## I. SUMMARY

1. On August 17, 2001, the Centre for Global Justice, the representatives of the Samucangaua, Ririzal, Ladeira, Só Assim, Santa Maria, Canelatiua, Itapera and Mamuninha Communities –all living within the same ethnic territory in Alcântara, in the state of Maranhão-, the Sociedade Maranhense de Direitos Humanos (SMDH – the Maranhão Human Rights Society); the Centro de Cultura Negra do Maranhão (CCN - the Maranhão Afro-Brazilian Cultural Center); the Associação das Comunidades Negras Rurais Quilombolas do Maranhão (ACONERUQ – Association of Rural Afro-Brazilian Quilombo Communities of Maranhão), the Federação dos Trabalhadores na Agricultura do Estado do Maranhão (FETAEMA – the Maranhão State Federation of Farm Workers) and Global Exchange, lodged a petition with the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Commission"), against the Federative Republic of Brazil (hereinafter "Brazil" or "the State"). This petition alleges that the society and culture of the traditional communities of Alcântara are being destructured, and their right to property and to the land they occupy is being violated. The situation is the result of the establishment of the "Alcântara Launch Center", being the Brazilian Government conducting an expropriation in that region to settle it, failing to give those communities definitive property titles. According to the petitioners, the facts in the case establish violations of the human rights protected under Articles 1.1, 8, 16, 17, 21, 22, 25 and 26 of the American Convention on Human Rights (hereinafter "the Convention" or "the American

Convention"), and Articles VI, VIII, XII, XIII, XIV, XVII, XXII and XXIII of the American Declaration of the Rights and Duties of Man (hereinafter "the Declaration").

2. The Brazilian State argues that the IACHR should declare the petition inadmissible on the grounds of a failure to exhaust domestic remedies, as required under Article 46.1.a of the American Convention. It asserts that the petitioners still have an opportunity to win their cases in the domestic courts. The State adds that the welfare of the remaining quilomobo communities is a priority for the State, and a variety of administrative and legislative measures are being taken to that end.

3. After examining the petition, and pursuant to Articles 46 and 47 of the American Convention, the Commission has decided to declare this petition admissible in relation to the alleged violations of Articles 1.1, 8, 16, 17, 21, 22, 24, 25 and 26 of the Convention, as well as Articles VI, VIII, XII, XIII, XIV, XVIII, XXII and XXIII of the American Declaration, in relation to the facts that occurred prior to September 25, 1992. The Commission has also decided to report this decision to the parties, to publish it and to include this report in its Annual Report to the OAS General Assembly.

## II. PROCESSING WITH THE COMMISSION

4. On August 20, 2001, the Commission received a request from the petitioners to establish the Commission's competence to settle the present case. The IACHR forwarded the information received to the Brazilian State on August 28, 2001.

5. On November 28, 2001, the State sent its response to the petition lodged by the petitioners.

6. On January 21, 2002, the petitioners requested a hearing to examine the interpretation and scope of the right to property, as it relates to the requests made in Petition No. 555/2001.

7. On December 14, 2004, the petitioners furnished additional information related to the petition under review.

8. On July 14, 2005, the State submitted observations on the petitioners' reply.

9. On August 30, 2006, the Commission requested the petitioners and the State, to submit information about specific points.

10. On September 19, 2006, the petitioners asked the Commission for a 15-day extension to submit the information that was requested of them, as did the State on September 22, 2006. On that same date the concession of this extension was communicated to the State and the petitioners were notified. On September 29, 2006 the concession of the extension to the petitioners was communicated and the State was notified.

11. On October 15, 2006, the petitioners submitted the information that was requested to them, and the State did the same on the 18th of the same month and year.

## III. POSITION OF THE PARTIES

### A. The petitioners

12. The petitioners allege that the Brazilian State is in violation of the provisions of the American Convention by virtue of its failure to fulfill its obligation to respect and ensure the rights protected under the Convention (Article 1.1), and by its violation of the right to a fair trial (Article 8), the right to freedom of association (Article 16), the rights of the family (Article 17), the right to property (Article 21), the right to freedom of movement and residence (Article 22), the right to judicial protection (Article 25.1), and the right to protection of economic, social and cultural rights (Article 26).

13. The petitioners contend that the traditional communities on whose behalf the petition is lodged, is established in the area related to the municipality of Alcântara, distant at 22 kilometers from São Luís (capital of the state of Maranhão), in the northeastern region of Brazil. This municipality is in the midst of a large conservation area, which encompasses the Amazon region. Because of the privileged location of the area, it is considered strategic for aerospace technology research and development. In the petitioner's opinion, the establishment of the "Alcântara Launch Center" in the region, has taken a serious toll on the society and culture of the traditional communities that lived or live there.

14. The petitioners point out, that "quilombos" are communities composed mainly of the descendents of runaway or freed slaves, which operate on the basis of communal production. They are traditional communities, with their own cultures, dialects, production techniques and internal rules. The petitioners state further that because of the historical and cultural importance of the quilombos, Brazil's 1988 Constitution recognizes the quilombo communities' right to their land.[FN1]

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[FN1] Constitution of the Federative Republic of Brazil (1988), Article 68 of the Transitory Provisions. The remaining quilombo communities who are still living on their lands are hereby given definitive title to that land; it is the State's duty to issue to them the respective land titles.

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15. The petitioners explain that through a directive,[FN2] the Brazilian Government invested the "Palmares Cultural Foundation" with the authority to identify, demarcate and issue titles to the lands belonging to the remaining quilombo communities. However, the petitioners point out that while Brazil has over 1000 remaining quilombo communities, since October 1988 the "Palmares Cultural Foundation" has given only 18 communities definitive titles to their land. To make matters worse, say the petitioners, of those 18 communities that have received legal titles to their land from the "Palmares Cultural Foundation", only about three of them have managed to get their titles registered with the "Office of Civil Records", because Brazil's civil records system does not recognize property titles issued to communities, against recorded property of old plantations and ranches, even if those communities have lived on the land for over a century.

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[FN2] Directive 447, dated December 2, 1999.

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16. The petitioners report, that the "Alcântara Launch Center" (CLA)[FN3] was created in 1983 to conduct and support the launch and tracking of aerospace operations, as well as tests and experiments of the Ministry of Aeronautics. To make this project possible, in 1980 the Government of the state of Maranhão declared[FN4] that the tract of land needed for the CLA project was to be expropriated for public use. That land was home to various quilombo communities.

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[FN3] Created by Federal Decree No. 88,136, of March 1, 1983.
[FN4] Decree No. 7,820, of September 12, 1980.

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17. The petitioners assert that although more recent data are not available, their estimates are that 3,600 families belonging to dozens of interrelated communities live within the area declared for public use or interest for the Launch Center. Moreover, even the communities outside the tract of land on which the Launch Center is located, sustained and are sustaining indirect damages caused by the establishment of that base, and by the Agreement concluded between Brazil and the United States on "Technology Safeguards Relating to the Use of the Alcântara Spaceport".[FN5]

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[FN5] Signed on April 18, 2000. Regulates access to and use of the facilities at the Spaceport.

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18. The petitioners argue that, with the signing of the Agreement on Technology Safeguards, the planned commercial use of the CLA facilities was made known. They describe a gradual change in the project's objectives, which started as a national security project and then morphed into a commercial venture.

19. The petitioners report, that the predicament of the communities that live within the Alcântara territory is extremely difficult. For the petitioners, the dispossession of collective and ancestral lands is a vital issue, as are the adverse effects on the economic, family, cultural and religious aspects of the communities' lives, salient among them the following: fishing is impossible; families cannot grow, and some members of the communities are not being allowed to visit the cemeteries where their relatives are buried.

20. For purposes of the present petition, the petitioners divide Alcântara's traditional communities into three different groups: communities threatened with dislocation; communities threatened with destructuring, and dislocated communities. The area undergoing expropriation is divided into two areas, according to the petitioners: Area I and Area II. Area I is where the CLA installations are located, while Area II is the remaining land that the Brazilian Government is planning to expropriate. The CLA's timetable for relocating nearly 400 families is in two

phases.[FN6] The petitioners contend that the fear and insecurity in the communities threatened with dislocation is palpable.

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[FN6] The first phase (which corresponds to the third phase since establishment of the CLA) involves 261 families from 16 communities, which includes relocated communities and communities that received additional families. According to the CLA, 158 families will be moved. They will be from the communities of Mamuna (56 families), Águas Belas (08 families), Caiuaua (02 families), Baracatatiua (26 families), São Francisco (02 families), Barbosa (02 families), Pacoval (02 families), Corre Prata (01 family), Brito (28 families), Itapera (19 families) and Mamuninha (12 families).
In the second phase (which is the fourth phase since the start of the CLA project), 215 families will be relocated. They will come from the communities of Folhau (20 families), Santa Maria (66 families), Tacaua (09 families), Bom Viver (12 families), Uru-Grande (05 families), Uru-Mirim (02 families), Arapiranga (01 family), Canelatiua (48 families), Retiro (14 families), Mato Grosso (04 families), Centro Alegre (03 families), Rio Verde (01 family) and Vista Alegre (30 families).

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21. The petitioners assert that the dispossessions already effected, were forced evictions that moved the dislocated families to areas far from the sea and other waterways. No diagnosis or systematic analyses were done to examine the socioeconomic and cultural situation, the interests and specific needs of those families, farming practices, economic activities, the work force used, the appropriation of natural resources, etc. The petitioners make the point that nothing was done to preserve the conditions necessary for economic activity to continue.[FN7]

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[FN7] Data from the report of the Anthropological Advisory Office of the Federal Public Prosecutor's Office, dated, October 6, 1999.

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22. The petitioners[FN8] affirm that between 1982 and 1985, Area I was home to some 503 families, distributed among 48 communities (or settlements). Of these, 312 families from 31 settlements were moved to "agrovilas" – housing built by the Alcântara Launch Center-, while those that remained are being threatened with forced eviction. Area I is the municipality's coastal region and is where the Spaceport's installations were built.

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[FN8] Data from the Companhia de Colonização do Nordeste (COLONE).

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23. The petitioners report that to minimize the adverse consequences of their dislocation, the communities that were moved off their lands requested various measures from the Ministry of Aeronautics, which pledged to honor most of the requests. According to the petitioners, three years after the pledge not one of the requests had been honored.

24. The petitioners assert that more than 30 of the dislocated communities[FN9] were moved to 7 agricultural districts or "agrovilas". The petitioners contend that a number of communities were settled in the same "agrovila", and yet the place bore the name of only one of the communities settled there. This caused conflict within the area and was completely insensitive to the cultural origins of those communities.[FN10] For the petitioners, the move to the "agrovilas" made the lives of the relocated families much more difficult: they now have no place to fish; hunting is difficult; beaches and waterways are far away, and the CLA restricts access to natural resources.

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[FN9] In the first phase of the CLA's establishment, which was between July and December 1986, 112 families from 10 communities were moved and settled in agrovilas built in the area known as Fazenda Norcasa. The communities moved were: Espera and Barro Alto (11 families), Ponta Seca, Curuca and Laje (13 families), Pepital (38 families), Cajueiro (33 families), Só Assim, Boa Vista and Norcasa (17 families).
In the second phase, between November 1987 and December 1988, 200 families from 21 communities were moved and settled in 02 agrovilas built in the area, which included part of the Rio Grande and Mutiiti fazendas and part of the Returned Lands VIII. The communities moved to the agrovila named "Marudá" were: 100 families from the communities of Sozinho, Baracatatiua, São Raimundo, Jabaquara, Curuçá, Jardim, Santa Cruz, Titica, Porto, Santa Rosa, Pirarema, Marudá, Santo Antonio, Ponta, Jenipaúba, Camarajó, Capijuba, part of Águas Belas, Corre Prata and Ladeira (a few families). The communities moved to the agrovila called "Peru" were: Sozinho, Santa Cruz, Titica, Porto, Cavém, Peru, Camarajó, Capijuba, part of Águas Belas and Corre Prata.
[FN10] This is the case with the "agrovila" Só Assim, which was established by the forced convergence of the communities of Só Assim, Boa Vista and Norcasa. The "agrovila" Marudá was formed by forcibly combining 20 different communities.

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25. As for exhaustion of domestic remedies, the petitioners contend that when expropriation is for public interest or public use, Brazilian law provides no means to challenge the merits of the order of expropriation. The executive branch has discretionary authority to decide whether any studies will be conducted. The petitioners assert that the communities whose land was expropriated have no means to defend themselves, because Brazil's domestic law does not provide the means to challenge the merits, i.e. the question of whether a real public interest or use exists (hence the exception provided for in Article 31.2.a of the Commission's Rules of Procedure). The petitioners further assert, that the 10-year delay in conducting court proceedings on the expropriation suits is discriminatory, and the almost 13-year delay in the process of giving the remaining quilombo communities legal title to their land, constitutes unwarranted delay in the sense of Article 31.2.c of the Commission's Rules of Procedure.

26. The petitioners sustained that all the communities' victims of expropriation, as well as threatened by expropriation and destructuring are quilombo remnants. The anthropologic record elaborated by Professor Alfredo Wagner Berno de Almeira, published in the year 2006, that is joined as an annex to this presentation, describes the requisites which define this condition, the

communities belonging to the area of quilombo remnants in the Alcantara Region, and the territory included by these 156 (one hundred and fifty six) communities.

27. In relation to the Public Civil Action Number 1999.37.00.007382-0, being transacted in front of the 3rd "Vara Federal de Sao Luis, Maranhao", they sustain that it is in condition of being resolved since more than 18 months ago, since February 22, 2005. In the Public Civil Action Number 2003.8868-2, in transaction at the 5th "Vara Federal" of the same location, on September 27, 2006, the Judge dictated an interlocutory resolution that conceded the INCRA a 180 (one hundred and eighty) days deadline to prosecute with the emission of the definitive titles of the involved lands. The Collective Action Number 2003.7826-3, in transaction in front of the lastly alluded Court, is found pending of a resolution since October 3rd 2005, more than a year ago.

28. It is denounced that since mid 2005, the quilombolas which habitat the region, who practice cultures in their old lands, the ones that now belong to the Air Force, are being object of threatens, persecutions, detentions and destruction of their crops. 5 (five) "Mandados de Seguranca" were articulated on September 19th 2006 by social organizations, to try to repair the described acts. The lands that were assigned to the harmed ones are constituted by small parcels, inadequate for cultures, situation that destructured the common use of the land system, depriving them of the indispensable for subsistence. The only mean of assistance that they posses to subsist is the "Bolsafamilia" program, that provides them with a small stipend, that results insufficient.

29. It is denounced, that in addition of the 8.700 (eight thousand seven hundred) hectares occupied by the Alcantara Launching Center, now the State pretends to occupy another 5.600 (five thousand six hundred) hectares more, to build new rocket launching sites, situation that was proposed to the communities on July 15, 2006 by the Executive Inter Ministerial Group (GEI). The affected ones manifested themselves in contrary with the denominated "Carta de Alcantara" (Letter of Alcantara), on August 12, 2006.

B. The State

30. The Brazilian State denies negligence in the case of the rural communities created within the area of the CLA; quite the contrary, it argues, the federal government is constantly adopting measures to ensure that the members of those communities enjoy their human rights, especially their economic, cultural and social rights. Through the "Agência Espacial Brasileira" (AEB – Brazilian Space Agency), "INFRAERO" (Aeroportos Brasileiros) and other State agencies, the State has taken alleviative measures to benefit the local communities, such as payment of compensation, improvement and revitalization of the "agrovilas" infrastructure, sustainable development of the populations affected by the CLA's establishment, and titling of land and homes of 312 families moved to "agrovilas" as a result of the construction of the CLA facilities.

31. Brazil's Federal Government established a special program in the 2004-2007 "Pluriannual Plan" for development of the remaining quilombo communities, spelling out responsibilities and deadlines for execution. Brazil's "Quilombo Program" is a combination of measures by various areas of government, all targeting the sustainable development of the quilombo communities, which is tailored to their historical and modern-day distinguishing traits.

32. The Brazilian State reports that starting in 1998, the "Fundação Cultural Palmares" (FCP – Palmares Cultural Foundation)[FN11] stepped up its efforts in the Alcântara area, partnering with a number of Maranhão state and federal government agencies. The FCP took the initiative of establishing a dialogue with Alcântara's remaining quilombo communities, their representative entities, support organizations and religious leaders. The State is of the view that while the process of legalizing the communities title to the land has not yet been concluded, the FCP is working hard to complete the work and deed them the land.

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[FN11] The foundation responsible for identifying and issuing title to the land of the remaining quilombolo communities pursuant to Transitory 68 of the Constitution.

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33. The Brazilian State therefore contends that it unambiguously adheres to the international consensus as to the indivisibility and interdependence of all human rights, as stated in the 1993 "Vienna Declaration and Program of Action". However, it explains, the so-called second-generation rights are programmatic aspirations and their realization, especially in a country like Brazil with pronounced regional differences, will necessarily be gradual.

34. The State argues that the public interest purpose of the "Alcântara Launch Center" did not change when Brazil and its technological partners entered into bilateral agreements for commercial exploitation of this station, including the "Agreement on Technological Safeguards" that the Brazilian Government concluded with the United States Government on April 18, 2000. It contends that the social purpose of the CLA was kept entirely intact, as the social, economic and technological development objectives established in the legal documents creating the rocket launch center, and the complete Brazilian space mission were maintained and updated. The State's position is that the agreement between the Brazilian and United States governments did not cause any deviation from the CLA's original object and purpose.

35. As for the rule requiring that internal remedies be pursued and exhausted first, the State asserts that the Commission must declare the petition inadmissible on the grounds of a failure to comply with the requirement set forth in Article 46.1.a of the American Convention. It adds that the exception on the grounds of an unwarranted delay in rendering a final judgment under the domestic remedies, provided for in Article 46.2.c, does not apply either.

36. The State points out that the cases prosecuted on the subject are as follows: (a) a Public Civil Action brought by the Federal Public Prosecutor's Office,[FN12] the subject of which was the suspension of public hearings by the "Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis" (IBAMA - Brazilian Institute for the Environment and Renewable Natural Resources) into the CLA's permit, specifically with regard to the project's environmental impact assessment; (b) a Public Civil Action prosecuted by the Federal Public Prosecutor[FN13] against the Union and the "Palmares Cultural Foundation" to order the Foundation to move forward with the appraisal of the remaining quilombo communities or, failing that, to suspend any further activity to relocate those communities; (c) a class action suit[FN14] brought by the Associação das Comunidades Negras Rurais Quilombolas do Maranhão – ACONERUQ (Association of

Rural Afro-Brazilian Quilombo Communities of Maranhão) against the Union and the state of Maranhão, asking the court to declare the communities of "Só-Assim" and "Itamatatiua" as remaining quilombo communities and to exclude those communities from the area in which the CLA is being established; (d) various expropriation actions brought by the Union and the state of Maranhão[FN15] against the parties whose land is being expropriated, referred to as property owners or settlers, still pending in the federal and state courts.

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[FN12] Being heard in Federal Court: No. 1999.37.00.007382-0. The Federal Court's decision is pending.
[FN13] Being heard in Federal Court: No. 2003.8868-2. The ruling has been pending since September 25, 2003, in the Fifth Federal District Court of the state of Maranhão.
[FN14] Case in the Federal Courts: No. 2003.7826-3.
[FN15] There are no figures in the documents presented by the two sides as to the number of expropriation cases.

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37. The State adds that these suits are in progress and a number of judicial remedies are still available should the petitioners be dissatisfied with the decisions handed down in those cases.[FN16] The State reasons that the very fact that new legal suits were filed about the alleged violations, even after the petition was lodged with the IACHR, shows that the petitioners made no attempt to satisfy the requirement of prior exhaustion of domestic remedies and instead rushed to bring their allegations to the Commission.

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[FN16] Under Articles 513 to 521 of the Civil Procedure Code, an appeal filed with the Federal Regional Court; then, under Articles 530 to 534 of the Civil Procedure Code, embargos de divergência, which is an appeal allowed when the decision of the appellate tribunal reverses the ruling on the merits and the appellate tribunal's decision is not unanimous; agravo is an appeal to a higher court when the appellate tribunal decision on review denies the embargos de divergência; then a special appeal to the Superior Tribunal of Justice, and then an extraordinary appeal to the Federal Supreme Tribunal when the appellate tribunal decision is considered unsatisfactory.

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38. The State alleges that the time period required under Article 32.1 of the Commission's Rules of Procedure has not been fulfilled. It asserts that the Brazilian court's final rulings on the legal suits being heard have not been delivered; hence, the presumption must be that the remedies under domestic law have not been exhausted. The Brazilian State therefore rejects the notion of a continuing violation of the human rights of the quilombo communities in the Alcântara region, since the civil and administrative suits are still active, and competent state bodies are taking the appropriate measures.

39. The State manifested the adoption of diverse measures of political, legislative and administrative nature directed to the quilombo remnants communities, the ones that are described in the answer presented on August 2005. It is affirmed that on November 20th 2003, the

Presidential Decree N° 4.887 which establishes the rules of procedure for identification, recognition, delimitation, demarcation and title emission of the lands occupied by the referred communities, was dictated. This is the result of the work of the Inter Ministerial Work Group (GEI), coordinated by the Civil House of the Presidency of the Republic and the Special Secretariat of Politics of Racial Equality Promotion of the Presidency of the Republic (SEPPIR/PR), with the participation of representatives of the civil society and quilombolas leaders. This group has to join a sustainable development project of the region. The State does not question that the communities on whose behalf the petition is articulated are quilombo remnants. They recapitulate the history of the Alcantara Launching Center, the area that is supposed to be occupied by it, and the way it was expropriated.

40. The State alleges that the interposition of Public Civil Action No. 1999.37.00.007382-0, Public Civil Action No. 2003.8868-2 and Collective Action No. 2003.7826 are from a time period preceding the creation of the Executive Inter-Ministerial Group (GEI). Regarding the first action referenced the State sustains that the General Advocacy of the Union required its dissolution, claiming that the objective had been lost. Regarding Public Civil Action 2003.8868-2, they allege that the Public Ministry requested the revocation of the anticipated measure that was conferred to conclude the expedition of the titles of the land occupied by the affected communities, requesting that the Union and Brazilian Space Agency abstain from initiating acts biased toward the installation of the Alcantara Space Center until the conclusion of the administrative procedure which will issue the titles, which will show there exists a willingness of the parties to conclude the action. Regarding Collective Action 2003.7826, the State says that it promotes recognition of the communities affected by the Alcantara Launch Center, such as the quilombo remnants, but in September some security orders were introduced before the Federal Justice requiring the recognition of the right to use land already expropriated, under administration of the ASC, being a preliminary measure that guarantees the use of the land to the affected people. Based on the information presented, the State reiterates that the petition should be rejected because the domestic remedies were not exhausted.

41. In conclusion the State affirms that in keeping with Decree No. 4887/2003, development has begun on a Technical Report of Identification and Delimitation for the quilombo remnant communities of Alcantara. In March 2006 a process of land registry began which is currently paralyzed, but in the long run a complete issuance will be achieved for affected lands for the quilombo communities, which means that there remain internal remedies to be exhausted.

## IV. ADMISSIBILITY

### A. Competence rationae personae, rationae materiae, rationae temporis and rationae loci

42. Under Article 44 of the American Convention and Article 23 of the Commission's Rules of Procedure, the petitioners, as legally recognized nongovernmental organizations, have standing to lodge petitions with the Commission alleging violations of rights protected under the American Convention. Furthermore, Brazil is a party to the Convention and is therefore internationally accountable for violations of it.

43. The Commission regards the members of the following communities as the alleged victims: Mamuna, Águas Belas, Caiuaua, Baracatatiua, São Francisco, Barbosa, Pacoval, Corre Prata, Brito, Itapera, Mamuninha, Folhau, Santa Maria, Tacaua, Bom Viver, Uru-Grande, Uru-Mirim, Arapiranga, Canelatiua, Retiro, Vista Alegre, Rio Verde, Centro Alegre, Mato Grosso, Itapuaua, Perizinho, Esperança, Cajitiua, Murari, Ladeira, Iririzal, Samucangaua, Espera, Barro Alto, Ponta Seca, Curuçá, Laje, Pepital, Cajueiro, Só Assim, Boa Vista, Norcasa, Sozinho, Baracatatiua, São Raimundo, Jabaquara, Jardim, Santa Cruz, Titica, Porto, Santa Rosa, Pirarema, Marudá, Santo Antonio, Ponta, Jenipaúba, Camarajó, Capijuba and Ladeira. These communities have either been relocated or are threatened with relocation, or have been living under the threat of being destructured since 1980 when state decree No. 7.820 was signed declaring the CLA area expropriated for public use.

44. The Commission is competent rationae materiae because the complaint alleges violation of human rights protected by the American Convention in its Articles 1.1, 8, 17, 21, 22, 25 and 26. The Commission is competent rationae loci because the facts allegedly occurred within the territory of the Federative Republic of Brazil, which ratified the American Convention.

45. The facts herein described began in 1980,[FN17] by which time the Brazilian State had not yet ratified the American Convention. However, all member States of the Organization of American States are subject to the Commission's jurisdiction. Under Article 20 of the Commission's Statute, the Commission is to examine communications alleging violations of the American Declaration. The Commission therefore has jurisdiction rationae temporis to determine whether, during the period prior to September 25, 1992, the date on which Brazil ratified the Convention, there was a violation of Articles VI, VIII, XII, XIII, XIV, XVIII, XXII and XXIII of the American Declaration.

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[FN17] State decree No. 7.820, dated September 12, 1980.

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46. The Commission is also competent rationae temporis with respect to any violations alleged to have occurred subsequent to September 25, 1992, because the Brazilian State's obligation to respect and ensure the rights protected under the Convention was in effect as of that date.

## V. ADMISSIBILITY REQUIREMENTS

### A. Exhaustion of domestic remedies

47. Under Article 46.1 of the American Convention, in order for the Commission to admit a petition the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. Subparagraph 2 of that same Article, however, stipulates that the provisions under Article 46.1 shall not apply when 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, or when the party alleging violation of his or her

rights has been denied access to the remedies under domestic law, or when there has been an unwarranted delay in rendering a final judgment on those remedies.

48. The rule requiring exhaustion of domestic remedies affords the State the opportunity to have its own jurisdictional bodies prosecute and punish human rights violations committed by State agents, before having to face an international proceeding. This presupposes, however, that due process of law is available at the domestic level to investigate human rights violations and that such an investigation will be effective. If those conditions are not present, Article 46.2.a of the Convention authorizes the Commission to take the case before domestic remedies are exhausted.

49. The IACHR considers that the appropriate domestic remedies for ending the alleged violations are the ones that concern the non-relocation of the communities within the area declared to be for public use, with the gradual expropriation that followed.

50. The petitioners are claiming the exceptions to the rule requiring exhaustion of domestic remedies: the exception allowed under Article 31.2.a of the Commission's Rules of Procedure, i.e., on the grounds that Brazilian law does not afford due process to challenge the merits of the expropriation order; and the exception allowed under Article 31.2.b of the Commission's Rules of Procedure, i.e., on the grounds of an unwarranted delay in deciding the cases in the Brazilian courts.

51. The State, for its part, objects to the claim asserting the exceptions to the rule requiring exhaustion of domestic remedies. The State contends that the cases on this matter are still active in the domestic courts. The petitioners respond by alleging that there is no effective domestic remedy to challenge the Brazilian State's public use declaration, and they underscore the Brazilian court's delay in bringing the court cases underway to conclusion.

52. Decree-Law No. 3.365/41 – which regulates expropriation based on public use or interest in Brazil- provides that in the expropriation process the courts do not have jurisdiction to determine whether or not a public interest or use exists.[FN18] The inference of this decree is that the courts are not permitted to assess the merits of a public use or interest decision.

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[FN18] Art. 9. In an expropriation case, the Judicial Branch is not permitted to determine whether the expropriation is or is not for public use or interest.

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53. The Commission considers that although legal actions have been attempted, the decision to expropriate for public use will not be reversed inasmuch as a specific law on the subject exists within the Brazilian legal system.

54. Further, in order for the Commission to determine whether the remedies under domestic law have been exhausted, it has to consider the situation as of the time the decision on admissibility is taken. Therefore, although the petitioners have filed suits since the time the case

with the Commission was opened, the current standing of the legal proceedings attempted has to be examined.

55. In 1999, the Federal Public Prosecutor brought a public civil action, registered as No. 1999.37.00.007382-0, against the Union, the IBAMA (Brazilian Institute for the Environment and Renewable Natural Resources), and INFRAERO (the Brazilian Airport Infrastructure Company). It alleged irregularities in the environmental impact study/environmental impact report having to do with the activities of the "Alcântara Launch Center" (CLA). The Commission observes that even if this action is satisfactory to the authors, the decision would not alter the harm alleged by the petitioners, since the subject of this litigation does not directly concern the relocation status of the communities in the area of Alcântara. Since 1980,[FN19] the state of Maranhão has brought a number of expropriation actions, which are being heard in Federal court. The Commission notes that those legal actions cannot examine the public use or public interest issue and are strictly confined to the issue of the price to be paid for the expropriation.[FN20]

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[FN19] State Decree Nº 7.820/80.
[FN20] Decree No. 3.365/41, art. 20.

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56. In 2003, the Federal Public Prosecutor's Office brought Civil Public Action No. 2003.8868-2 against the Union and the "Palmares Cultural Foundation". The purpose of the action is to force this Foundation to proceed with the appraisal of the remaining quilombo communities; failing that, to suspend any further relocation of those communities. The IACHR observes that the eventual recognition of the remaining quilombo communities legal title to their land will not prevent the Union from expropriating that land claiming public use or interest. Should that happen, the general law on the subject stipulates that the judicial branch is not allowed to determine whether the declaration is or is not for public use or interest.[FN21] In 2003, Class Action No. 2003.7826-3 was filed by the "Associação das Comunidades Negras Rurais Quilombolas do Maranhão" – ACONERUQ, against the Union and the state of Maranhão. It asks the court to declare the communities of "Só Assim" and "Itamatatiua" to be remaining quilombo communities, and to exclude them from the area in which the CLA facilities are located. The co-defendants named in the suit were the "Palmares Cultural Foundation" and the INCRA – "Instituto Nacional de Colonização e Reforma Agrária". The Commission notes that this action concerns specific communities and its conclusion will not change the situation of all quilombo communities in the region; furthermore, this action could not reverse the state's declaration of public use or interest, as such a declaration is a discretionary power of the State, as previously explained.

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[FN21] Decree No. 3.365/41.

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57. On the other hand, an unwarranted delay could be established in the instant case, since the lower court decisions on these legal actions are still pending, even though the cases were brought in 1999 and 2003.

58. Analyzing the information submitted by the petitioners and the State, it is determined that none of the individualized actions have provided an effective result that would tend to put an end and repair the denounced violations. As the remedies that the internal legislation proportionate, until this date have provided no solutions or effectiveness, it is allowed to the IACHR to consider that the exception to the exhaustion of domestic remedies applies to the instant case.

59. The IACHR observes that invocation of the exceptions to the rule requiring exhaustion of domestic remedies, provided for in Article 46.2 of the Convention, is closely linked to the determination of possible violations of certain Convention-protected rights, such as the guarantees of access to justice. However, given its nature and purpose, Article 46.2 stands separate and apart from the Convention's substantive provisions. Therefore, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies apply to the case in point, must be done prior to and separate from the analysis of the merits. The determination of whether the exceptions apply relies on a standard of assessment that is different from the standard used to determine possible violations of Articles 8 and 25 of the Convention. It is worth noting that the causes and effects that prevented exhaustion of domestic remedies in the present case will be examined in the report that the Commission adopts on the merits of the case, to determine whether violations of the American Convention have occurred.

60. For all the foregoing reasons, the Commission finds that there is sufficient cause under Article 46.2 of the American Convention to exempt the petitioners from the rule requiring prior exhaustion of domestic remedies.

B. Time period for lodging a petition

61. Article 32 of the Commission's Rules of Procedure provides that in cases in which the exceptions to the rule requiring exhaustion of domestic remedies apply, the petition must be lodged within a reasonable period of time. In the instant case, the exceptions allowed under Article 31.2 of the Commission's Rules of Procedure have already been examined under the section on exhaustion of local remedies.

62. Having examined the date on which the alleged facts occurred,[FN22] having considered that this case may involve a continuing violation of human rights, and given the status of the various legal cases pending in the Brazilian courts, the Commission concludes that the petition under study was lodged within a reasonable period of time.

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[FN22] State Decree N° 7.820, September 12, 1980, which declared the area as a public utility space for means of expropriation; the reestablishment of 312 families between years 1982 and 1985; the chronogram of the program of the CLA to reestablish more than 400 families' stages (not accomplished yet).

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63. The initial human rights violations being alleged were said to have occurred with Decree No. 7,820 of September 12, 1980, which declared the tract of land planned for the CLA to be of public use or interest for expropriation purposes. The violations alleged to have occurred thereafter happened over the course of time, as certain families were moved to the "agrovilas," and many families have had to live under the threat of expropriation.

64. The IACHR considers when the violations in a particular case are continuing in nature, there is no single date from which to calculate what a reasonable period of time might be. The expropriations occurred at different times and the threat of expropriation may qualify as a continuing violation. Hence, the Commission concludes that the present petition was filed within a reasonable period, since the initial alleged violations are still ongoing as of the date of preparation of this report.

C. Duplication of international proceedings and res iudicata

65. Nothing in the file of this petition or in any information the Commission received, suggests that the subject matter of the petition is pending decision in another international proceeding for settlement or that it replicates a petition or communication it previously examined. The Commission therefore concludes that the requirements established in Articles 46.1.c and 47.d of the Convention have been met.

D. Characterization of the facts alleged

66. The Commission considers that prima facie the facts alleged tend to establish a violation of Article 1.1, in connection with Article 17, in the case of the relocated families and those families living under the threat of relocation; Articles 16, as regards respect for the individuality of the communities existing within the Alcântara region; Article 21 in the case of the expropriation of the lands of the remaining quilombo communities, by virtue of Transitory Article 68 of the 1988 Federal Constitution of Brazil; Article 22, in that the right of the relocated communities to move about freely in the "agrovilas" in order to fish and plant crops may have been violated, and also because of the allegedly tiny properties offered to the quilombo communities. As for possible violations of Articles 8 and 25, the alleged victims would be all those who may have suffered because of the conditions to which they were exposed when their land was declared for public use or interest, with the expropriation that followed in the case of some families. Being afro descendents communities involved, which allege an inadequate protection of their rights, the IACHR considers motu proprio that the facts could characterize a violation of Article 24, in connection
with 1.1.

67. The Commission also decides to admit the petition with regard to possible violations of Article 2 of the American Convention since, as previously noted, the Commission, when examining the domestic remedies, determined that Brazilian law may not offer effective due process to challenge the declaration of public use or interest in an expropriation.

68. The petition should also be declared admissible based on Articles VI, VIII, XII, XIII, XIV, XVIII, XXII and XXIII of the American Declaration for the occurrences prior to September 25, 1992.

V. CONCLUSION

69. The Commission concludes that it is competent to take cognizance of this petition and that the latter satisfies the admissibility requirements set forth in Articles 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. Without prejudging the merits of this complaint, to declare the petition admissible relative to Articles 16, 17, 21, 24, 8 and 25 of the American Convention, in combination with Articles 1.1 and 2 thereof, as well as Articles VI, VIII, XII, XIII, XIV, XVIII, XXII and XXIII of the American Declaration, in relation to the facts that occurred previously to September 25, 1992.
2. To send this report to the State and to the petitioners.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on October 21, 2006 (Signed): Evelio Fernández Arévalos, President; Florentín Meléndez, Second Vice-president; Freddy Gutiérrez, Paolo Carozza and Víctor Abramovich, Commissioners.