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File Number(s):	Report No. 81/06; Petition 394-02
Session:	Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause:	Persons Deprived of Freedom at Urso Branco Prison, Rondonia v. Brazil
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; Second Vice-President: Florentin Melendez; Commissioners: Freddy Gutierrez, Paolo Carozza, Victor Abramovich. Commission member Dr. Paulo Sergio Pinheiro, of Brazilian nationality, did not take part in the deliberations or vote on the present report, in accordance with Article 17(2)(a) of the Rules of Procedure of the Commission.
Dated:	21 October 2006
Citation:	Persons Deprived of Freedom at Urso Branco Prison v. Brazil, Petition 394-02, Inter-Am. C.H.R., Report No. 81/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANTS: “Global Justice” and the “Justice and Peace Commission of the Porto Velho Archdiocese”
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I. SUMMARY

1. On June 5, 2002, “Global Justice” and the “Justice and Peace Commission of the Porto Velho Archdiocese” (hereinafter “the petitioners”) 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 persons deprived of freedom at the “Casa de Detenção José Mario Alves”, known as “Urso Branco” Prison in Porto Velho, in the state of Rondônia, Brazil, are living in violent and dangerous conditions. According to the petitioners, the facts in the case establish violations of the human rights guaranteed by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) in its Articles 1(1), 4, 5, 8 and 25(1).

2. The Brazilian State contends that it has already made a number of systemic improvements at the prison, including better medical and dental care and legal counsel. It argues that the legal guarantees and juridical protection required under the Convention are being observed and ensured in all the investigations being conducted into the deaths at the prison, and that improving conditions at “Urso Branco” Prison is a matter of the utmost importance to the Brazilian State.

3. After examining the petition and in accordance with Articles 46 and 47 of the American Convention, the Commission has decided to declare the petition admissible regarding the alleged

violations of Articles 4, 5, 8 and 25(1) of the American Convention, in relation to the obligations enshrined in Articles 1(1) and 2 of the same instrument. The Commission has also decided to inform the parties of this decision, to publish it and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING WITH THE COMMISSION, PRECAUTIONARY MEASURES AND PROVISIONAL MEASURES

4. On March 5, 2002, and in an addendum sent on March 12, the petitioners asked the IACtHR to seek precautionary measures from the Brazilian Government, in order to protect the lives and physical safety of the persons deprived of freedom at “Urso Branco” Prison.

5. On March 14, 2002, the IACtHR sent a request to the Brazilian State seeking precautionary measures. Nevertheless, on April 17, 2002, the IACtHR was informed that three more beneficiaries had died at the prison.

6. Reasoning that the precautionary measures that the Brazilian State had adopted to ensure the beneficiaries’ safety had been inadequate, on June 5, 2002 the IACtHR turned to the Inter-American Court of Human Rights to request that it order provisional measures. The Court ordered those measures on June 18, 2002.

7. On June 5, 2002, at the petitioners’ request and in accordance with its Rules of Procedure, the Commission opened the case. The relevant information was forwarded to the State and both parties replied in successive communications and filed evidentiary documents on a number of occasions, which were, in turn, forwarded to the other parties.[FN2]

[FN2] The State filed the Government’s Reports on the situation at the Casa de Detenção José Mario Alves, known as “Urso Branco” Prison, in May 2002, on July 8, 2002, September 11, 2002, December 3, 2002, August 14, 2003, February 18, 2004, May 4, 2004, August 11, 2004, September 27, 2004, October 2004, December 2004, December 2, 2005, February 2006 and April 2006. The petitioners filed their observations on the report on July 24, 2002, October 16, 2002, October 5, 2002, February 4, 2003, October 14, 2003, April 7, 2004, May 18, 2004, November 12, 2004, March 15, 2005, March 20, 2005, July 8, 2005, and December 20, 2005. On August 14, 2002, the petitioners presented additional information; on August 29, 2002, the Court issued an order calling for provisional measures. On February 7, 2003, the State reported that it had formed a special committee to examine the prison situation. On February 19, 2003, the petitioners filed a preliminary report on a visit made to the prison. On June 3, 2003, the State responded to the petitioners’ observations. Then on August 22, 2003, the petitioners presented their observations on the State’s response. On January 7, 2004, the petitioners supplied additional information on the facts reported in the September 9, 2003 edition of the Jorrnal Diário da Amazônia. On April 15, 2004, the petitioners reported news of the death of another beneficiary, and then on August 11, 2005, news of a possible strike by prison personnel. On August 19, 2005, the State provided the information requested of it on August 12, 2005. On August 26, 2005, the petitioners supplied information on the Brazilian Government’s Notification No. 188. On

January 6, 2006, the State filed a report on the events that occurred between December 25 and 28, 2005.

8. On August 29, 2002, the Inter-American Court of Human Rights issued an order extending the provisional measures. The State filed a Report on the subject.[FN3]

[FN3] According to the Brazilian Government's report on the Provisional Measures adopted.

9. The Inter-American Court of Human Rights issued another order of provisional measures on April 22, 2004, and summoned the parties to a public hearing which was held on June 28, 2004, at the Court's seat.

10. The State filed twelve reports on the provisional measures, the most recent one in April 2006.

III. POSITION OF THE PARTIES

A. The petitioners

11. The petitioners contend that the Brazilian State is in violation of the American Convention on Human Rights by virtue of its failure to fulfill its obligation to respect and ensure the rights protected under the Convention (Article 1(1)) its failure to ensure the victims' right to life (Article 4), their right to humane treatment (Article 5), their right to a fair trial (Article 8), and their right to judicial protection (Article 25(1)).

12. The petitioners allege that the situation at "Urso Branco" Prison is one of extreme violence. A total of 27 persons deprived of freedom died in the carnage that occurred at the prison on January 1 and 2, 2002. Since that incident, and as of the date of this report, 60 more deaths have occurred inside the prison's walls. The petitioners are also denouncing the conditions at "Urso Branco" Prison.

13. The petitioners allege that various legal inquiries and proceedings were instituted into the deaths that occurred inside the prison. However, they contend that there has been an unwarranted delay, mainly in the case of the investigations into the slaughter of January 1 and 2, 2002. Thus far, they contend, only the interrogatories have been completed; no plans are as yet in place to hear testimony of witnesses or for the judgment binding defendants over for trial. As for the deaths that happened subsequent to the massacre (i.e., after January 2, 2002), the petitioners contend that in very few cases have the guilty parties been convicted; many of these cases have not moved beyond the police-investigation phase (the investigation that precedes court proceedings) or are pending an interlocutory sentence of arraignment (the decision that binds the accused over for trial by a jury, which has jurisdiction to prosecute crimes against life).

14. The petitioners assert that the State did not provide any information on the investigations into the deaths that occurred after 2002, on the pretext that it was having difficulties getting the information. The petitioners argue that the State's claim is preposterous since these cases are under the responsibility of the State. The petitioners contend that the deaths at the prison are evidence of the Brazilian authorities disregard for the lives of persons deprived of freedom and shows that the Brazilian authorities are not disposed to prevent further deaths or even effectively investigate incidents that have occurred within the prison's walls and convict the guilty parties.

15. The petitioners maintain that conditions at "Urso Branco" Prison are completely unsuitable for persons deprived of freedom. They assert that "Urso Branco" Prison does not conform to international standards for the protection of human rights and that the victims are incarcerated in unhealthy and unsafe conditions.

16. The petitioners report that medical and dental care at the prison is poor, and that many persons deprived of freedom have died for lack of care. In 2002, the then prison warden, Lieutenant Colonel Josanildo Querino, told the petitioners that the medical care provided was poor, owing to the fact that the physicians hired were not diligent. He stated further that the prison did not have on-site dentists and social workers. In July 2006, the petitioners reported that health services at the prison were still very poor and that medical care there was grossly inferior. According to the petitioners, a new infirmary was built in the prison, but is not being used because it is not properly equipped and outfitted. The old infirmary is still providing outpatient care and has only one bed. The team to provide medical care to the persons deprived of freedom at "Urso Branco" Prison consists of one physician, one nurse, four nurse's aides, a psychologist, a dentist and one social worker.[FN4]

[FN4] Information obtained by request and sent to the IACMR by the petitioners on May 2, 2006.

17. According to the director of the SEAPEN Health Unit, the lack of daily exposure to the sun, inaccessibility of running water for personal hygiene, and unsanitary cells increase the incidence of infectious-contagious diseases.[FN5] The petitioners assert that many cells have neither bathrooms nor running water, making personal hygiene impossible. They also claim that some cells are not properly ventilated and that the temperature and humidity in the cells is high, making conditions all the more unsafe for the persons deprived of freedom at "Urso Branco" Prison.

[FN5] Information obtained by request and sent to the IACMR by the petitioners on July 6, 2006.

18. The petitioners are protesting the prison's security system. They warn that lack of control at "Urso Branco" Prison is serious – the persons deprived of freedom break padlocks and build underground tunnels that link the various cells. The petitioners[FN6] assert that on average between 20 and 30 padlocks are broken per week. The number of weapons found in the prison is also significant. An inspection carried out on April 18, 2006, turned up 24 chuchos [FN7], two

knives and four iron bars. This same inspection (on April 18, 2006) also turned up clandestine connections between cells, built by the persons deprived of freedom.[FN8] One reason suggested by the petitioners to explain the dangerous conditions at the prison is its overcrowding. They report that the prison population is almost twice the prison's capacity. The petitioners also attribute the lack of security at the prison to the extremely rundown physical structure of the cellblocks at "Urso Branco" Prison. The petitioners believe that structural and organizational reforms are needed at the prison. They warn that the cells at "Urso Branco" Prison have been in terrible structural condition for long, yet the Brazilian State has not taken measures to find an immediate solution to the problem.

[FN6] Information supplied by the Judge with jurisdiction over Execution of Criminal Sentences. Document dated July 6, 2006.

[FN7] A handcrafted weapon made with iron bars.

[FN8] Nine interconnected cells in cellblock "A"; nine interconnected cells in cellblock "B"; four interconnected cells in cellblock "C" nine interconnected cells in each of cellblocks "D", "E" and "F," for a total of 44 interconnected cells.

19. The petitioners also report that corruption is rampant in the prison system, a problem aggravated by the fact that the low-paid prison guards are not properly trained. According to the petitioners, all these factors combine to cultivate a climate that corrupts and ensnares, forming a web that is solid, impenetrable and insoluble. It is corruption that enables drugs, cell phones and weapons to make their way into prisons. The petitioners note also that prison guards are at risk, as they are not given security, training and a safe working environment.

20. According to the petitioners, mistreatment of the victims is common practice at "Urso Branco" Prison. They contend that prior to the weekly visits made to the cells in 2002, at the beginning of the work day the prison guards frequently threw gas bombs at the persons deprived of freedom, and then required that they take off their clothes and "run the gauntlet" to get to the prison courtyard: prison guards would form two rows, facing each other, and the victims would be forced to run through this corridor of guards, while the latter beat them on the head and ribs using their billy clubs. There are also reports that after the visits made by human rights defenders[FN9] the victims in the cells that the team had visited were beaten and tortured. Between June 23 and 27, 2002, 308 persons deprived of freedom were put on a punishment regime and given water only sporadically. They were forced to take care of their physiological needs in open air. During the day, these people were left in the heat of the sun (Porto Velho's temperature during those days ranged from 30 to 38° C). They were also beaten over the course of this period, and had their heads shaved.

[FN9] This was true of the visit that the Global Justice Center made to the prison on July 15, 2002.

21. The petitioners point out that despite the evidence of torture within the prison, various inquiries and investigations undertaken to look into the torture of persons deprived of freedom at “Urso Branco” Prison were never concluded.[FN10]

[FN10] The petitioners allege that the Administrative Inquiry opened in the wake of the slaughter of January 1, was closed on September 4, 2002, having reached the following conclusion: “The Office of the Magistrate of the Prison System concluded that neither malice nor negligence on the part of any prison system employee caused the tragedy that occurred on January 1; quite the contrary, their conduct reveals a desire to save the lives of the inmates, even those lives that were so violently and inexplicably snuffed out that day.”

Similarly, according to the petitioners Disciplinary Administrative Inquiry No. 0046/2002-COGESP/SUPEN was closed by Directive No. 815/2002/GAB/SUPEN. This inquiry was conducted in the wake of the alleged torture of inmates following the visit made by members of the Global Justice Center. The petitioners claim that in the administrative proceeding, the Permanent Investigative Commission heard only from police officers; the warden of “Urso Branco” Prison at the time, MP Colonel Josanildo Querino, did not allow the Commission into the prison to question the inmates allegedly tortured..

22. The petitioners assert that contrary to what the State alleges, the so-called “safe cells” – overcrowded and unfit cells that housed persons being threatened by other inmates- were never actually decommissioned. The “safe-cells” were replaced by the “birdcage”. In other words, the persons deprived of freedom were transferred from the “safe cells” to another area that was just as unfit to house persons and just as overcrowded. According to the petitioners, the “birdcage” is just as unhealthy: there is no bathroom; the heat inside is excessive; the area is not adequately protected from the elements (when it rains the cell floods); it is infested with flies, and piles of paper are used as mattresses and beds. Later, the petitioners allege, those threatened within the prison were transferred to the “boxes” – cells called that way because of their structure. They are concrete units, with holes in the walls to allow for breathing. The so-called “boxes” measure about five square meters. The holes in the walls are the only source of ventilation. The persons deprived of freedom in these cells have told the petitioners that they are constantly threatened by the “leaders” of the pavilions and that they are not being adequately protected.

23. The petitioners’ position is that the State seeks to misrepresent the facts, without actually correcting the serious conditions at the prison. For the petitioners, the ideal solution would be to build a proper facility that conforms to international standards for the protection of human rights, to house those who are threatened and later transfer them to another prison.

24. In sum, the petitioners point to the Brazilian State’s failure to act on the deaths that occurred inside “Urso Branco” Prison and on the prison conditions that the victims are enduring. The petitioners assert that conditions at the prison are dangerous to the health of the persons deprived of freedom and prison staff alike, and are not up to the standards prescribed by the Law on Execution of Criminal Sentences[FN11]. They also allege that prison staff lacks proper working conditions.

[FN11] Law on Execution of Criminal Sentences, No. 7210/84, Articles 1 and 10 to 36.

B. The State

25. In a communication sent to the IACtHR on April 22, 2003, the State acknowledges that, in fact, “Urso Branco” Prison was overcrowded, unsafe and unhealthy, that medical care at the prison was inadequate and that the prison population was to a large extent idle. In this regard, by a Joint Recommendation from the Court with jurisdiction over Execution of Criminal Sentences and the Prosecutor from the 10th Public Prosecutor’s Office, the Brazilian State immediately recommended the following: (1) that the prison overcrowding issue be resolved ; (2) that a new prison facility be put into operation; (3) that investigations be carried out regarding torture and beatings involving prison guards and military police; (4) that periodic cell inspections be conducted; (5) that the establishment be equipped to provide medical and dental care to all persons deprived of freedom; (6) and that security controls to prevent arms, drugs and cell phones from making their way into prisons be stepped up, among other recommendations.

26. The State thus acknowledges the violence and other conditions under which persons deprived of freedom are held at “Urso Branco” Prison. Nevertheless, it contends that it took the necessary steps to restore normalcy, and to bring the prison system in line with international human rights standards on the theme. The State alleges that after taking a number of steps, which will be described below, it regained full control of the prison unit, which was essential to safeguard the lives of the persons deprived of freedom. To supervise, monitor and coordinate the measures the State took, a Special Commission of the “Council for the Protection of Human Rights” was formed.

27. As for the deaths that occurred inside the prison, the State asserts that it firmly intends to conduct investigations so that all the guilty parties are properly punished. In the case of the massacre on January 1 and 2, 2002, the State asserts that the judicial procedure is extremely complex since it involves multiple deaths and multiple perpetrators. Among the hundreds of judicial acts that were performed, the State notes that the questioning of the witnesses was completed on May 23, 2006. As for the other deaths that occurred inside the prison (between the time of the massacre and the date of presentation of this report), all the incidents are being duly investigated, some prisoners have already been convicted and their sentences have become final.[FN12] The State therefore contends that the Bureau of Prisons is heavily committed to investigating the deaths and the death threats that occurred, are occurring or could occur.

[FN12] Attached is the list identifying the dead by name and the status of the court inquiries or police investigations, which is based on information provided by both parties.

28. The State objects to the charge that it has taken no action on the torture cases. It claims that administrative inquiries[FN13] were instituted to examine the accounts of the persons deprived of freedom. Those investigations are proceeding normally, following the procedures of

the Brazilian domestic system of justice. It also asserts that the petitioners are making reckless accusations against the authorities, accusing them of heinous crimes (incidents of torture), without offering any concrete evidence and without ensuring their right to refute the charges. The State points out that the right to a presumption of innocence is one of the principles of due process of law.[FN14]

[FN13] As with Case No. 0046/2002 (SUPEN/RO).

[FN14] Federal Constitution of Brazil, 1988, Article 5, paragraph LVII.

29. As for conditions at the prison, the State defends itself by asserting that it firmly intends to rid “Urso Branco” Prison of any threat to human rights. To restore order at the prison, the State sent an Investigation Mission to Rondônia, to negotiate with state authorities with a view to working out effective measures to ensure the lives and physical safety of the persons deprived of freedom.

30. To correct the overcrowding at “Urso Branco” Prison, the federal and state governments have teamed up to rebuild the “Casa de Detenção José Mario Alves”.[FN15] The State contends that this measure will eliminate the overcrowding problem and will separate accused persons from those who have already been convicted. It points out that the State is making numerous efforts to increase the number of vacancies available in prisons throughout the state of Rondônia.

[FN15] Information supplied in April 2003; the Brazilian Government’s 13th Report.

31. The State asserts that the lack of security prior to 2004, caused by the insufficient number of prison guards, was corrected when reinforcements were sent to boost the number of guards and maximize security at the prison. Furthermore, guard staffing was significantly improved; according to the State, the number of guards per shift[FN16] went from an average of 13 to an average of 16. Furthermore, the state of Rondônia provides ongoing training for prison guards.

[FN16] The Brazilian State’s Tenth Report, December 2004/January to February 2005.

32. The State contends that medical and dental care at the prison has improved significantly. According to the reports of the SEAPEN Prison Health Unit, in November and December 2004 medical treatment was administered 428 times; in January, 266 times; and in February 379 times. In January 2005, a number of persons deprived of freedom were diagnosed with malaria. In partnership with the National Health Foundation (Fundação Nacional de Saúde - FUNASA), the Porto Velho prison units were externally sprayed, which controlled the spread of malaria. A Health Fair was held on February 22, 23 and 24, and was attended by 492 persons deprived of freedom.

33. As for the legal counsel provided to the persons deprived of freedom, the State pointed out that in addition to the Moving Justice Project – a project conducted in 2004 and 2005 to address their legal situation – another project keeps public defenders representing persons deprived of freedom in “Urso Branco” prison, in constant contact with the Public Prosecutor’s Office and the courts.

34. In sum, the Brazilian State asserts that it is firmly committed to the “Casa de Detenção José Mario Alves” and that all measures necessary to bring it in line with international standards were either already taken or are in progress. As for the deaths that occurred inside the prison, the State contends that all measures necessary to identify and convict the guilty parties are being taken in accordance with the American Convention on Human Rights and Brazilian domestic law.

IV. ADMISSIBILITY

35. During the processing of the petition with the Commission and of the provisional measures requested to the Court, the petitioners and the State filed successive reports concerning the precautionary measures, the provisional measures and the case of “Urso Branco” Prison, to update the information reported in the complaints.

36. As for the nature of the facts in the present case, to exclude from this admissibility report the facts as alleged by the petitioners would be irrational and contrary to the object and purpose of the American Convention. In this report, the Commission addresses each of the facts alleged thus far by both parties.

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

37. In accordance with 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 since September 25, 1992, and is therefore internationally accountable for violations of it.

38. The Commission regards as alleged victims in this case those persons who have been affected by conditions at the “Casa de Detenção José Mario Alves”, known as “Urso Branco” Prison, at anytime during the period from 2001 to the present.[FN17] The Commission includes among the alleged victims in this case anyone who died at the prison since November 3, 2000 to the present.

[FN17] Attached is the list identifying the dead by name and the status of the court inquiries or police investigations, which is based on information provided by both parties.

39. The Commission has competence rationae materiae by virtue of the fact that the petition alleges violations of human rights protected by the American Convention in Articles 1(1), 4, 5, 8

and 25(1). The Commission is competent rationae temporis because the violations alleged were said to have occurred when the obligation to respect and ensure the Convention-protected rights was already in force for Brazil, in other words, subsequent to September 25, 1992. The Commission is competent rationae loci because the facts allegedly occurred within the territory of the Federative Republic of Brazil, a country that ratified the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

40. 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.

41. The rule requiring exhaustion of domestic remedies affords the State the opportunity to have its own judicial bodies investigate and punish human rights violations committed by State agents, before having to face an international proceeding. This presupposes, of course, 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.

42. The petitioners allege that there has been unwarranted delay in the respective domestic proceedings, and also that the remedies under domestic law have been ineffective. Under Article 31 of the Commission's Rules of Procedure, when a petitioner asserts any of the exceptions, it is up to the State to demonstrate that internal remedies were not pursued and exhausted, unless this is self-evident from the facts presented. Based on principles of international law, the precedents established by the Commission and the case-law of the Inter-American Court, the respondent State may waive, either expressly or tacitly, its right to invoke the rule requiring exhaustion of domestic remedies.[FN18] Secondly, the objection asserting failure to exhaust domestic remedies, to be timely, must be made at an early stage of the proceedings before the Commission by the State entitled to make it, lest a waiver of the objection be presumed. Third, the burden of proof in such a case rests with the State alleging failure to exhaust domestic remedies, which must show which remedies have to be exhausted and provide proof of their effectiveness.

[FN18] IACtHR, Report No. 69/05, petition 960/03, Admissibility, Ivan Eladio Torres, Argentina, 13 October 2005, paragraph 42; IACtHR, Ximenes Lopes v. Brazil. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, paragraph 5; IACtHR. Moiwana Community v. Suriname. Judgment of July 15, 2005. Series C No. 124, paragraph 49; and IACtHR, Serrano Cruz Sisters v. El Salvador. Preliminary Objections. Judgment of November 23, 2004, Series C No. 118, paragraph 135.

43. Thus, if the State in the case under dispute does not promptly enter the objection asserting failure to exhaust domestic remedies, it may be presumed to have tacitly waived its right to do so. In the instant case, the State did not attempt to make the case that the requirements for the petition's admissibility had not been met. The Commission therefore understands that the State tacitly waived its right to use that defense.

44. The State's tacit waiver notwithstanding, the Commission observes that the exceptions to the rule requiring exhaustion of domestic remedies do apply, as will be explained below, either because the internal remedies attempted produced no result, or there was an unwarranted delay, or the State failed to act ex officio, which was its duty. With every inquiry conducted[FN19] and the subsequent indictment, the judicial authorities were aware of conditions at "Urso Branco" Prison. With its provisional measures, the Court ordered an investigation of the situation at the prison,[FN20] yet the State failed to open any legal proceeding into the matter. Furthermore, the administrative measures to ensure the safety of the persons deprived of freedom, which were taken at the behest of the petitioners and of the beneficiaries themselves through letters sent to the responsible authorities ultimately had no practical effect.

[FN19] Attached is the list identifying the dead by name and the status of the court inquiries or police investigations, which is based on information provided by both parties.

[FN20] Order of the Inter-American Court of Human Rights of June 18, 2002; Precautionary Measures requested by the Inter-American Commission on Human Rights with regard to the Federative Republic of Brazil – "Urso Branco" Prison Case, resolving paragraph 1(d).

45. The Commission notes here that it was the responsibility of the State, through the Public Prosecutor's Office, to ensure the beneficiaries' physical safety, to seek the necessary court action, and to keep the process moving forward.[FN21]

[FN21] Constitution of the Federative Republic of Brazil (1988): Article 127. The Public Prosecutor's Office is a permanent institution, essential to the jurisdictional function of the State, and it is its duty to defend the juridical order, the democratic regime and the inalienable social and individual interests." Law 7,347/85 concerning Public Civil Action, Article 1, paragraph V, and Article 5.

46. The judicial proceedings and the police investigations to identify and prosecute those responsible for the deaths that occurred at "Urso Branco" Prison since November 2000 are still underway and have reached very few conclusions.[FN22] There has been an unwarranted delay in determining who was responsible for these deaths, mainly in the case of the January 2002 massacre in which 27 people died.

[FN22] Attached is the list identifying the dead by name and the status of the court inquiries or police investigations, which is based on information provided by both parties.

2. Time period for lodging a petition

47. Under Article 46(1)(b) of the American Convention, for a petition to be admissible it must be lodged within six months from the date on which the party alleging violation of his or her rights was notified of the final judgment that exhausted domestic remedies. Article 32 of the Commission's Rules of Procedure provides that “[i]n those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.”

48. The massacre at “Urso Branco” Prison –one of the reasons why the case against the Brazilian State was brought- occurred on January 1, 2002. The petition asking the Commission to open a case against the State in connection with the situation at the “Casa de Detenção José Mario Alves”, known as “Urso Branco” Prison, was lodged on June 5, 2002, which the Commission believes was within a reasonable time period.

3. Duplication of international proceedings and res judicata

49. Nothing in the file of this petition or in any information received by the Commission suggests that the subject matter of the petition is pending decision in another international proceeding for settlement or that it is substantially the same as one previously examined by the Commission. The Commission therefore concludes that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts

50. The Commission’s *prima facie* assessment is that the facts alleged by the petitioners tend to establish potential violations of Article 4 of the Convention, in the case of the persons who died within the prison; possible violations of Article 5 of the same instrument, with regard to the conditions under which persons deprived of freedom at “Urso Branco” Prison are held and with regard to those wounded as a result of the uprising or any other violence; possible violations of Articles 8 and 25(1) of the Convention with regard to the wounded persons, any and all persons who may have suffered as a result of conditions at the prison by reason of the inefficacy of a proper remedy, as well as the next of kin of those who died in the incidents at “Urso Branco” Prison. All the above in relation to the obligation enshrined in Article 1(1) of the Convention.

51. Furthermore, and although not alleged in the petition, the Commission, exercising its authority under the principle of *iura novit curiae*, decides to examine whether the facts denounced might also demonstrate non-compliance with the obligation enshrined in Article 2 of the American Convention. As stated previously, when examining the domestic remedies, the Commission decided to admit the petition because in its view Brazilian law may not make

provision for an effective legal procedure by which to make Brazilian prisons conform to standards of dignity.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible regarding the alleged violations of Articles 4, 5, 8 and 25(1) of the American Convention, in relation to the obligations enshrined in Articles 1(1) and 2 thereof;
2. To notify the State and the petitioners of this decision;
3. To continue with the analysis of the merits of the case;
4. To publish this report 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 the 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President, Florentín Meléndez, Second Vice-president, Freddy Gutiérrez, Paolo Carozza and Víctor Abramovich, members of the Commission.

List of inmates who have died since November 2000 at the Casa de Detenção José Mario Alves, known as “Urso Branco” Prison in Porto Velho, state of Rondônia, Brazil[FN23]

Name	Date	Cause	Phase of Inquiry/Proceeding[FN24]
1. Alessandro de Souza Pinho	3 November 2000	Killed in an uprising	No information
2. Aurimaci Cavalcante dos Santos	18 January 2001	Allegedly killed by inmates Shirleno Barroso da Costa, Ednildo Paulo de Souza and Alderley Carvalho Assemi, who purportedly beat him to death with a “chuço”.	Shirleno Barroso da Costa was killed in an escape attempt; Alderley Carvalho Assemi was sentenced to 17 years in prison, and Ednildo Paulo de Souza is still being prosecuted for the murder (Case No. 501.2001.002213-4)
3. Dithley da Silva Daniel	04 May 2001	Killed (no additional details).	No information
4. Josías Portugal de Almeida	04 May 2001	Killed, allegedly by inmate Romualdo Antônio Gonçalves Aragão, who was armed with a “chuço”.	Case No. 501.2001.002397-1 is on hold until the individual is recaptured. He has been a fugitive from justice since August 8, 2001.

5.	Edson Sarmento Brasil	16 May 2001	Killed, allegedly by inmate José de Arimatéia Nogueira Queiroz, who purportedly beat the victim to death using a “chuço”.	The alleged murderer was charged on May 29, 2001, and the finding of probable cause was on September 25, 2001, based on Article 409 of the Brazilian Penal Code. In court, José de Arimatéia denied being the author of the crime. He testified that another inmate had forced him to admit to the crime to the prison authorities. The inmate he said was the actual killer, Roni Pio Machado, was killed inside the prison. Police Inquiry No. 146/2001 was instituted to establish the true authorship of the murder. José de Arimatéia was also killed on April 30, 2003.
6.	Francisco Ferreira Duarte	06 June 2001	Killed, allegedly beaten to death by Reniere de Souza Lopes and Assis Santana da Frota who were armed with “chuços”.	The prisoners were acquitted in Case No. 501.2001.003206-7 based on Article 386, VI, of the Brazil Code of Criminal Procedure. No information has been obtained to indicate that a new inquiry into the victim’s death has been opened.
7.	Roni Pio Machado	09 June 2001	Killed, allegedly beaten to death by Luiz Marques Pereira, who was armed with a “chuço”.	Case no. 501.2001.003227-0. The suspect was bound over for trial but escaped on August 2, 2001; he was killed on August 5, 2001.
8.	Shirleno Barroso Costa	02 August 2001	Shot to death by Military Police in a mass escape attempt	Under investigation in Police Inquiry No. 108/2001.
9.	André Evangelistas dos Santos	5 August 2001	Killed, allegedly by inmates Marco Antônio Ribeiro dos Santos and Elissandro Brito da Silva.	Elissandro Brito da Silva died in the massacre of January 1 and 2, 2002. Marco Antônio Ribeiro dos Santos was convicted and sentenced to 16 years in prison in Legal Proceeding No. 03.003267-9. He appealed his conviction and had the sentence nullified. A new ruling in the case is pending..
10.		5 August 2001	Killed, allegedly by	Elissandro Brito da Silva died in

Manoel Evangelista dos Santos		inmates Marco Antônio Ribeiro dos Santos and Elissandro Brito da Silva.	the massacre of January 1 and 2, 2002. Marco Antônio Ribeiro dos Santos was sentenced to 16 years' imprisonment in Legal Proceeding No. 03.003267-9. He appealed the conviction and had the sentence nullified. A new ruling in the case is pending.
11. Valdeci Ferreira de Almeida	7 September/2001	Killed, allegedly by inmate José Carlos Delgado Derlamani in an episode that has come to be known as the "Maria Conga Massacre".	Police Inquiry No. 112/2001, although the identity of the author has not been fully established.
12. Acilmar Souza da Silva or Ocielio Emilio da Silva	11/September/2001	Killed in a massacre	Police Inquiry No. 803/2001.
13. Derli Fortunato da Silva	11/September/2001	Killed in a massacre	Police Inquiry No. 803/2001.
14. Gilmar Pereira Cabral Junior	11/September/2001	Killed in a massacre	Police Inquiry No. 803/2001.
15. Marcos José Paz de Castro	11/September/2001	Killed in a massacre	Police Inquiry No. 803/2001.
16. Raimundo Nonato de Lima	11/September/2001	Killed in a massacre	Police Inquiry No. 803/2001.
17. Ranievon Lima Silva	11/September/2001	Killed in a massacre	Police Inquiry No. 803/2001.
18. Joel Barbosa da	13/September/2001	Killed. (no further details).	No police inquiry is in progress.

Silva			
19. Claudinei Pedro de Andrade	30/November/2001	Killed in a mass escape attempt	Police Inquiry No. 158/2001/DEECV/RO.
20. Sebastião Luciano Alves	30/November/2001	Killed in a mass escape attempt.	Police Inquiry No. 158/2001/DEECV/RO.
21. Acilon dos Santos Carvalho	1/January/2002	Massacre of 1 January de 2002	- Administrative Inquiry No. 0001/2002 COGESP/ SUPEN was opened on January 2, 2002 and closed on September 4, 2002, with directive No. 628/2002-GAB/SUPEN, which concluded the following: "The Office of the Magistrate of the Prison System found that neither malice nor negligence on the part of any prison system employee caused the tragedy that occurred on January 1 of this year; quite the contrary, the conduct reveals a desire to save the lives of the inmates, even those lives that were so violently and inexplicably snuffed out. The only course of action, then, is to close the present administrative proceeding." [FN25].
22. Adilson Pereira da Silva	1/January/2002	Massacre of 1 January de 2002	
23. Acirlei Rodrigues da Silva	1/January/2002	Massacre of 1 January de 2002	
24. Anderson Ibiapino de lima	1/January/2002	Massacre of 1 January de 2002	
25. Antônio Carlos Andrade de Souza	1/January/2002	Massacre of 1 January de 2002	
26. Antônio Carlos Pereira de Freitas	1/January/2002	Massacre of 1 January de 2002	- Court Case No. 5012002000549-6. Phase involving the interrogation of inmates. No plans are as yet in place to hear testimony or for the hearing binding suspects over for trial.
27. Antônio Elineudo Lima Nascimento	1/January/2002	Massacre of 1 January de 2002	
28. Edissandro Macedo da Conceição	1/January/2002	Massacre of 1 January de 2002	
29. Elissandro Brito da Silva	1/January/2002	Massacre of 1 January de 2002	

30. Elizeu Ferreira da Silva	1/January/2002	Massacre of 1 January de 2002
31. Francisco Araújo Xavier or Francisco Xavier da Silva	1/January/2002	Massacre of 1 January de 2002
32. Gilberto da Cruz Pereira	1/January/2002	Massacre of 1 January de 2002
33. Gilson de Souza Coreas	1/January/2002	Massacre of 1 January de 2002
34. Gilson Ferreira de Souza ou de Souza Corea	1/January/2002	Massacre of 1 January de 2002
35. Iran Ferreira da Silva	1/January/2002	Massacre of 1 January de 2002
36. Irismar Frazão Silva	1/January/2002	Massacre of 1 January de 2002
37. Ivan de Jesus Pereira	1/January/2002	Massacre of 1 January de 2002
38. Izaque da Silva Pires or Isaque	1/January/2002	Massacre of 1 January de 2002
39. João Pereira Rocha or Ferreira da Rocha	1/January/2002	Massacre of 1 January de 2002
40. Joarez Dias da Silva or Juarez	1/January/2002	Massacre of 1 January de 2002
41. Jean Carlos Cruz Nogueira	1/January/2002	Massacre of 1 January de 2002
42. José Francisco Ferreira Brito	1/January/2002	Massacre of 1 January de 2002

43.	Maico Rocha dos Santos	1/January/2002	Massacre of 1 January de 2002
44.	Márcio José Cardoso	1/January/2002	Massacre of 1 January de 2002
45.	Raimundo Nonato Gomes Costa	1/January/2002	Massacre of 1 January de 2002
46.	Rodolfo Tavares Cunha	1/January/2002	Massacre of 1 January de 2002
47.	Rodomilson Nunes Lindoso	1/January/2002	Massacre of 1 January de 2002
48.	Simão João Reski Neto	1/January/2002	Massacre of 1 January de 2002
49.	Wilson Pereira Feitosa	1/January/2002	Massacre of 1 January de 2002
50.	Marcos Oliveira Monteiro	18/February/2002	Killed, allegedly by other inmates. Police Inquiry No. 0021/2002. Under investigation.
51.	Aurimacy Cavalcante dos Santos	18 February 2002	Killed, allegedly by other inmates. Police Inquiry No. 0021/2002. Under investigation.
52.	Sidney José da Silva Maciel	18 February 2002	Killed, allegedly by other inmates. Police Inquiry No. 0021/2002. Under investigation.
53.	Jussier Silva da Costa	9 March 2002 or 10 March 2002[FN26]	Killed, allegedly beaten to death by inmate Reginaldo Galvão, who was armed with a “chuço”. Police Inquiry No. 024/2002-DECCV. Case No. 501.2002.000838-0. O case was closed when the suspect died on January 4, 2003.
54.	Alexsandro Ferreira da	10 March 2002	Brutally murdered, allegedly by inmate Ednildo de Paula. Police Inquiry No. 026/2002-DECCV. The finding of probable cause came down in December

Silva			2002. The case was closed when the suspect died in March 2003.
55. Valdir Chrispin Macedo	14 April 2002[FN27] or 15 April 2002	Killed, alleged by other inmates wielding “chuços”.	Police Inquiry No. 0036/2002. Under investigation.
56. Reginaldo Mendonça de Oliveira	2 May 2002	Killed, allegedly by other inmates who beat him to death using “chuços”.	Police Inquiry No. 042/2002. Complaint filed in April 2002. Case No. 501.2002.000838-0. In November 2002, the Judge agreed to the Public Prosecutor’s request that the case be closed because the identity of the murderers was unknown.
57. Francisco Néri da Conceição	3 May 2002	Killed by Corporal José Nogueira da Silva, who claimed that the inmate had attacked him.	Police Inquiry No. 0043/2002-DECCV. Court Case No. 5012002003163-2. In May 2005, the Judge agreed to the Public Prosecutor’s request that the case be closed.
58. Nilton Felbech de Almeida	8 May 2002	Killed, allegedly by other inmates who beat him to death using “chuços”.	Police Inquiry No. 0046/2002. Under investigation. The identity of the authors of the crime has not yet been established.
59. Manoel Figueiredo de Souza	10 May 2002[FN28] or 9 May 2002	Killed, allegedly by other inmates who beat him to death using “chuços.”	Police Inquiry No. 0047/2002-DECCV/RO. Case No. 501.2002.003289-2. Closed in November 2005.
60. Antônio Miguel Alves	09 June 2002	Brutally killed, allegedly by other inmates	No information
61. Evandro Mota de Paula	10 June 2002	Accidentally shot by prison guard Luis Alberto de Oliveira Macedo.	No information.
62. Claudisson Maciel da Silva	23 June 2002	Killed, allegedly by other inmates who beat him to death with a “chuço”	Police Inquiry No. 0074/2002-DECCV. Case No. 5012002003292-2
63. Marcelo Ferreira Paixão	23 June 2002	Killed, allegedly by other inmates who supposedly beat him to death with “chuços”	Police Inquiry No. 0060/2002. Case No. 20020013007039

64. Manuel Laborda Nascimento	12 November 2002	Killed (no additional information).	Police Inquiry No. 0060/2002. Still under investigation.
65. Paulo Cesar Cazuza	4 January 2003	Beaten to death, allegedly by other inmates wielding “chuços”.	Police Inquiry No. 060/2002
66. Reginaldo Galvão	4 January 2003	Start of an uprising. Killed, allegedly by another 17 inmates who supposedly beat him to death with “chuços.” Start of an uprising.	Case No. 501.2003.000044-6. Ruling binding the suspect over for trial, dated July 2003. That ruling was then appealed. The appeal was denied by the Criminal Chamber of the Tribunal of the State of Rondônia in March 2005.
67. Paulo César Cazuza	4 January 2003	Beaten to death, allegedly by 17 other inmates wielding “chuços” Start of an uprising	Case No. 501.2003.000044-6. Ruling binding over for trial dated July 2003, which was then appealed. The Criminal Chamber of the Tribunal of the State of Rondônia denied the appeal in March 2005.
68. Mozart Soares Freitas Filho	9 February 2003 or 8 January 2003	Killed, allegedly by four inmates – Paulo Rodrigues Lopes, Francisco das Chagas Nascimento, Frankmar Sabino de Souza and Ernando Ferreira de Amorim – wielding “chuços”	Inquiry No. 016/2003-DECCV/RO. Case No. 501.2003.000044-6. Defendants convicted in November 2003.
69. Amauri de Souza Lopes	9 February 2003	Killed (no additional information).	No information.
70. Amaury da Silva Batista	10 February 2003	Killed by hanging, allegedly by his cellmates. The cellmates deny having killed the victim and accuse inmates Luiz Miguel, Marcelo da Silva Mendes and	Inquiry No. 016/2003-DECCV/RO. Case No. 501.2003.000420-4. The defendants were convicted in 2004 (no specific details).

			José Pereira de Carvalho.	
71.	Denis de Lima Gomes	12 March 2003	The victim died two days after receiving a court-ordered release because he had contracted hepatitis B in the prison. The family alleges that the prison administration did not make medical care available.	Administrative proceeding 034/03/COET/CJP-RO was instituted to determine criminal and civil liabilities. The finding was: "Having ruled out administrative liability for the death, some explanation is still possible as to the reasons for the delay in getting medical care for the prisoner. Then there is the question of whether there was mistreatment." No police inquiry was instituted to investigate the death.
72.	Antônio Edilinton dos Santos Nobre	30 April 2003	Killed (no additional information).	Police Inquiry No. 0016/2003. Still under investigation.
73.	Erique Parada Rodrigues	22 September 2003	Killed, allegedly beaten to death by inmate Jeanclei de Freitas Vasconcelos wielding a "chuço."	Police Inquiry No. 0482/2003-10 (PP). Case No. 501.2003.006435-5. Inmate Jeancley de Freitas Vasconcelos was convicted and then sentenced on May 27, 2004.
74.	Ademilson Pereira da Silva	30 December 2003	Killed, allegedly by other inmates.	No information
75.	Lindomar Castilho Santos da Silva	10 March 2004	Killed, allegedly by another inmate.	Accused convicted on May 27, 2004
76.	Ismael Marcio Soares ou Israel Máximo Soares	16 April 2004	Choked to death, allegedly by inmate Valci Conceição Marolo.	No information
77.	Jailson Quintino de Lima	16 April 2004	Stabbed to death, allegedly by inmate Adelmo Martins Barbosa	No information
78.	Alex	18 April 2004	Massacre	No information

da Silva Fonseca			
79. Antonio Mendes Neto	18 April 2004	Massacre	No information
80. César Ramos Sodré	18 April 2004	Massacre	No information
81. Eduardo Angélico de Jesus ou Michel Muniz	18 April 2004	Massacre	No information
82. Enivonio Gonçalves dos Santos	18 April 2004	Massacre	No information
83. Gerson Merciano Gonçalves	18 April 2004	Massacre	No information
84. Giscard Swinca	18 April 2004	Massacre	No information
85. Isaque Monteiro do Espírito Santo ou Isaac Monteiro do Espírito Santo	18 April 2004	Massacre	No information
86. Jeckerson Alves da Cruz	18 April 2004	Massacre	No information
87. Luciano Teotônio dos Santos	18 April 2004	Massacre	No information
88. Sidnei Guimarães da Silva	18 April 2004	Massacre	No information
89. José Aparecido da Silva	10 June 2004	Death from natural causes	No information
90.	26 June 2004 to 14	Killed in a Military	On December 26, 2005, the police

Charles Borges Cardoso	July 2004[FN29]	Police operation – MP Sergeant Francisco das Chagas de Souza Mendes – conducted to stop a fight among prisoners.	officer who fired the shot that killed the victim was accused of intentional homicide. On April 4, 2006, the suspect appeared for questioning. Testimony is scheduled to be taken on July 6, 2006.
91. Izaias Lacerda dos Santos	12 July 2004	Death from natural causes	No information
92. Ronaldo Jesus da Silva	November 2004	Killed (no further details).	Police Inquiry No. 04.01.933. A military police officer was accused of intentional homicide. The questioning of the witnesses was scheduled for July 6, 2006. The State disputes the above information and claims that the victim was killed by another inmate who was convicted on April 26, 2005.
93. Jorge Laranjeira Viana	2 May 2005	Septic shock when an abscess caused by osteomyelitis in the right femur ruptured.	Police Inquiry No. 0057/2005. Under investigation. An administrative investigation is also underway.
94. Clemilson Rocha de Souza	24 September 2005	Killed (no further details).	The prisoner was convicted of murder on April 26, 2005.
95. Antônio Francisco da Silva	12 January 2006	Killed	Case No. 5001.2006.000.387-7. Proceedings for the probable cause finding.
96. Manud Carlos Damasceno	8 February 2006	Killed	Case No. 5001.2006.000.959-0. Deposition of accused inmate Josué Constantino da Silva slated for April 2006.

[FN23] The information contained in this list is from the reports sent to the Commission by the State and by the petitioners, the Global Justice Center and the Peace and Justice Commission of the Porto Velho Archdiocese,

[FN24] The information in this list is the most recent information supplied by the parties, and does not necessarily reflect the most recent stage of the proceedings.

[FN25] Administrative Inquiry No. 0001/2002/COGES/PUPEN, on April 17, 2002.

[FN26] From Memorandum No. 415/02/CC/DECCV/SESDEC of the Forensic Medicine Institute.

[FN27] From Autopsy Report No. 162/02.

[FN28] According to the Global Justice Center and the Justice and Peace Commission of the Porto Velho Archdiocese, in a document sent to the Commission on June 5, 2002, proven by autopsy report No. 202/02.

[FN29] According to the Global Justice Center and the Justice and Peace Commission of the Porto Velho Archdiocese, in a document sent to the Commission.
