as soon the Supreme Court's decision was known. On December 13, 1996, the State reported that the Supreme Court had decided that the proceedings be transferred to the jurisdiction of the civil criminal courts of the state of São Paulo, which had already been done and it was expected that the proceedings would be concluded shortly and that a jury trial would take place.

[FN1] Pursuant to Law 9.299/96 issued on August 6, 1996, consideration of the proceedings relating to the voluntary manslaughter by the military police would cease to be considered by the

military courts and would be handed over to the civil criminal courts. This law is known as the Bicudo Act after its principal proponent, Representative Hélio Bicudo.

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8. On April 10, 1997, the petitioner asked the Commission to intervene with the State to set up a Special Commission composed of non-governmental agencies and the State, to monitor the closing down of the Carandirú correctional facility. This proposal was sent to, and rejected by, the State. On October 7, 1997, the petitioner requested that the State take various measures and that the Commission reopen the proceedings in view of the delay by the civil courts in prosecuting the proceedings and provided new information on the problems that persisted at the Carandirú facility, including more riots and repression.

9. At that same hearing the State reported that it had been decided by the courts to compensate some of the victims' families and that additional steps were being taken to resolve the case. The petitioner responded that such steps were ineffective and incomplete and again requested that the Commission act on the petition. In view of the fact that the grounds for suspending consideration of the case were removed through the transfer of the proceedings to the civil criminal courts, the Commission decided to reopen consideration of the matter.

III. POSITIONS OF THE PARTIES

A. The petitioner

The events of October 2, 1992

10. The petitioner alleges[FN2] that on the date of the riot there were 2,069 inmates in Block 9 of the Carandirú complex, a number in excess of the facility's capacity, that these inmates were in the charge of just 15 prison guards, and that conditions in the detention center were against the regulations and abusive; and that as a result of the tensions and ill-feelings that existed, what started out as a minor altercation between inmates was mishandled by the guards and degenerated into a full-scale protest. The petitioner specifies that two prisoners began to fight over a trivial matter at 2:00 p.m. that day. When the fight was over, the guards shut off access to the corridor, crowding and confining the prisoners together on the second floor of the cellblock. In desperation, the prisoners managed to break the lock and the uprising commenced.

[FN2] The petitioner furnishes material from newspapers and an Amnesty International report. See Amnesty International, Prison Massacre at the Casa de Detencão, Sao Paulo. AMR 19/0893 P.4, hereinafter called AMR.

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11. When the riot broke out, the guards decided to withdraw from the building and the Warden called on the military police for assistance. Approximately 350 agents of the military police arrived on the scene at 2:45 p.m. from various barracks, including shock troops and the ROTA special group. At the same time, the Warden requested that magistrates with jurisdiction in the matter (i.e. the juiz da vara de execuções criminais and the juiz corregedor da

policía)[FN3]. Upon their arrival, the magistrates were discouraged from intervening by members of the military police of São Paulo (PM) and were told that they could not enter block 9 on grounds that the prisoners were armed. This brief effort at negotiation that the judges were about to attempt was thus thwarted, and at 4:00 p.m. the military police began their take over of cellblock 9. Eleven hours later, some time after midnight, when the military police withdrew from the prison and returned to their barracks, the prison guards confirmed that the action had claimed 111 lives and left about 35 prisoners wounded[FN4]. No members of the police were killed.

[FN3] In Brazil, judicial responsibility for the prisons rests with two magistrates, the juiz corregedor da policía (police monitoring magistrate), who is responsible for the well being of the prisoners, and the juiz da vara de execuções criminais (sentencing magistrate), responsible for supervision of sentences. The Office of the Public Prosecutor is also responsible for visiting the prisons regularly and for intervening in cases of abuse. See Amnesty International, Prison Massacre at the Casa de Detenção, Sao Paulo. AMR 19.08093 P.4.

[FN4] The number of wounded has never been definitely established and the figures in official versions vary. Reports after the event indicate that inmates originally wounded in the repression were subsequently executed.

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12. The petitioner also maintains that the deaths were summary executions of the inmates, who were murdered after they had surrendered and that wounded inmates who had surrendered were subsequently executed. The petitioner goes on to say that according to police experts bullet holes in the cell walls corroborate the version that they had been summarily executed. The petitioner reports that an expert, Osvaldo Negrini Neto, author of the work on the massacre, disclosed in an interview for Folha de São Paulo that military police units had probably stormed cell block 9, had prior information of the location of the ring leaders, went directly to that spot, and murdered them in their cells[FN5]. According to the expert:

[FN5] Note from the petitioner, October 8, 1997.

We found evidence that a hail of machine gun bullets had been fired about 50 centimeters above ground level, indicating that the prisoners had been shot while on their knees. The marks indicate that the bullets had been fired in a single direction. There were no holes in the opposite wall, indicating that no shots had been fired at the police.[FN6]

[FN6] Folha de São Paulo, September 28, 1997.

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13. The petitioner further states that immediately after the massacre military police destroyed any evidence that could have been used to determine individual responsibility for the murders, and that the three magistrates present had done nothing to prevent this from happening. The main

pieces of evidence that would have made it easier to establish the identity of those responsible disappeared.

14. The petitioner affirms that the subsequent behavior of the authorities was as shameful as the massacre itself. The relatives of the victims were not given any information until the afternoon of the following day. The official list of victims was not released until October 8, six days after the massacre. Reporters were initially prevented from disclosing any information about the matter, and two news photographers were held at the police station for photographing the removal of the bodies.

15. The petitioner also indicated that many of the inmates who had been wounded in the action, most of them seriously, had to wait several days before being treated and that the families of the victims were subjected to inhumane treatment, by being kept waiting at length exposed to the elements and threatened by police dogs.

16. The petitioner notes that the riot and the subsequent massacre occurred following a decade during which the military police of São Paulo had earned a reputation for resorting frequently to the use of deadly force as reflected by the fact that 25% of all violent deaths in 1991 in the state of São Paulo had been caused by the police. The petitioner maintains that government data show that 14 of the senior police officers who commanded the operations at the detention center on October 2, 1992, were being tried by military courts for 148 other counts of homicide or attempted homicide.

17. The petitioner maintains that in the past massacres had taken place in operations to quell prison riots in São Paulo but none of the magnitude of the one of October 2. Notwithstanding these previous incidents of police violence, the Secretary of Public Security for São Paulo gave the military police absolute authority to put down the riot. The petitioner subsequently indicated that the problem had persisted over the years since then, because on several occasions, including in 1997, riots continued to break out at Carandirú.

18. The petitioner reports that in October 1997, despite the body of evidence that had accumulated since the events, the Government had not issued an official version of the facts acknowledging the massacre or the responsibility of the agents of the State. It is also noted that the victims' next of kin had not been paid compensation. The petitioner clarifies that although the Prosecutor's Office had initiated legal proceedings for compensation in 59 cases, with a ruling in favor for 13 of the victims, even these few compensation awards had not been effected, as confirmed in newspaper reports indicating that compensation could not be paid unless the State allocated special funds to the budget, in other words compensation could only be paid if funds were appropriated by the Legislature as late as 1999. Five years after the events, a ruling of the lower court was still pending in 20 other actions for civil damages arising from these events, an indication of the failure of the State to fulfill its international obligation to compensate the victims for these violations.

19. In its submissions, the petitioner also reported that after the events had taken place, and pursuant to the Officer Promotion Act (Executive Order 13,654/54), senior and middle ranking officers in charge of putting down the riot and who had been charged with, amongst other things,

voluntary manslaughter of the victims, had been promoted. One of the officers promoted, Lt. Col. Armando Rafael Araujo, who had been made Commander of the 9th of July Cavalry Regiment, was charged with injuring 87 prisoners.[FN7] It further reports that the names of members of a group of military police officers under the command of Major Rail de Mendoça, that included four plainclothesmen, all of whom had taken part in the assault to crush the Carandirú riot, do not appear on the list of the accused and are still active members of the police force.

[FN7] Communication from the petitioner in March 1995 made available to the State.

Law

20. The petitioner recalls that the Court established the obligations of the States parties with respect to individuals in its custody:

In the terms of Article 5(2) of the Convention, every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal dignity, and the State must guarantee to that person the right to life and to humane treatment. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners.[FN8]

[FN8] Inter-American Court of Human Rights. Neira Alegria Case, Decision of January 19,1995, para. 60

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21. The petitioner maintains that the judicial authorities and the prosecutor have confirmed that agents of the State had entered the prison and opened fire on defenseless inmates, and that the details of these events submitted to the Commission were never denied by the State. Even the State's own investigations established that violations to the right to life and integrity of the person had occurred (Articles 4 and 5 of the Convention) and that failure to elucidate the case and take effective legal action to bring those responsible to justice are violations of Articles 8 and 25 (judicial guarantees) of the Convention.

22. As to compensation to the victims' families, the petitioner refers to the established precedent of the Inter-American Court of Human Rights concerning the obligation of the State to provide adequate compensation to the victims and their families.[FN9]

[FN9] He cites the judgments in the Velásquez Rodríguez case of July 29, 1988, para. 174 and the Godinez Cruz case of January 20, 1989, para. 185.

Legal remedies and judicial guarantees

23. The petitioner notes in its submission of January 15, 1996, that after processing the case for 3 years the military courts decided to transfer it to the civil courts. Thus, on February 13, 1996, the Special Council of Military Justice decided unanimously to transfer the case to the civil courts on grounds that "there was proof of involvement in the case by the then duly established civil authorities" presumably in reference to the alleged responsibilities of former governor Luis Antonio Fleury Filho and the former Secretary of Security Pedro Franco de Campos[FN10]. It is maintained that if the civil courts do not agree to take over the case[FN11], there will be a conflict of jurisdictions on which the Federal Supreme Court would have to rule. The petitioner points out the delay and complexity that this means since after three years during which a vast body of evidence had been accumulated and the testimony of 253 witnesses, filling 26 volumes and 7,651 pages, only now was jurisdiction passing to the civil courts and in accordance with the new jury legislation. In light of the fact that this new court will use only the technical evidence -- ballistic evidence, expert testimony, etc. -- the accused will request that the testimony of the witnesses be reexamined, with the additional delay that this implies.

[FN10] Judgment on pp. 112.
[FN11] At that time, Law 9,299 was not yet in force, the transfer was therefore not based on the law but on the alleged responsibility of the civil authorities.

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24. The petitioner maintains that this not only violates due process to which the victims are entitled but is also a manoeuvre to add to the unwarranted delay that has already occurred in the military courts. Subsequently, the petitioner reported that there was a lengthy additional delay, noting that only 14 months later in April 1997, the Supreme Court confirmed the decision for transfer of the case to the civil courts. The petitioner again reiterates that the proceedings are lengthy since this decision took more than one year and was in fact redundant since such a transfer should automatically have been done pursuant to the Bicudo Act adopted seven months earlier on August 6, 1996.

25. On October 8, 1997, the petitioner reports provision had not yet been made for the case to be tried by the jury, and that the main proceedings had been split up in order to separate from the case the only officer charged, Col. Ubiratan Guimaraes, now retired who commanded the operation and had been elected to the state Legislature in January 1997. In that capacity, he enjoyed parliamentary immunity, which can only be withdrawn by the Legislative Assembly of São Paulo and this had not been done.

26. The petitioner further reports that in another example of impunity in case Nº 266-93 before the 5th criminal court of Santana Edson Faroro (military officer) and Ismael Pedrosa (Warden of Carandirú at the time of the riot) were found not guilty of abuse of authority in September 1997. In efforts to maintain this impunity, on September 10, 1997, the Attorney General requested that proceedings against seven of the military policemen charged with seriously injuring an inmate be suspended in accordance with Article 89 of law 9099/95, which allows conditional suspension for felonies with a minimum sentence of a year in jail. It is recalled that the police officers had been charged with seriously injuring the prisoner when he

had surrendered and was unarmed. The petitioner indicates that as a result of this suspension requested by the Prosecutor through a motion that seeks to benefit the principals charged, no reference to the criminal charges even appears in the defendants' record. Thus, the petitioner maintains the State is failing to fulfill its international commitment to punish those responsible for violations of human rights.

Admissibility

27. The petitioner maintains that, given the nature of the alleged violations, the Commission is fully competent to hear the case. With respect to the requisite that domestic remedies be exhausted, such remedies have been shown to be ineffectual and unwarranted delay has resulted in the military and civil courts. The petitioner mentions that three years after the proceedings were initiated the military courts decided to transfer the case to the competence of the civil courts, reopening proof despite the mountain of accumulated evidence. The petitioner notes that as recently as 1997 no sentences had been passed and no compensation had been paid, and requests that the exception granted pursuant to Article 46(2)(c) of the Convention be applied.

B. The State

The events in the prison and the response of the State institutions

28. With respect to objective responsibility of the State for homicide and the attacks on the personal integrity of the inmates, the Government acknowledges the serious nature of the situation and the events reported although it maintains that it has taken steps to provide adequate compensation and has initiated the legal proceedings provided for in Brazilian law.[FN12] Hence, as later indicated with respect to each action, it contends that: (a) all of the families that have demonstrated their kinship with the victims have been awarded compensation in civil proceedings; (b) a Secretary of State has been established within the government of the state of São Paulo solely to handle correctional facility matters; and (c) a plan has been initiated to close down the Carandirú correctional facility and to build modern facilities.

[FN12] The State has not denied at any time the facts alleged in the petition, and has forwarded to the Commission information indicating that it generally accepts responsibility for the violations committed. In statements by newsmen obtained by the Commission, Luiz Antonio Fleury Filho, Governor of Sao Paulo at the time of the events and who had been Secretary of Public Security before becoming Governor, subsequently agreed that what had taken place was a massacre which he attributed to the fact that when Commander Guimaraes fell wounded, the police officers who, according to him, had been running the operation correctly until then "lost control and started acting on their own in what could be termed a massacre or extermination". He maintained that the instructions that had been given were appropriate and legal (Folha de Sao Paulo, September 28, 1997).

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29. As to the events of October 2, the State indicated on August 8, 1994, that "the government and courts of Brazil are determined to press ahead with the proceedings in this sad

episode, and to elucidate the facts with a view to determining responsibility". It reported that 120 police officers had been charged, including Military Police Colonel, Ubiratan Guimaraes, who together with Lt. Col. Edson Faroro, had transferred to the reserve. It reports that civil proceedings had commenced to compensate the victims.

30. It further reports that immediately after the riot steps were taken to set up a Secretary for Prison Administration in São Paulo and that a course in human rights had become a compulsory part of police officer training in that state.

31. On October 15, 1996, the State reported that an agreement had been reached between the Federative Republic of Brazil and the state of São Paulo to close down the Carandirú prison complex as an initial step to fulfilling one of the long-term objectives of the National Human Rights Program, which provides that "the São Paulo Detention Center (Carandirú) and other correctional facilities that failed to meet the minimum international prison standards be closed down."[FN13] In addition, a significant number of new prisons and associated facilities will be built with the ultimate objective of rehabilitating the inmates. The program acknowledges that at the time (1996) Carandirú housed almost double its regulation inmate capacity. These assertions on the implementation of the penitentiary reform were broadened on August 4, 1999, noting that Carandirú had been closed down completely and other preventive measures implemented.

[FN13] The program proposes initially to build nine prisons, of which six would be maximum security, two medium security, and one a detention center for detainees awaiting sentencing. Each prison facility will house 600 inmates, and the detention center 3,600. In a second stage, an additional 25 prisons will be constructed, to house 600 inmates each. In all, every effort will be made to rehabilitate the inmates.

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32. The State reports that on November 27, 1996, the Supreme Court confirmed the competence of the civil courts to hear the case concerning the massacre of 111 prisoners, expressing the view that "the crime may be considered a matter for the civil courts although it had been committed by military personnel on duty using military weapons and that the Military Code of Justice is clear in this respect. In a subsequent communication, the government maintained that the decision was based on the entry into force of the Bicudo Act (Law 9,299/96), which transferred to the civil courts the prosecution of the crimes of voluntary manslaughter committed by military personnel.

33. On April 6, 1996, the State officially forwarded to the Commission a notice placed on the internet indicating that the "government of Brazil accepts responsibility for Carandirú". The notice states that the government of the state of São Paulo with the support of José Gregori, National Human Rights Commissioner, was studying a solution to the case, whereby compensation would be paid to the victims' families. The notice also states that the Governor of the state, Mario Covas, maintained that legal proceedings for compensation needed to be followed, and that any decision taken should be consistent with others being processed in other cases.

Admissibility

34. It is maintained that domestic remedies have not been exhausted in the proceedings of the military police officers charged with voluntary manslaughter and in the cases of compensation, all of which are being carried out in accordance with the guarantees and procedures provided in Brazilian law.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

35. The Commission is competent prima facie to examine this case, given that the alleged facts affected people under the jurisdiction of the State when the obligation to respect and guarantee rights recognized in the Convention was in full force.[FN14]

[FN14] Brazil ratified the American Convention on Human Rights on September 25, 1992.

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36. As to competence ratione personae, Article 1(1) of the Convention clearly establishes the obligation of the State to respect the rights and freedoms recognized by the Convention as well as to ensure the free and full exercise of such rights so that any violation of the rights recognized under the Convention that may be attributable, in accordance with the standards of international law, to an action or omission by any public authority is the responsibility of the State. Pursuant to Article 28 of the Convention, in the case of a federative State like Brazil, the national government answers internationally for the acts committed by the federation's constituent units.

37. The present case deals not only with alleged violations committed during the violent suppression of the Carandirú riot but also alleged violations of the rights to a fair trial, due process and judicial guarantees recognized under the Convention. These violations are attributable to state officials (senior authorities of the state of São Paulo, authorities in the prison system, state military police, officials at the Attorney General's Office and judicial officers).

38. The present petition therefore meets the formal requisites for admissibility provided for in Articles 46(1)(c) and 46(1)(d) of the Convention and in Article 32 of the Regulations of the Commission. The Commission is not aware of the subject of this petition being pending for settlement or of a ruling having been issued in another international proceeding.

Exhaustion of domestic remedies and period for presentation

39. The Commission now turns to the formal aspects of the admissibility of the complaint. Pursuant to Article 46(1)(a) of the Convention for a petition to be admissible by the Commission all remedies available under domestic jurisdiction must have been exhausted, in accordance with the principles of international law. Article 46(2) establishes, however, that the provisions for exhaustion of remedies available under domestic jurisdiction are not fulfilled when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
c. there has been unwarranted delay in rendering a final judgement under the aforementioned remedies.

40. The petitioners alleged that the proceedings were delayed on numerous occasions and held up in the various courts, with the result that five years after the events occurred none of those responsible have been punished and no compensation has been paid to the victims or their families. The State on several occasions during the proceedings before the IACHR alleged that the judicial remedies were in progress and had not been exhausted.

41. The State pressed ahead with various proceedings based on the events in question in the criminal and civil courts. Some of the actions had become statute barred before the proceedings were completed, other proceedings were completed with a verdict, and others are in progress. According to the information at the Commission's disposal, a guilty verdict has not been returned in any of the cases, and those still in progress, seven years after the riot, have not been concluded.

42. Amongst those for which judicial remedies have been exhausted are the proceedings against 8 policemen charged by the Attorney General of injuring the inmates. The charges were filed on March 8, 1993, and lapsed two years later, in 1995, without a verdict. In another case of civil liability for abuse of authority against Col. Faroro, one of the officers commanding the forces used to suppress the riot, and the Warden of the Prison, the defendants were acquitted.

43. The main criminal proceedings against 119 policemen charged with aggravated manslaughter was initiated before the Military Court of São Paulo on June 23, 1993 (case 78/93) and was seriously delayed. Three years after the case was opened, during which period numerous judicial proceedings took place, it was transferred by the Special Council of Military Justice to the jurisdiction of the civil courts on February 13, 1996, because of evidence of responsibility on the part of duly elected civil authorities. Such evidence against civil authorities (the Governor and the Secretary of Public Security) were known when the charges were filed in 1993. Consequently, the three-year delay in transferring the case appears to be unwarranted to the Commission. In addition, the transfer further delayed the handling of the case since under procedural law only the testimony of technical experts and documentary evidence is still admissible in civil proceedings but the testimony of witnesses would need to be repeated when 253 sworn declarations had already been taken.

44. This decision of the Council of Military Justice was reviewed by the Federal Supreme Court, which took fourteen months to uphold it, in April 1997. Since then the case continues to be heard in the civil courts for a decision by the jury.

45. In case 78/93, charges were filed against the only officer accused, Col. Ubiratan Guimaraes, who commanded the forces that suppressed the riot. He was charged with manslaughter as well as other counts. When Col. Ubiratan was elected to the state Legislature in

January 1997, the proceedings came to standstill, and this will continue as long as he has parliamentary immunity, without the Legislative Assembly initiating proceedings against him at the political level to remove the privilege, despite the enormity of the charge and requests from various representatives and civil organizations. His term of office ended the first semester of 1999, thereby ending his parliamentary immunity.

46. As to compensation, the Commission confirms that of the 59 trials initiated by the State for satisfaction, the families of the victims were identified in only 13, although compensation was determined, it was never paid because funds had not been allocated for this purpose in the state budget.

47. The exemptions provided in Article 46(2) of the Convention seek to ensure that international action will be taken when the remedies under domestic jurisdiction and the judicial system itself are not effective in guaranteeing respect for the victims' human rights. Hence, the formal requirement regarding the nonexistence of domestic remedies that safeguard the principle of due process (Article 46(2)(a) of the Convention) refer not only to the absence of formal remedies under domestic jurisdiction but also to the case in which they prove ineffective. The denial of access to judicial remedies (Article 46(2)(b) of the Convention), and unwarranted delay in rendering judgement (Article 46(2)(c) of the Convention) are also linked to the effectiveness of such remedies.[FN15]

[FN15] Pinto, Mónica, La denuncia ante la Comisión Interamericana de Derechos Humanos, Editores del Puerto, page 64

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48. The Court has maintained on this point that the generally recognized principles of international law mean that domestic remedies must formally exist and that they be suitable for addressing the infringed legal right and effective in producing the result for which they were designed.[FN16] That is why exhaustion of such remedies should not be understood to require mechanical attempts at formal procedures, but rather to require a case-by-case analysis of the reasonable possibility of obtaining a remedy.[FN17] In this same vein, the right to furnish proof that domestic remedies have been exhausted as grounds for declaring a petition inadmissible does not mean that it may "lead to a halt or delay that would render international action in support of the defenseless victim ineffective.".[FN18]

[FN16] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, paragraphs 62-66; Fairén Garbi and Solís Corrales case, Preliminary Objections, March 15, 1989, paragraphs 86‑90; Godínez Cruz case, Judgment of January 20, 1989, paragraphs 65-69.

[FN17] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, paragraph 72; Fairén Garbi and Solís Corrales case, Preliminary Objections, March 15, 1989, paragraph 97; Godínez Cruz case, Judgment of January 20, 1989, paragraph 75.

[FN18] Inter-American Court of Human Rights, Godínez Cruz case, Judgment of June 26, 1987, paragraph 95.

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49. In other words, if processing of domestic remedies is subject to unwarranted delay[FN19], it can be inferred that they have ceased to be effective in producing the result for which they were intended, thus rendering "the victim helpless".[FN20] It is at that point that the mechanisms of international protection including the exceptions provided for in Article 46(2) of the Convention must be applied.

[FN19] This type of delay has a negative effect on the effectiveness of domestic judicial remedies since it leads to a deterioration in the quality of the evidence, particularly in the testimony of witnesses who, with the passage of time, may change or tend to forget the facts. This certainly undermines the effectiveness of the proceedings to determine responsibility and punish those found guilty.
[FN20] Inter-American Court of Human Rights, Godínez Cruz case, Judgment of June 26, 1987, paragraph 95.
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50. At the writing of this report, more than seven years have elapsed since the events in question occurred. Yet, domestic judicial remedies have failed to punish even one of those responsible because of acquittal, or the lapse of statutory periods, or unwarranted delay; nor has compensation been paid to the victims and/or their families.

51. Accordingly, the Commission can confirm that domestic remedies have been exhausted or have been delayed unjustifiably. Moreover, in their failure to provide for punishment because of prescription or to pay compensation to the victims, domestic remedies have not proven effective or at least up to the standard required for a decision of admissibility or inadmissibility. In view of the foregoing, the Commission is of the view that in the present case the exception for unwarranted delay provided in Article 46(2) of the Convention applies to criminal proceedings.

52. As to the requirement that the petition be submitted within six months (Article 46(1)(b) of the Convention), in the Commission's judgment, the exception provided in Article 46(2)(c) of the Convention and Article 37(2)(c) of the Regulations of the Commission apply because there has been unjustified delay in the serving of justice. In this regard, Article 38(2) of the Regulations states:

In the circumstances set forth in Article 37(2) of these Regulations, the deadline for presentation of a petition to the Commission shall be within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case.

53. Since the complaint was filed sixteen months after the alleged violation of the rights and repeated in subsequent years, in confirming that the judicial delays increased in frequency throughout this period, the Commission considers that the petition was submitted within a reasonable period of time in accordance with Article 38(2). Consequently, in lights of Articles 46

and 47 of the Convention, the terms for declaring the petition admissible in the present case have been fulfilled. The Commission now examines the facts.

Conclusions on admissibility

The Commission considers that it is competent to review the complaint presented by the petitioners and declares that the present case is admissible in accordance with the requirements provided in Articles 46 and 47 of the American Convention.

V. ANALYSIS ON THE MERITS

A. The facts

The prison situation and security

54. The Commission considers it necessary to examine the prison situation that developed in the state of São Paulo, living conditions of the inmates, the background to the riots at that particular facility, and the chain of command and decision-making in circumstances such as a riot, and the pattern for the use of extreme force by the São Paulo military police.

The basic requirements for inmates in prisons at the time of the riot

55. In September 1992, the Carandirú prison wing in which the riot and its subsequent suppression occurred housed more than twice its permitted capacity, as acknowledged by the Government in its prison reform plan. Such overcrowding leads to friction amongst the inmates and between inmates and prison guards. A total of 7,257 prisoners were housed together in the facility. Of this number, 2,706 were imprisoned in Cell Block 9, the scene of the uprising. The prisoners in this wing were "first offenders" (those imprisoned for the first time), many of whom had not been sentenced and were under "amparo" on presumption of innocence. Most of the inmates ranged in age from 18 to 25. They were housed in 248 cells, or about eight per cell, in conditions of physical overcrowding without sufficient space for relaxation or work. In fact, as the Commission confirmed on its on-site visit in 1995, there was barely enough room to stand or sit side by side.

The institutional control of the prison

56. When Fleury Filho, the former Secretary of Public Security, became Governor in March 1991, he transferred administrative jurisdiction for state prisons from the Secretariat of Justice to the Secretariat of Public Security. This move was criticized by the São Paulo Bar Association since the prisons were placed under the same authority as the Police and Prison Guards. When riots take place in prisons, the monitoring magistrate (juiz corrigedor da policía) and the sentencing magistrate (juiz da vara execuções criminais) were called in to guarantee the safety of the prisoners and decide on the actions to be taken to quell the disturbances. In earlier incidents, the Secretary of Justice himself had been present or actively involved in the negotiations.[FN21]

[FN21] AMR, page 6.
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57. On October 2, therefore, administrative responsibility for Carandirú correctional and police services was centralized in the São Paulo Secretariat of Public Security. Police officials reporting to this Secretariat removed the potential for negotiations by the judges who arrived at the prison, indicating to them that they should not enter because the situation was extremely dangerous and hard to control.

58. The Commission calls attention to the fact that a study conducted in 1988 on riots in São Paulo found that eleven uprisings had occurred between September 1986 and April 1988; in the six occurrences in which a negotiation strategy was used there were no deaths, whereas there were 47 (inmates and policemen) in those in which force was used to suppress the riot.[FN22]

[FN22]I Pastoral Carceraria of the Archidiocese of Sao Paulo, “Elementos para una reflexion buscando respuestas a la cuestion de rebeliones y rehenes. May 1998, page 5. Quoted by the IACHR Report on the human rights situation in Brazil, 1995.

The São Paulo military police's pattern of violence

59. At the time of the riot, the São Paulo military police had a record of using extreme force in their fight against crime. In 1991, 25% (1,140) of all violent deaths in São Paulo were at the hands of the police. During Antonio Fleury Filho's administration (1991‑1992), the military police killed on average one person every six hours, compared with an average of one every 17 hours during the two previous administrations (1982‑1991) and one every 30 hours in the 1978‑1982 administration. A Federal Commission of Inquiry of the Legislature found that 14 of the senior officers commanding the assault on October 2 had been charged with 148 counts of homicide or attempted homicide by military courts.[FN23]

[FN23]The same legislative Commission compared this record with that of the New York police department for 1991. In New York, the police in their fight against crime caused the deaths of 27 civilians, compared with 1,140 by the Sao Paulo military police. More important still, the ratio of dead to wounded for the New York police was one to two compared with three to one for the Sao Paulo military police.

The State's response to the riot

The State's responsibility for guaranteeing the integrity of the inmates and preventing outbursts of violence

60. As the Court has stated: "In terms of Article 5(2) of the Convention, every person deprived of her or his liberty has the right to live in detention conditions compatible with her of

his dignity, and the State must guarantee the right to life and to humane treatment."[FN24] Consequently, the State, as the party responsible for establishments of detention is the guarantor of these rights of detainees. The living conditions of the inmates in the facility, which did not conform to international standards due to overcrowding and lack of recreational activities, created the conditions for an outbreak of friction between the inmates that could easily escalate into acts of general rebellion with an ensuing backlash of disproportionate force by agents of the State to bring the violence under control.

[FN24] Inter American Court on Human Rights. Caso Neira Alegría, Decision of January 19, 1995, para. 60

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61. The illegal conditions in which the inmates lived, the previous riots at Carandirú, and the lack of any strategy to prevent or avoid the escalation of friction, as well as the absence of any negotiating capacity by the State which could have avoided or lessened the violence of the riot are themselves violations on the part of the State to honor its obligation to guarantee the life and personal integrity of individuals in its care. Furthermore, in violation of national and international law, most of the inmates at Carandirú at the time had not been sentenced (and must therefore be presumed innocent) and were compelled to live in highly dangerous conditions side by side with condemned convicts.

The riot and its suppression

The State's obligation to control the riot and the proportionality of required force

62. That the State has the right and the duty to put down a prison riot was maintained by the Court in the Neira Alegría case[FN25]. The riot must be suppressed through such strategies and actions as are needed to bring it under control with minimal harm to the life and physical integrity of the inmates and minimal risk to law enforcement officials.

[FN25] Decision on January 19, 1995, para. 60 and 61. As stated by Article 5(2) of the Convention every person deprived of his liberty shall be treated with respect, and under detention conditions compatibles with the dignity of the human person, and the State has to guarantee his right to life and personal integrity. Therefore, the State, as responsible for the detention facilities es the guarantor of this rights of the detainees.

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63. The repression by the police, as described in the petition and confirmed by the official investigation and the opinion of experts, was conducted with absolute disregard for the life of the inmates, demonstrating a retaliatory and punitive attitude, wholly at variance with the guarantees that the police should offer. The Commission notes that the deaths did not take place in situations of self-defense or to disarm the inmates since the prisoners' weapons were of the homemade variety and had been thrown down on to the patio when the police entered. No firearms were

found in the possession of the rioters nor had any shots been fired against the police. Their initially violent attitude was quickly overcome by the entry en masse of the heavily armed police. The action of the civil authorities and the magistrates supervising the prison during the uprising

64. According to facts furnished by the petitioners and not denied by the State, the supervisory magistrates were notified by the Warden of the Prison as soon as the alarm was sounded at 2:15 p.m. at which time the police authorities were called in. At 2:30 p.m. Commander Ubiratan Guimaraes, Chief of the Metropolitan São Paulo police department, arrived with three battalions of shock troops, including dogs and a heavily armed unit, and the ROTA Battalion, which specializes in armed assaults. The Secretary of Security transferred authority over the prison to Commander Guimaraes. According to testimony given before the Legislature, such a transfer of command was done without consulting the supervisory magistrates. There were no instructions either as to the avoidance, if possible, of the use of deadly force. The Governor was then away from the city and apparently was not informed of the riot until 5:35 p.m.

65. The Warden of the Prison declared before the Legislature that he was prepared to negotiate with the rioters and with this in mind had approached Cell Block 9 with a loud speaker but the police physically prevented him from negotiating and he was pushed to one side as the police stampeded into the cell block. Much the same thing happened to the magistrates, who had arrived at the prison at 3:45 p.m. and were told by the military police that there were no conditions to negotiate. About 5:00 p.m., the magistrates were informed that the riot was over, but that civilians could not enter the cellblock. They were not authorized to enter until 7:00 p.m. In their testimony before the Legislature, the magistrates indicated that they had seen pipes, knives, pieces of wood, chains, and stones thrown out on to the ground as well as "many naked prisoners sitting on the ground with their hands on their heads". The magistrates did not ask to inspect all of the sections and cells and after visiting the first floor of the cell block, without visiting the others floors, they went to the Warden's offices without questioning any of the inmates. They left the prison at 10:30 p.m. after being informed by Lt. Col. Edson Faroro that there were more than 50 dead. They did not open any proceeding or investigation at that time. The next day, they were advised that 111 inmates had died.[FN26]

[FN26] Communication from the three magistrates issued on October 8. AMR, op.cit. p.10.

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66. The Commission is of the view that the civil authorities of the state of São Paulo failed to comply with their lawful responsibilities in dealing with the riot, particularly the authorities of the Secretariat of Public Security which, aware of the military police's violent attitude and disregard for the right to life, sanctioned an invasion of the cell block without attempting to isolate and pacify the rioters. The magistrates, too, made no attempt to assert their authority since they accepted a role wholly subordinate to the orders of the military even after the riot had been put down, when they could have initiated an investigation in order to preserve the evidence. Probably, their presence alone would have prevented suffering and death; nor did they then take any steps to control the fate of the inmates who had survived the initial massacre, many of whom were killed in its aftermath.

The action by the police to suppress the riot

67. It has been fully confirmed that as a result of the police action 111 inmates were killed and approximately 35 wounded. The petition also indicates that many of the victims were killed while they were unarmed and defenseless, and this is not denied by the State and was corroborated in the Legislative inquiry and by independent experts. Governor Fleury himself declared that the situation got out of hand and widespread killing began of those who may have been leaders or participants in the riot as well as others who happened to witness the indiscriminate slaughter when a number of inmates attacked the police and Commander Guimaraes was injured when a television camera exploded. It also emerges from the expert report that the shots fired in the cells came from the police and were fired in a single direction about fifty centimeters above ground level, indicating that the victims were on their knees at the time. The investigations and testimony of survivors also indicate that many of the inmates were killed after they had surrendered, had their hands up and were naked for the most part. The nature of these violations of the rights to life and personal integrity were further exacerbated by the savage methods used to suppress the rioters who had surrendered through the execution of inmates who had been forced to take part in the illegal removal of bodies, the attacks against the survivors and the beating of their wounds, the delay in providing medical care, and the murder of wounded inmates on their way to hospitals. Of all of the cases of massacres heard by the Commission through the years there have been few to equal the savagery and brutality that afternoon at Carandirú.

Actions to destroy the evidence and to prevent action by the newsmen

68. It also emerges that some of the inmates were murdered after carrying out orders to remove the corpses from where they had originally fallen, as part of a systematic effort to destroy any evidence that could be used to identify the individual police officers responsible for each death and to cloud the evidence and the circumstances. These actions to conceal what had happened began when the magistrates present in the prison were prevented from entering the cell blocks at the time of the surrender, continuing with the execution of witnesses and numerous other actions carried out systematically to elude investigation, confuse public opinion, and ensure impunity. These actions documented in the parliamentary investigation include washing away the blood from the scene of the massacre, prohibiting photographs from being taken after the inmates had surrendered, offering conflicting reports on police casualties and inflating the number, producing thirteen firearms attributed to the inmates from which none of the shots fired was found to have come, and which because of their rusty condition and the way in which they turned up had been blatantly "planted" after the event.[FN27]

[FN27] AMR, p.8-9.

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69. The Director of Prison Discipline testified to Amnesty International that he had requested that each wounded inmate removed from the prison be accompanied by correctional services personnel. The police denied this request and according to the deposition the first eight inmates

taken away, slightly wounded, to the Santana Hospital died before or soon after arriving at the hospital, apparently executed on the way.[FN28]

[FN28] AMR, p.16.

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70. The purpose of some of these maneuvers was to elude and confuse reporters. For instance, photographers were not permitted to enter even when the uprising was already under control, and from taking photographs of the dead and wounded that were being taken away. One reporter, Caco Barcellos, who had investigated police conduct in the past, was harassed, through interference with his reports and threatened to the point that he was forced to flee the country. Although the number of dead was known to the civil and military authorities at 8:00 a.m. on October 3, the figures were not released to the press until 4:30 p.m., one half hour after the polls for the municipal election being held that day had closed. The press was informed on the night of October 2 that "eight prisoners had been killed in a fracas between rival bands during the riot", when in fact the eight prisoners in question were the ones who had been slightly wounded and taken away and killed in police custody on their way to the hospital.

71. The IACHR notes that, as in previous cases[FN29] it is necessary to analyze and evaluate the present case in light of the criteria established in the "Principles on the effective prevention and investigation of extralegal, arbitrary, and summary executions", adopted by the United Nations Economic and Social Council (Resolution 1989/65) in order to determine whether the State has fulfilled its obligation to conduct an immediate, exhaustive, and impartial investigation of the summary execution of persons in its exclusive care. According to these principles, in cases of this nature the purpose of the investigation must be to determine the cause, the manner, and the moment of death, the person responsible, and the procedure or practice that could have caused it. Also, a proper autopsy must be performed, all of the material and documentary evidence collected and analyzed, and eyewitness testimony taken. The investigation should distinguish between death from natural causes, accidental death, suicide, and homicide.

[FN29] IACHR –Case 11.137 Abella - Argentina Annual Report 1997, para. 414-415 Case 11.411 Ejido Morelia‑Mexico. 1997 Annual Report, paragraphs 109 to 111 of the report on the merits.

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72. These principles have been supplemented by the adoption of the "Manual on the Effective Prevention and Investigation of Extra Legal, Arbitrary, and Summary Executions", whereby the main objective of an investigation is "to discover the truth surrounding the events that caused the suspicious death of a victim". To this end, the Manual establishes that those carrying out the investigation must adopt, as a minimum, the following measures:

a. Identify the victim;
b. Recover and preserve pieces of evidence from the deceased to assist in any possible proceedings against those responsible;

c. Identify possible witnesses and obtain statements from the latter about the death;
d. Determine the cause, manner, location, and time of death as well as any method or practice that may have caused it;
e. Distinguish between natural and accidental death, suicide, and homicide;
f. Identify and apprehend the person or persons that may have participated in the execution;
g. Bring the perpetrator or perpetrators suspected of having committed a crime before a competent court established by law.

73. To ensure that an exhaustive and impartial investigation of an extrajudicial, arbitrary, or summary execution, the Manual provides that "one of the most important aspects of the process is the gathering together and analysis of the evidence". Therefore "the persons in charge of the investigation of a suspected extrajudicial execution must have access to the place where the body was discovered as well as the possible place of death." According to the standards contained in the Manual, the procedure for collecting evidence must conform to certain criteria, some of which are listed below:

a. The area adjacent to the body must be closed off. Only investigators and their staff will be allowed to enter the area.
b. Color photographs of the victim must be taken since these could reveal more details than black and white ones about the nature and circumstances of the victim's death.
c. Photographs must be taken of the scene (inside and outside) and any physical evidence.
d. The position of the body and the condition of the clothing must be recorded.
e. The following factors serving to establish the time of death must be noted:

(i) Body temperature (warm, cool, cold);
(ii) Location and degree of lividity;
(iii) Rigor mortis; and
(iv) State of decomposition.

f. All evidence of weapons such as firearms, projectiles, bullets, and shell cases or cartridges must be collected and preserved. If necessary, tests must be performed to find residues from shots and/or to detect the presence of metal.

74. The Commission confirms that these standards were not observed and were systematically violated in an attempt to destroy the evidence and to prevent the identification and punishment of those responsible.

Treatment of the wounded

75. The petition reports on a number of unidentified wounded persons who did not receive care for days and in some cases died for lack of adequate medical care. This information was confirmed by the parliamentary investigation and in the Amnesty International report.[FN30] None of this information was denied by the State in its submissions. An analysis of the documentation shows that they were not given adequate assistance and that some of the wounded were subsequently executed in cold blood, which is confirmed by the fact that the number of seriously wounded is very small in proportion to the number of dead. More importantly, some of

the few wounded to survive were mistreated and beaten on their wounds as a form of revenge and punishment.[FN31]

[FN30] Parliamentary Inquiry by the Legislative Assembly of Sao Paulo, quoted by Amnesty International, AMR 19-8-93, p. 17.
[FN31] AMR 19/0893 p. 18.

The treatment of the families

76. In accordance with the United Nations Minimum Standard Rules for the treatment of Prisoners (44(1)), "in the event of the death, serious illness, or serious injury of a prisoner, the Director shall inform the spouse immediately, if the prisoner is married, and if not his next of kin and, in all cases, he shall report to any other person previously designated by the prisoner". Although the number of dead was known to the police at 8:00 a.m. the next day (October 3), the families waiting outside the prison were not officially informed. The names of the dead were not made public until October 4 when a list of the 111 victims was affixed to the prison gate. No formal notification was given to each family, nor were they told to which morgue the bodies had been taken, with the result that some families visited several morgues before finding the bodies of their loved ones. A number of errors appeared in the initial list, and three inmates listed as killed turned up alive. No official information on the survivors had been given by October 6, and although there was a master list of inmates, official information on the dead and survivors was not released until October 8. On October 3 and 5, policemen with their identification tags covered beat and set police dogs on the grief-stricken family members waiting outside the prison gate.

The official investigations and the police action

The official investigation

77. Eight government agencies, six from the state of São Paulo and two federal ones, investigated the events. The State agencies were the civil police, the military police, the Prison Service, the Attorney General, the Judicial Branch, and the Legislative Assembly. The federal government agencies were the Council for the Defense of Human Rights, a consultative body within the Ministry of Justice, and the Federal Council for Policy on Crime and Prisons. Although their interpretations differed somewhat, none denied the excesses of the military and their crimes and that prisoners had been killed defenseless in their cells. None of the agencies was able to determine individual responsibility for the homicides.

78. The official state bodies agreed that there had been excessive force used but in general considered the reaction understandable against the violent action of the inmates. In general, they tended to exonerate the police from blame, considering that the planning and operation by the police had been correct ("perfect" according to the note from the military police commander conducting the internal investigation) and justifying the excesses. The parliamentary investigation prepared mainly by members of the Governor's party noted that there had been

reprehensible excesses that should not be repeated but did not apportion blame or agree that there had been a "massacre".[FN32] The investigation by the Judicial Branch exonerated the magistrates, and indicated that they had performed their duties adequately.

[FN32] The parliamentary opposition disagreed with the findings, publishing its own report, making public testimony and documents collected. It indicated that there had been no mitigating circumstances for the murders, and requested that the participants be tried individually and that the Secretary of Public Security, his assistants, and the magistrates involved be prosecuted for malfeasance. (AMR p. 26)

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79. The federal government investigations, however, noted that "it was an action with inadequate planning, not coordinated, a criminal action that was extremely violent and irresponsible. It indicated that the "São Paulo military police had murdered without justification 111 prisoners in their custody and under the responsibility of the state," and that it was the "natural result of the climate of political violence established in the state of São Paulo during that period" in which "torture and summary executions was the modus operandi" (AMR p. 26). However, these federal bodies are consultative and their recommendations are not binding, as indicated publicly by the Hon. Mr. Cardozo, then Minister of External Relations, who alleged that there was no legal mechanism whereby the federal government could ensure that those responsible were properly judged in the state courts.

80. The Commission concludes that various bodies of the state of São Paulo and the federal government investigated the facts. Although they were all hampered by actions on the part of the São Paulo military police to conceal and destroy evidence as indicated earlier, there is evidently a contrast between the findings of the state bodies which tended to minimize, justify, and exonerate from blame the state's civil and police authorities, and those of the Brazilian government which conclude on the basis of the evidence that there occurred a massacre of prisoners and serious and systematic violations of rights on the part of the state police authorities. The Commission also finds that in the present case, the federal government had no effective mechanisms to ensure that federal agencies comply with the international commitments of the Republic of Brazil with respect to human rights or to establish by federal means other mechanisms to prevent, act on, correct, or offset such failings by the states.

Judicial proceedings

81. As indicated earlier in the section analyzing exhaustion of domestic remedies (paragraphs 39-51) none of those responsible had been punished seven years after the events had taken place. In one of the proceedings, the statute of limitations had expired, in others the proceedings became bogged down, and in others those charged were acquitted. The proceedings against Commander Guimaraes were obstructed by the parliamentary immunity he has enjoyed since January 1997 until the end of his mandate in 1999 as a member of the Legislative Assembly. The Legislative Assembly, despite numerous requests from national and international organizations, had refused to remove his immunity as a member and the proceedings against the Commander had therefore come to a standstill.

82. Also, the families have not been paid fair compensation. In this regard, the Commission was informed by the State that proceedings to determine compensation had been initiated and that in 49 cases compensation had already been received for the families. The Commission was informed, however, that such compensation although ordered, was not effectively paid out because funds had not been appropriated for this purpose in the state budget. The government also indicated that the state had acknowledged civil liability in the civil courts and that a decision in the criminal courts was pending.

83. As further indicated in the section analyzing exhaustion of domestic remedies, the proceedings before the military courts in which 121 military policemen were charged had been transferred to the civil courts in March 1996 (three and one half years after the riot) on grounds that civilians had also been charged. The proceedings, however, were delayed for nearly a year without justification by the Supreme Court of São Paulo for purposes of determining jurisdiction. This process was not concluded until April 1997, although law 9,099 had entered into force on August 7, 1996, permitting the transfer to civil jurisdiction of crimes committed against civilian lives with malice aforethought by members of the military police or the Prosecutor, once the Bicudo Act was in force.

84. The proceedings against the 120 military policemen went to trial by jury in November 1998 with the defendants being found not guilty, a verdict that was appealed by the Prosecutor. In the proceedings (266/93) against military police officer Edson Faroro and the Warden of the Prison, Ismael Pedrosa, charged with abuse of authority, the defendants were acquitted in September 1997.

85. The proceedings against seven military policemen charged with seriously injuring an inmate, Edson Xavier dos Santos, were suspended at the request of the Attorney General in accordance with Article 89 of the Bicudo Act, which provides for the possibility of a conditional suspension of a trial for crimes with a minimum sentence of a year in prison. This crime of causing serious injury against the inmate was committed after the rioters had surrendered and were being beaten by the police.

86. The Commission finds that the different judicial proceedings by the military and civil courts of São Paulo were subjected to numerous unwarranted delays and postponements, failed to establish the truth of what happened and corporate and individual responsibility, and did not award adequate compensation to the victims and their families. The Commission further concludes that, despite the destruction of evidence by the military police, already noted, there were other pieces of evidence that would have permitted a serious and thorough investigation, which was not carried out by the prosecutors' offices and magistrates, contributing to the failure to establish the truth and responsibility and to the resulting impunity.

B. Rights

Right to life (Article 4) and personal integrity (Article 5)

87. The American Convention on Human Rights consacrates the rights to life and personal integrity as basic human rights that the State must respect, enforce, and guarantee. (Articles 1(1), 4 and 5)[FN33]. The Court has stated that:

[FN33] Article 4. Right to Life. 1. Every person has the right to have his life respected. ...No one shall be arbitrarily deprived of his life. Article 5 Right to Humane Treatment (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. Article 1. Obligation to Respect Rights. (1) The States Parties in this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free exercise of those rights and freedoms, without any discrimination..."

The analysis that must be made has to do with the right of the State to use force, even if this implies depriving people of their lives to maintain law and order, an issue that currently is not under discussion. There is an abundance of reflections in philosophy and history as to how the death of individuals in these circumstances generates no responsibility whatsoever against the State or its officials.[FN34]

[FN34] Neira Alegría case, Judgment of January 19, 1995 (para. 74).

Without question, the State has the right and duty to guarantee its security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis of any State action."[FN35]

[FN35] Veládquez Rodríguez case, Judgment on the merits, para. 154; Godínez Cruz case, id. para. 162; Neira Alegría et al case, Judgment of January 19, 1995, para. 75).

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88. An analysis of the facts, the official and private investigations, the large body of evidence presented in the case and to the Commission and the acknowledgement of responsibility by the Brazilian State itself show clearly that in the Carandirú riot the inmates were not killed or wounded by the agents of the state in self-defense. They were murdered or wounded in deliberate and systematic infringements of their rights to life and integrity in violation of Articles 4(1) and 5 of the Convention.

89. The obligation of the State and its agent to respect the life and personal integrity of persons in their care includes providing proper and timely information to their families on the condition of their loved ones, an obligation that is particularly sensitive in situations of friction and violence as in the present case. The failure, through negligence or fraud, to notify the families, who had been waiting for days immediately outside the prison for reliable news, is in itself a violation and causes a specific harm for which the State must assume responsibility and make amends and every effort must be made to ensure that it is not repeated.

90. The October 2, 1992, massacre at Carandirú and its background and immediate effects must be examined as well in terms of the State's obligation:

to organize the governmental apparatus and, in general, all the structures through which public power is exercised so that they are capable of juridically ensuring the free and full enjoyment of human rights.[FN36]

[FN36] IACHR. Velásquez Rodríguez case, Judgment on the merits, para. 166-68.

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91. The Commission concludes that neither the state of São Paulo nor the Federative Republic of Brazil took before, during, or after the riot steps to organize its government structure in such a way as to avoid tragedies of this kind. An examination of the background information shows that before the events in question and taking into account the prison conditions, the State had not developed any plans or strategies to resolve the problems effectively and legally or to address the frequent outbursts of violence that the situation caused. First, the overcrowding and unsuitable living conditions were illegal and increased the likelihood of violence. What had been an altercation between inmates was mishandled to the extent that it degenerated into a riot against the ineffective guards in charge of prison security. The absence of any mechanism to bring incidents quickly under control caused the violence to flair up and grow, involving a large number of inmates. The negotiating capacity of the prison authorities was minimal and was swept aside and undermined by the military police command. It was also denied because of the orders issued to the police by the civil authorities, particularly the Secretary of Security for the state. The action by magistrates responsible for prison supervision was also cut short by the police through an inversion of the decision-making hierarchy for a situation of this kind. In fact, the state's entire action strategy rested on the immediate use of all available force, in a manner that was totally disproportionate and ruled out any strategy that might resolve the situation effectively with respect for life and personal integrity of the inmates. The systematic use of deadly disproportionate violence by the São Paulo military police in the handling of public security, which is backed by the official statistics for those years, served as a blueprint that was tragically repeated in the suppression of the October 2 riot. The lack of planning by the State in terms of taking steps to improve the living conditions in the facility as well as to organize strategies that were legal, effective, and compatible with respect for life in the handling of emergency situations in correctional facilities is also a violation of the international commitments established by the Convention (Articles 4 and 5, in conjunction with Article 1).

Right to judicial guarantees and due process (Articles 8 and 25 of the Convention)

92. Article 25 of the American Convention states that:

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.

The States Parties undertake:

a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
b) to develop the possibilities of judicial remedy; and
c) to ensure that the competent authorities shall enforce such remedies when granted.

93. The Court has ruled that, according to the Convention,

States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdictions.[FN37] [FN38]

[FN37] Inter-American Court of Human Rights, Velásquez Rodríguez, Fairen Garbi and Solis Corrales, and Godinez Cruz cases, Preliminary Objections, Judgments of June 26, 1987, para. 91, 90 and 92, respectively.
[FN38] As the victim of an execution or murder is not in a position to seek legal compensation, that right necessarily passes to the victim's family. See reports 28-92 (Argentina) and 29-92 (Uruguay) IACHR Annual Report 1992-93, pages 51-53 and 169-174. Also Court, Velásquez Rodríguez case, Judgment on the merits. Para. 174.

... 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 .... for such a remedy to exist, it is not sufficient that it be provided for ... 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. That could be the case, for example, when practice has shown its ineffectiveness: when the Judicial Power lacks the necessary independence to render impartial decisions or the means to carry out its judgments; or in any other situation that constitutes a denial of justice, as when there is an unjustified delay in the decision.[FN39]

[FN39] Inter-American Court of Human Rights, Advisory Opinion OC-9/87 of October 6, 1987. Series A Nº 9 par. 24.

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94. The Commission concludes that the total impunity to date for the events of October 2, 1992, as demonstrated by: (a) the lack of efficient action by the judges present when the riot was put down and immediately thereafter and the obstruction of their actions by the police forces; (b) the destruction and intentional distortion of evidence immediately following the riot and its suppression; (c) the unwarranted delay in the main trial in both the military judiciary and the appeal before the High Court of Justice; (d) the negligence that allowed a case for minor injuries inflicted on a prisoner to prescribe due to the statute of limitations (paragraph 42); (e) the dropping of the serious injury charges; and (f) the failure to revoke the parliamentary immunity of the commander of the unit that put down the riot, shows that the State has violated its commitment to respect and guarantee the right to justice and to a fair trial enshrined in the Convention (Art. 1(1), 8, and 25). This proven ineffectiveness and negligence in the judicial intervention during the events and in the military and civilian criminal proceedings is such that seven years later total impunity of the perpetrators persists; there is no complete, official version of the events; and no one has assumed responsibility specifically for those events or for redressing them.

95. The Commission has indicated in a decision that:

[T]he group of provisions… tends to thwart unimpeded exercise of the right to a recourse or effective remedy to judge and punish officials who violate human rights, shielded by the powers and impunity conferred by their posts. The result is a clear-cut violation of the State's obligation to respect and guarantee their rights – as well as the right to judicial protection – which are set forth in Articles 1(1) and 25 of the American Convention.[FN40]

[FN40] Inter-American Court of Human Rights, Case 11,520 "Aguas Blancas" Mexico, paragraph 132, published in the 1998 Annual Report of the IACHR.

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96. The Constitutions of the Federative Republic of Brazil and the State of São Paulo contain similar Articles that establish the inviolability of deputies and senators for "their opinions, words, and votes" (Constitution of Brazil, Article 53) and prohibit the arrest, criminal prosecution, or incarceration "without prior authorization by the respective House (bold added by the Commission) from the date of the issuance of the certificate of electoral victory, except in flagrante delicto of an unbailable crime" (Constitution of Brazil, Article 53(1)), which suspends "the limitation for the duration of the term of office" (Constitution of Brazil, Article 53(2)).[FN41]

[FN41] Constitution of the Federative Republic of Brazil, Section V on Deputies and Senators, Article 53.

Deputies and Senators enjoy inviolability on account of their opinions, words, and votes.

1. From the date of the issuance of the certificate of electoral victory, the members of the National Congress may not be arrested, except in flagrante delicto of an unbailable crime, nor may they be criminally prosecuted, without prior authorization by the respective House.

2. Rejection of the demand for authorization or the absence of a decision shall suspend the limitation for the duration of the term of office.

3. On this topic, please see, Parliamentary Immunities and Prohibitions in "Celso Ribeiro Bastos Curso de Direito Constitucional," Ed. Saraiva, 1994, p. 306.
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97. In this case, Colonel Guimaraes, the commander of the forces responsible for suppressing the riot and indicted for multiple intentional homicide and other serious offenses was elected in 1997 to the parliament of the State of São Paulo, which granted him parliamentary immunity until his term ended in early 1999, when he lost his bid for reelection. Despite the notoriety of the case and the requests made by different organizations and various members of parliament, the legislature of São Paulo refrained from revoking his immunity throughout his term.

98. The Commission notes with concern that pursuant to Brazilian law (and in this case due to the inaction of the parliament of the State of São Paulo), a parliamentarian, merely because he was elected, can escape criminal prosecution, even for serious offenses, including homicide with perfidy and torture, committed prior to or during his term in office. Although the Commission understands the need for parliamentary immunity, particularly for actions related to parliamentary activities, when that immunity translates into total impunity, such as in this case of serious human rights violations, it is not consistent with the essential commitments of the State set forth in the American Convention. If allowed, this would deny victims the right to effective judicial recourse, as required in Article 25 of the Convention.

The obligation to investigate

99. Failure to fulfill the obligation to conduct an immediate investigation took various forms in the present case. These include the responsibility of the military police itself in destroying the evidence and the failure of the civil police to step with a rigorous investigation documenting and preserving physical evidence in the cell block, the shortcomings in the forensic autopsies, and failings on the part of the São Paulo Attorney General and state judicial bodies which did not make use of the body of still existing evidence, which could have led to those responsible being effectively brought to justice.

100. Although the obligation to investigate is an obligation of "means" and not of "result", when the State is presented with a case of this magnitude it must make full use of its administrative apparatus, law enforcement bodies, and the Attorney General to conduct an investigation, that is serious, exhaustive, impartial, and conclusive, supported insofar as is necessary by the political and legislative bodies, something that did not occur. Here, the Commission draws attention to the fact that when the central government concluded from its

investigations that an unjustified massacre had occurred, the Federative Republic of Brazil had no effective mechanisms to require that the state of São Paulo conduct a more thorough investigation so that effective administrative and judicial proceedings could be instituted in accordance with the State's international commitments.

101. The Commission concludes, therefore, that the State failed to fulfill its obligation to investigate in an exhaustive, impartial, and conclusive manner the events that occurred at Carandirú, thus contributing to the resulting impunity and lack of compensation.

The obligation to try and punish those responsible

102. The Commission concludes that the State has not fulfilled its obligation to prosecute and punish those responsible. As a corollary to Article 1(1) of the Convention, the State has the obligation to guarantee the full exercise of the rights recognized therein and must make provision for, investigate, and punish any violation.[FN42] The State contended that various proceedings had been initiated and were being conducted in accordance with domestic legislation and in observance of procedural guarantees. However, the analysis of the course and results of these proceedings confirms that they have encountered unwarranted delays, have been conducted negligently, and have been hampered by obstacles of all kinds, all with a view to ensuring, inadvertently or intentionally, the impunity of the those responsible. Seven years after the events, the inability to fully punish those responsible is the ultimate expression of noncompliance of the obligation set out in Article 1(1) of the Convention.

[FN42] Inter-American Court of Human Rights, Velásquez Rodríguez, loc. cit. para. 166, 174.

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103. This obligation is breached by the absence of any effective punishment for those charged and a series of violations and crimes that went unpunished, namely: the inability to take the necessary steps to preserve evidence, the inability of the judicial authorities to intervene while the events were taking place, the lack of serious and effective action by the Attorney General to prosecute those charged as being directly responsible or accessories, insufficient domestic legal remedies to activate federal mechanisms to reinforce the federal government's prosecutorial capacity when it is unable to fulfill the minimum standards guaranteeing recognized rights; and the decision of the Legislative Assembly of São Paulo not to remove parliamentary immunity from one of its members, who has been charged, as commander of the operation that ultimately perpetrated voluntary manslaughter and other atrocious crimes.

The obligation to provide compensation

104. In addition, the Court notes the failure on the part of the State of Brazil to provide compensation to the victims or their families, if applicable. The State has the obligation to ensure that the victim receives fair compensation for the violations of the Convention as a result of action by its agents or the lack of adequate guarantees. Such compensation is not separate from the existence of a violation of the Convention, and in this case, the violations of the right to life, personal integrity, access to justice, and judicial guarantees have been clearly established.

105. The Inter-American Court in commenting on the obligation to "guarantee" the rights established in Article 1(1) of the Convention, declared:

As a consequence of this obligation, the State must ... moreover, if possible, attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation of human rights.[FN43]

[FN43] Inter-American Court of Human Rights, Velásquez Rodríguez case, judgment cit., para. 166.

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106. The compensation of the victims is not limited to financial compensation. It must include measures to compensate, rehabilitate in the case of wounded survivors, provide satisfaction for moral damages to the families and guarantee that it will not be repeated. The Commission notes that although the State initiated judicial proceedings for compensation several years after the events they had not yet been effective according to the information possessed by the Commission, and also the unjustified delay in the criminal proceedings as well as their ineffectiveness have prevented the victims from initiating civil proceedings for the compensation and restitution. This in itself is a violation independent of the Convention, for which the State is responsible and which must be corrected. The Commission recalls that under international law:

The States have the duty to adopt, when the situation so requires, special measures to permit compensation to be granted, quickly, fully, and effectively.[FN44]

[FN44] Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law. E7CN.47SUB 2/1996/97/17, PRINCIPIO 7.

Proceedings subsequent to Report Nº 120/99 (Article 50)

107. The Commission forwarded the aforementioned report to the State on October 26, 1999 and gave it two months to comply with the recommendations therein. It also informed the petitioners of the approval of a report under the terms of Article 50 of the Convention. The deadline passed, and the Commission did not receive the State’s reply regarding those recommendations.

VI. CONCLUSIONS

THE INTER-AMERICAN COMISSION OF HUMAN RIGHTS,

DECIDES:

1. That it is competent to hear the present case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention.
2. That the Federative Republic of Brazil violated its obligations under Article 4 (right to life) and Article 5 (right to personal integrity) in causing the deaths of 111 persons and in wounding an indefinite number of others, all of whom were in its custody, during the suppression of the Carandirú prison riot on October 2, 1992, as a result of actions by the agents of the São Paulo military police.
3. That the Federative Republic of Brazil is responsible for the violation of the aforesaid Articles of the Convention as a result of noncompliance with the conditions of detention of the inmates at Carandirú and the absence of appropriate strategies and measures to provide for situations of violence and to put down potential riots. The Commission acknowledges that steps have been taken to improve conditions of detention, particularly through the building of new correctional facilities, the setting of new standards for detention, and the establishment within the state of São Paulo of a special Secretariat in charge of such matters.
4. That the Federative Republic of Brazil is responsible for the violation of Articles 8 and 25 (guarantees and judicial protection) in conjunction with Article 1(1) of the Convention owing to the failure to investigate, bring to trial, and punish seriously and effectively those responsible and the lack of effective compensation for the victims of these violations and their families.

VII. RECOMMENDATIONS

On the basis of the analysis and the conclusions of this report,

The Inter-American Commission of Human Rights recommends that the Federative Republic of Brazil:

1. Conduct a full, impartial, and effective investigation of these violations with a view to identifying and prosecuting the authorities and functionaries responsible for the violations of the human rights as indicated in the conclusions of this report.
2. Take such steps as are necessary to ensure that the victims of these violations who have been identified and their families receive fair and timely compensation for the violations indicated in the conclusions of this report and to identify those not identified.
3. Develop policies and strategies to ease congestion in detention centers, introduce programs for rehabilitation and social integration in accordance with national and international standards, and provide for outbursts of violence at such establishments. Develop policies and strategies and provide special training to correctional facilities and law enforcement personnel in negotiating peaceful settlements of conflicts, and methods for restoring order that make it possible to suppress possible riots with minimal risk to the life and personal integrity of the inmates and law enforcement agencies.
4. Adopt measures necessaries for fulfilling in this case Art. 28 (Federal Clause) of the Convention at the level of the national government such measures as are needed, in accordance with the Constitution and laws of Brazil.

VIII. PUBLICATION

108. On February 24, 2000, the Commission decided to transmit this report to the Brazilian State, which it did on March 3, 2000, pursuant to Article 51 of the Convention. The Commission gave the State one month from the date it was sent to comply with the aforementioned recommendations. The deadline has since passed, and the Commission did not receive a reply from the State in this regard.

109. In view of the above and in keeping with Article 51(3) of the American Convention and Article 48 of the Regulations, the Commission decides to reiterate the foregoing conclusions and recommendations, to publish this report, and to include it in its Annual Report to the OAS General Assembly. In fulfillment of its mandate, the Commission will continue to evaluate the measures taken by the Brazilian State regarding those recommendations, until they are executed in full.

Approved by the Inter-American Commission of Human Rights, on the 13th day of April of 2000. (Signed): Claudio Grossman, First Vice Chairman; Juan Méndez, Second Vice Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman ,Peter Laurie and Julio Prado Vallejo.