I. SUMMARY

1. On December 20, 2002, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission," or the "IACHR") received a petition that Carlos Abraham Calderón Paz, an attorney with the Quetzaltenango Institute for Public Criminal Defense[FN1] (hereinafter "the petitioner") filed against the State of Guatemala (hereinafter "the State" or "the Guatemalan State," or "Guatemala") alleging the unlawful and excessive detention of Messrs. César Centeno Rosales, Efraín García Aquino, Reginaldo Arriola Ruíz and Óscar Alas Sanabria (hereinafter "the alleged victims") and the mistreatment the victims suffered during their incarceration, and the torture alleged to have been inflicted upon César Centeno at the time he was taken into custody. The facts alleged would constitute violations of articles 5(1), 5(2), 5(4), 6(1), 6(2), 6(3), 7(1), 7(3), 7(5), 8(1), 8(2) and 24 of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention") and articles 1, 2, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the Inter-American Convention against Torture").

[FN1] The original petition was filed by Carlos Abraham Calderón Paz, jointly with Jeydi Maribel Estrada Montoya. By a communication dated January 29, 2006, the latter is no longer a petitioner in the case.

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2. With regards to the admissibility of the petition, the petitioner argued that for those situations for which the internal jurisdiction contemplated remedies, they had been exhausted and had not been effective.

3. The State, for its part, alleged that the petitioner had failed to exhaust domestic remedies to re-establish the rights of the alleged victims, because civil law mechanisms are in place to obtain reparations for damages and injuries, and criminal actions can be brought against the public officials alleged to have committed the crimes.

4. After examining the petition and in keeping with articles 46 and 47 of the American Convention and articles 30, 37 et seq. of its Rules of Procedure, the IACHR declares the petition admissible with respect to the alleged violations of articles 5, 7, 8, 24 and 25 of the American Convention, in relation to the obligations erga omnes established in articles 1(1) and 2 thereof. The Commission also declares the petition admissible with regard to the alleged violation of articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. The Inter-American Commission further decides to notify the parties of this decision, to publish it and include it in the Commission's Annual Report to the Organization of American States' General Assembly.

II. PROCESSING BY THE INTER-AMERICAN COMMISSION

5. The Commission received the petition on December 20, 2002, and classified it as number 4657-02. The pertinent information was relayed to the State on May 22, 2003, which was given two months in which to present its reply. On June 22, 2004, the IACHR received additional information from the petitioner, which was forwarded to the State on January 27, 2005. On September 12, 2005, the petitioner sent still more information, which was sent to the State on November 11, 2005, with the request that it present its observations within one month. On February 14, 2006, the petitioner provided additional information, which was sent to the State on March 1, 2006. The State was given one month in which to present its observations. The Commission received the State's observations on April 3, 2006, which were forwarded to the petitioner on April 7, 2006. On October 25, 2006, the Commission received a brief from the petitioner, which was forwarded to the State on November 20, 2006. The State was given one month in which to present its observations. The State presented additional observations on December 28, 2006, which were forwarded to the petitioner on January 18, 2007. The petitioner was told to reply within one month. On January 27, 2007, the Commission received the petitioner's observations,[FN2] which were forwarded to the State on January 29, 2007.

[FN2] In this communication, the petitioner added articles 7(3) and 24 of the American Convention to the list of the rights violated by the facts reported in the petition.

III. THE POSITION OF THE PARTIES

A. The petitioner

6. The original petition alleged that members of the National Civil Police and the Guatemalan Army unlawfully detained Messrs. César Centeno Rosales, Efraín García Aquino, Reginaldo Arriola Ruíz and Óscar Alas Sanabria, on September 18, 1998, in the municipality of Patulul, Department of Suchitepéquez. The petitioner contends that three of the afore-named persons were dragged from their respective homes by the agents who took them into custody. They were then taken to a place which, according to the version of events given to the courts, was the place where they had been apprehended As for Mr. Centeno Rosales, the petitioner alleges that he was tortured by his captors, who were demanding information about outlaw groups.

7. According to the petitioner, the unlawful arrest and criminal prosecution of the alleged victims was done deliberately to blame them for a murder they did not commit.

8. On September 21, 1998, the Court of First Instance in Criminal Matters, Drug Activity and Crimes against the Environment, Santa Lucía Cotzumalguapa, Department of Escuintla, ordered that the detainees be held in preventive custody on charges of illegal possession of firearms.

9. The petition alleges that the case against the alleged victims was opened on August 17, 1999. They were accused of unlawful possession of firearms and of murder. The Sololá Trial Court for Criminal Matters, Drug Activity and Crimes against the Environment acquitted the four men on December 23, 1999, for lack of evidence.[FN3] However, the Public Prosecutor's Office appealed the verdict, which was overturned and a new trial ordered. On August 14, 2000, the very same court issued a new verdict in which César Centeno Rosales was found guilty of the crime of illegal possession of firearms and the crime of cover-up. He was given a commutable sentence of three years and six months in prison. The court ruling also acquitted the other defendants. The ruling was appealed by the Public Prosecutor's Office and by Mr. Centeno. On June 27, 2001, the Sololá Criminal Trial Court delivered another verdict, this time convicting the four accused and giving them a non-commutable sentence of 40 years in prison. The alleged victims appealed the decision, whereupon the verdict was nullified and a new trial ordered.

[FN3] The Court held that "the evidence introduced in this case was not sufficient to prove that the accused participated in the crimes with which they were charged. During the course of these proceedings, it was shown and proved that not one person witnessed the events in which Messrs. (….) lost their lives. Moreover, the investigative work done by the Public Prosecutor's Office was inadequate, negligent and irresponsible because it did undertake the investigations necessary to ascertain whether the accused were or were not responsible for the crime with which they were charged; there was sufficient evidence to establish the truth of what happened, yet the Public Prosecutor's Office did not take the lead in the investigation. In fact, it was the National Civil Police that directed and manipulated the investigation, and took it upon itself to attempt to determine the authorship of the crime. That is not the function of the police; it is the exclusive competence of the public prosecutor's office, as the organ charged with prosecuting crime."

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10. The petitioner alleges that none of the courts that heard the case ordered the release of the alleged victims, despite the requests made for that purpose. The petitioner explains that under Article 264 of the Penal Code, the sentencing guidelines are such that, where certain crimes are concerned, courts do not have the discretion to substitute one form of penalty for another; one such crime is murder. Even though the constitutionality of that article of the Penal Code was challenged as a violation of principles such as the presumption of innocence, the challenge was only upheld in the case of aggravated theft. Similarly, the petitioner writes that Article 268 of the Penal Code provides that deprivation of freedom shall end when the person has been in custody for more than one year; however it also stipulates that if a conviction has been handed down and is being appealed, preventive detention can last another three months, which the Supreme Court can renew as many times as necessary.[FN4] At the time the petition was filed, the alleged victims were still in preventive custody and awaiting trial. The case was transferred to the Quetzaltenango Regional Trial Court for Criminal Matters, Drug Activity and Crimes against the Environment. On March 5, 2003, that Court agreed to the motions entered claiming unlawful detention and violation of due process by virtue of unlawful detention. It acquitted the four defendants of all charges.[FN5] The foregoing notwithstanding, the alleged victims purportedly remained in preventive detention until the ruling became final; in other words, once the Special Appeal filed by the Public Prosecutor's Office was decided.[FN6]

[FN4] The petitioner alleges that the extension of preventive detention is virtually automatic and that "those in preventive custody in Guatemala City, the seat of the Supreme Court, have virtually no way to challenge and or put a halt to authorizations of extensions." Communication from the petitioner, dated September 12, 2005, received at the headquarters of the IACHR on September 19, 2005.

[FN5] On April 7, 2003, the petitioner requested that the IACHR seek precautionary measures (MC-496-03) on behalf of the alleged victims. The request was refused.

[FN6] The petitioner alleges that a constitutionality challenge and a petition seeking amparo relief take a long time; the main issue being litigated may be suspended until the challenges are decided, which adds to the period of time that the person in preventive custody remains behind bars. Fines can also be imposed on attorneys for filing petitions or challenges. The petitioner alleges that as a result, the constitutionality challenge and the petition seeking amparo relief are neither effective nor suitable as solutions for the situation being denounced, which opens the door for the claim that domestic remedies were not exhausted.

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11. On October 22, 2003, the Seventh Chamber of the Quetzaltenango Appellate Court dismissed the Special Appeal filed by the Public Prosecutor's Office and ordered the release of the alleged victims.

12. The petitioner alleges that the alleged victims suffered inhuman and degrading treatment while in custody. There was no way to file any complaint because discipline in the facility was controlled by the prisoners themselves. The petitioner alleges, in particular, that Mr. Centeno Rosales was held in four different prisons; in some of them he did not even have a bed, because to do so he would have had to pay one of the prisoners who controlled the distribution of beds. Mr. Centeno Rosales was also alleged to have been put in solitary confinement by prisoners who

appointed themselves as members of the Order and Discipline Committee.[FN7] He was also forced to cleaning work while at the Cantel Prison Farm (Quetzaltenango). A petition of habeas corpus filed on his behalf was dismissed.

[FN7] Composed of the prisoners at the Granja de Rehabilitación Penal de Cantel [the Cantel Prison Farm] (Quetzaltenango).

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13. Concerning the admissibility of the petition, the petitioner contends that the violations denounced therein are repeated and widespread and affect any person who is subject to criminal proceedings in Guatemala. The petitioner reports that on September 7, 2006, the Congress of Guatemala issued Decree 33-2206 on the Prison System Law, which will take effect on April 5, 2007. The petitioner makes the following observations regarding the new law: a) the system whereby sentence substitution is not allowed in certain crimes is left intact; b) in the case of disciplinary proceedings, professional legal counsel for the accused shall not be required; c) the Executive Branch is given 10 years in which to modernize the prison infrastructure, which in the petitioner's judgment means that the prison system in the country will not receive immediate attention.

14. As for the exhaustion of domestic remedies, the petitioner alleges that at the time the petition was filed, the alleged victims had been in preventive detention for too long. By then they had already spent four years, three months and two days in preventive custody, had been moved from prison to prison throughout the country and had stood trial several times. At the time of filing, they were in a prison farm for convicted criminals. The petitioner further alleges that on October 31, 2002, a petition of habeas corpus was entered on Mr. Centeno's behalf, as he had been persecuted and grossly mistreated in prison. The petition was dismissed.

15. The petitioner alleges that under Guatemalan law, the alleged victims are not entitled to reparations, since in the end they were acquitted of the crimes for which they had been detained. He explains that while Article 246 of the Penal Code makes provision for a liability suit, such suits can only be brought when a final verdict has been delivered that has the authority of res judicata; if the suit is reviewed and admitted, the party filing the suit may sue the State for damages.

16. In conclusion, the petitioner alleges that there were no internal remedies to exhaust and no effective mechanisms that would have prevented Mr. Centeno Rosales' abuse in the Guatemalan prisons.

17. The petitioner argues that the Guatemalan State has violated the following articles of the American Convention: Article 8(1), because the alleged victims were not tried within a reasonable period of time, since five years, one month and five days elapsed between the time proceedings in their case began and a final verdict of acquittal was delivered. Furthermore, the alleged victims were tried by a tribunal established ex post facto, thereby violating the principle of the natural judge;[FN8] Article 8(2), because of the excessive duration of the preventive detention, which saps the principle of the presumption of innocence of all meaning; Article 24,

by the creation of special courts for certain crimes, under Supreme Court Decision 8-2000; articles 7(1), 7(3) and 7(5), as the petitioner alleges that Article 264 of the Penal Code eliminates any possibility of an assessment by a judge to be able to grant release in a specific case; the petitioner reasons that preventive detention ought not to be the general rule, since a person's release may be conditional upon certain guarantees that he or she will appear for trial; articles 5(1), 5(2), and 6(1), 6(2) and 6(3), since at the detention centers in which the alleged victims were held, the physical, mental and moral integrity of incoming persons is not respected and they are mistreated and abused by other inmates, with the acquiescence or tolerance of the State authorities. The petitioner also contends that punishment cells were used in the case of Mr. Centeno Rosales, and that a petition of habeas corpus filed on his behalf was dismissed. In making his case for the violations of these articles, the petitioner also alleges that the new Prison System Law does not solve the structural problems of Guatemalan prisons. He goes on to add that the State violated Article 5(4) by having incarcerated the alleged victims in the Canada Prison Farm in Escuitla and the Cantel Prison Farm in Quetzaltenango, which are reserved for convicted criminals serving sentences.[FN9]

[FN8] The Quetzaltenango Regional Trial Court was created by Supreme Court Decision 8-2000 and began to function on October 6, 2000, in other words, subsequent to the events with which the alleged victims were charged. The petitioner states that both Agreement 8-2000 and the Agreement under which the cases were transferred to another court for trial 9Agreement 28-2000) were challenged on constitutionality groups. However, because of procedural matters, the Constitutional Court never took up the merits of the case.

[FN9] According to Memorandum 031-04 from the Mayor of the Cantel Model Prison Farm, a copy of which is in the case file, Messrs. Arriola, García and Alas entered the Prison Farm on February 13, 2003 and remained there until October 22, 2003, the date on which they were released. Mr. Centeno entered on May 2, 2001, and was then transferred to the Quetzaltenango Preventive Detention Center on November 8, 2002..

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18. The petitioner also alleges that the State violated, to the detriment of Mr. César Centeno Rosales, articles 1, 2, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture, since at the time of his detention, he was beaten to try to force to incriminate himself and admit to crimes, and to obtain from him information about other persons implicated in the alleged crimes with which he was accused.

B. The State

19. The State alleged that, based on information provided by the General Bureau of Prisons of Guatemala, Mr. César Centeno Rosales was sent to the Quetzaltenango Preventive Detention Center on November 8, 2002, for the crimes of illegal possession of firearms, explosives, chemical and biological weapons and murder, while Messrs. García Aquino, Reginaldo Arriola Ruíz and Oscar Alas Sanabria were reportedly released on October 22, 2003, when their verdict of acquittal became final.

20. As for the harm that the domestic criminal proceedings were alleged to have caused to the so-called victims by virtue of the fact that they remained in preventive custody, the State argued that these people did not exercise their right to file suit for damages and injuries against the public officials who allegedly caused them pecuniary and non-pecuniary damages. Such an action can be brought through a summary proceeding for a finding of civil liability of public officials and employees, as provided for in Article 246 of the Civil and Commercial Procedural Code. The State further alleges that the so-called victims did not file a criminal complaint alleging the mistreatment and abuse of prisoners alleged to have been committed by State authorities. The State contends that "Any crimes that may have been committed based on the facts as described and that warranted a complaint are: abuse of authority, dereliction of duty, abuse of private parties and, as appropriate, injuries".[FN10]

[FN10] Observations that the State presented to the IACHR, December 28, 2006.

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21. As regards Mr. Centeno, the State argues that his defense counsel has the right to exercise the appropriate legal measures within the domestic system before turning to international forums.

22. The State contends that the so-called victims are not entitled to compensation for the period of time they were held in preventive custody. The State cites Article 10 of the American Convention, arguing that this provision recognizes every person's right to be compensated if he or she has been sentenced by a final judgment through a miscarriage of justice. Similarly, the State makes allusion to the effects of a review of verdict under Article 462 of Guatemala's Code of Criminal Procedure and underscores that one such effect is that if the interested party so requests, the Court may rule on compensation owed. The State contends that in the present case, three of the so-called victims were acquitted in first instance, remained in custody when the Public Prosecutor's Office filed a Special Appeal and were released again on October 22, 2003. The State therefore alleges that the situation of these three people does not fit the premise established in the American Convention and the Penal Code. The State alleges that César Centeno Rosales was in no way entitled to reparations "because the verdict in his case was not final and he was still in preventive detention."[FN11] It also argues that as a consequence "no claim seeking compensation based on the time that the petitioners were deprived of their freedom is admissible."[FN12]

[FN11] Observations that the State presented to the IACHR, April 3, 2006.
[FN12] Ibíd.

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23. Finally, the State alleges that prison facilities are being gradually remodeled, proof that the prison problem is being immediately addressed and that the physical safety and human right of the persons incarcerated there are being protected. The State contends that the Prison System Act meets the standards set in domestic and international human rights instruments.

24. The State concludes by alleging that the petitioner has failed to exhaust the remedies under domestic law for re-establishment of the alleged victims' rights, and therefore contends that the petition should be declared inadmissible pursuant to articles 46(1)(a) and 47(a) of the American Convention.

IV. ANALYSIS

A. The Commission's competence ratione materiae, ratione personae, ratione temporis and ratione loci

25. The Commission is competent ratione materiae to hear this petition because it alleges violations of rights protected by the American Convention, to which the State of Guatemala is party and which it ratified on May 25, 1978; it is also party to the Inter-American Convention to Prevent and Punish Torture, which it ratified on January 29, 1987.

26. The Commission is competent ratione personae to hear the present petition because both the petitioner and the alleged victims satisfy the requirements set in articles 44 and 1(2) of the Convention, respectively.

27. The Commission is competent ratione temporis to hear this petition inasmuch as the obligation to respect and ensure the rights protected by the American Convention, and those protected by the Inter-American Convention to Prevent and Punish Torture, were already in force for the State on the date the facts alleged in the petition were said to have occurred.

28. Finally, the Commission is competent ratione loci to hear this petition because it alleges violations of rights said to have occurred within the territory of the respondent State party.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

29. Article 46(1)(a) of the Convention provides that for a petition to be admissible, the remedies under domestic law shall have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to give the national authorities an opportunity to hear the alleged violation of a protected right and, if appropriate, correct it before the matter is turned over to an international body.

30. In the case under study, the State contends that the petitioner did not exhaust domestic remedies because he did not avail himself of the civil and criminal actions available to obtain reparations for any violations of the alleged victims' rights and to have those responsible for any such violations punished. The petitioner, for his part, contends that the remedies available under domestic law were exhausted in an effort to put an end to the excessive preventive detention to which the alleged victims were subjected, to file complaints about the inhuman treatment to which Mr. Centeno Rosales was subjected and regarding the discrimination contained in Article 264 of the Code of Criminal Procedure. The petitioner further alleges that Guatemalan law

contains no provision that would have allowed a claim to be filed on behalf of the alleged victims seeking compensation for the excessive period of preventive detention.

31. The records in the case file show that the petitioner filed a number of petitions of habeas corpus on behalf of the alleged victims to secure their provisional release while their court case was in progress. However, his petitions were denied.[FN13]

[FN13] On October 8, 2001, the Ninth Chamber of the Antigua Guatemala (Sacatepéquez) Appellate Court dismissed the petition of habeas corpus filed on behalf of César Centeno Rosales, Efraín García Aquino, Reginaldo Arriola Ruíz and Óscar Alas Sanabria on September 20, 2001. On November 4, 2002, the Cantel (Quetzaltenango) Justice of the Peace dismissed the petition of habeas corpus filed on behalf of César Centeno Rosales on October 31, 2002.

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32. The Commission observes that the alleged victims were held in preventive detention for five years and 33 days –from September 18, 1998 to October 22, 2003, the date on which they were acquitted in a final judgment not subject to appeal. It also notes that the alleged victims in this case had no effective remedies available to them to secure provisional release from a prolonged period of preventive detention.

33. As for the domestic remedies attempted to protest the alleged violation of Mr. Centeno's right to humane treatment, the record shows that on October 31, 2002, a petition of habeas corpus was filed on the grounds of his gross mistreatment and abuse by those in charge of discipline at the Cantel Model Prison Farm. On November 4, 2002, the First Criminal and Environmental Law Court of First Instance of the Department of Quetzaltenango, dismissed the petition of habeas corpus, stating the following:

Having done a careful study of the case file, this court has concluded that the allegedly aggrieved party does not meet any of the criteria that would make his case admissible under Article 82 of the Law on Amparo, Habeas Corpus and Constitutionality, since the allegedly aggrieved party is being lawfully detained. The threats he claims were made against him by members of the order and discipline committee would have to be litigated by bringing a private action. If he wishes to pursue the matter, he should file a complaint with the proper authority and initiate a private action so that the state prosecutor can conduct the necessary investigations into the treatment he claims he was subjected to.[FN14]

[FN14] Decision of the First Criminal and Environmental Law Court of First Instance of the Department of Quetzaltenango, November 4, 2002.

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34. The Commission believes that when torture, cruel, inhuman and degrading treatment and punishment are involved, States have an obligation to investigate any situation that might involve a violation of the right to humane treatment caused by the commission of these crimes, and must do so de officio, through its own agents, who are to investigate the crime and begin the

appropriate criminal case.[FN15] Given these circumstances, the petition of amparo or habeas corpus is the proper remedy to exhaust to put an end to torture or mistreatment whenever it is practiced and denounced. This was the finding of the Inter-American Court, which ruled that habeas corpus is a procedure by which the courts can determine the lawfulness of a detention. It also requires that the detained person be brought before the competent judge or court. The Inter-American Court also held that these procedures were vital in order to "control respect for the life and safety of persons, prevent their disappearance or the concealment of their place of detention, as well as to protect them from torture and other cruel, inhuman and degrading treatment or punishment."[FN16] It is the Commission's view that, being incarcerated, the alleged victim was in the custody of the State, which means that the petition of habeas corpus was the proper means to assert protection of the right to humane treatment. The mechanism, however, was not effective.

[FN15] See I/A Court H. R., Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, paragraph 128; IACHR, Case No. 11,509, Manuel Manríquez, Mexico, Report No. 2/99 of February 23, 1999, paragraph 58.
[FN16] I/A Court H.R., Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraph 31. See also /A Court H. R., Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, paragraph 111.

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35. As for the petitioner's contention that the Guatemalan legal system does not provide judicial remedies through which aggrieved parties may seek compensation for excessive periods of incarceration upon acquittal or a procedure by which the alleged victims could have filed a complaint over the abuse and mistreatment received at the hands of the prisoners who were in charge of discipline at the detention centers, it is important to point out that the exceptions to the rule requiring exhaustion of domestic remedies are closely connected to the determination of possible violations of certain rights contained in the Convention, such as right to due process (Article 8) and the right to judicial protection (Article 25). However, Article 46(2) of the Convention, by its nature and purpose, has a content that is independent of the substantive norms of the Convention and hinges on a standard of assessment different from the one used to determine the violation of Articles 8 and 25 of the Convention. Therefore, the question of whether the exceptions to the domestic remedies rule provided in paragraphs (a), (b) and (c) of Article 46(2) apply must be decided prior to and separate from the examination of the merits.[FN17]

[FN17] IACHR, Report No.118/06, Petition 848-04, Admissibility, Ángel Pacheco León, Honduras, 26 October 2006, paragraph. 34

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36. The Commission deems that the exception allowed under Article 46(2)(c) applies in a case in which there is no internal remedy against situations of prolonged incarceration prior to acquittal and when there is no effective remedy to file a complaint alleging mistreatment and

abuse by private persons in charge of discipline in detention centers. Therefore, the reasons why the internal remedies were not exhausted and the legal effect of the failure to exhaust them will be examined when the Commission studies the merits of the case, so as to then determine whether articles 8 and 25 of the American Convention were violated.[FN18]

[FN18] See IACHR, Report No. 54/01, Case 12.250, Mapiripán Massacre, Colombia, paragraph 38 and IACHR, Report No. 65/01, Case 11.073, Juan Humberto Sánchez, Honduras, March 6, 2001, paragraph 51. IACHR, Report No. 15/02, Admissibility, Petition 11.802, Ramón Hernández Berrios et al., Honduras, 27 February 2002; Report No. 118/06, Petition 848-04, Admissibility, Ángel Pacheco León, Honduras, 26 October 2006, paragraph 35.

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37. As for the State's argument that internal remedies were not exhausted in the present case because civil actions seeking damages were not filed against the public officials based on the facts denounced, the Commission has held that:

[T]here is a difference between the personal responsibility of a State officer or agent, and the responsibility of the State itself, and the petitioner is required only to exhaust the remedies intended to establish State responsibility. Consistent with international human rights law, the Commission has held that the obligation to remedy human rights violations committed by its agents directly corresponds to State, and not to its agents. Moreover, in several occasions, the Commission has indicated that Member States' international obligation to compensate victims of human rights violations committed by their agents is one of its direct, main responsibilities, i.e. it is a direct responsibility of the State and does not require that victims first take personal action against those agents, regardless of the content of domestic provisions on the matter. In the present case, the State has not indicated what remedies are available for suits against the State or demonstrated the effectiveness. Therefore, the Commission considers that the State has failed to show that judicial remedies remain to be exhausted.[FN19]

[FN19] IACHR, Report No. 8/05, Admissibility, Petition 12.238, Miriam Larrea Pintado, Ecuador, 23 February 2005. See also, IACHR, Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura, Report No. 83/01, Peru.

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38. Therefore, with regard to the alleged violations of Mr. Centeno Rosales' rights under articles 5 of the American Convention and under articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, the Commission decides that the petition of habeas corpus filed on October 31, 2002 exhausted the domestic remedies and was ineffective. Likewise, with regards to the allegations on the violation of articles 7, 8, 24 and 25 of the American Convention on the grounds of the excessive preventive detention to which the alleged victims were purportedly subjected, the internal remedies were pursued and exhausted and were ineffective. As a result, the petition meets the requirement set up in article 46(1)(a) of the American Convention.

39. Finally, as to the allegations that no internal remedies existed to enable detainees to seek damages if subjected to excessive preventive detention only to be acquitted at trial, and as to the allegation that persons in custody had no recourse to seek protection from violations of the right to humane treatment, the Commission concludes that the exception allowed under Article 46(2)(a) of the American Convention applies.

2. Timeliness of the petition

40. Under Article 46(1)(b) of the American Convention, for a petition to be admissible it must be filed within six months of the date on which the party alleging violation of his rights was notified of the domestic final decision on his case. The six-month rule is intended to guarantee legal certainty and stability once a decision has been adopted.

41. In the present case, the petition was filed on December 20, 2002, when Messrs. García Aquino, Arriola Ruíz, Alas Sanabria and Centeno Rosales were still being held in preventive custody and were exercising the available remedies against the alleged violations, but to no avail. Indeed, in October 22, 2003, the Seventh Chamber of the Quetzaltenango Appellate Court confirmed the ruling of March 5, 2003, and ordered the prosecuted to be released.

42. The Commission therefore considers that given the fact that the petition was filed while the available domestic remedies were being exhausted, the requirement set in Article 46(1)(b) of the Convention has been satisfied. With respect to the facts of which it is alleged that no domestic remedies were available, the Commission considers that the petition was filed within a reasonable period of time.

3. Duplication of international proceedings and international res judicata

43. Nothing in the case file suggests that this petition is pending settlement in another international proceeding or that it is substantially the same as one previously examined by the Commission or any other international body. The requirements established in Articles 46.1 (c) of the Convention have therefore been satisfied.

4. Characterization of the facts alleged

44. For admissibility purposes, the Commission must decide whether a petition states facts that could tend to establish a violation of the rights protected under the American Convention, as Article 47(b) stipulates, or whether a petition is "manifestly groundless" or "obviously out of order", as Article 47(c) stipulates. The standard for assessing admissibility is different from the one used to decide the merits of a petition. For admissibility, the Commission need only make a prima facie analysis to determine whether the complaint establishes the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. The admissibility examination is a summary analysis that does not imply any prejudgment or preliminary opinion on the merits.

45. With that understanding and in application of the principle of jura novit curia the Commission makes the following observations:

46. The Commission notes that the alleged victims in the present case were detained on September 18, 1998, and that four different rulings were delivered in the criminal case against them: a) on December 23, 1999, the four defendants were acquitted by the Sololá Trial Court for Crimes, Narcotics Activity and Crimes against the Environment; b) on August 14, 2000, the very same court acquitted three of the defendants but convicted Mr. César Centeno Rosales of illegal possession of a firearm and criminal cover-up, sentencing him to three years, six months in prison; c) on June 27, 2001, the Criminal Trial Court found the four defendants guilty of murder and illegal possession of firearms and sentenced them to 40 years in prison; d) on March 5, 2003, the Quetzaltenango Regional Criminal and Narcotics Activity Court acquitted all four defendants. That ruling was upheld by the Seventh Chamber of the Quetzaltenango Appellate Court on October 22, 2003.

47. The Commission considers that the allegations to the effect that while in preventive detention the alleged victims were housed in prisons intended for convicted criminals could tend to establish a violation of Article 5(4) of the American Convention. Similarly, considering that the 1999 verdict in their first trial was acquittal, the excessive preventive detention to which the alleged victims were purportedly subjected for the duration of the ensuing trials, with no recourse available to challenge the duration of their preventive detention or any possibility of securing provisional recourse, may constitute a violation of articles 7, 8 and 25 of the American Convention.

48. Moreover, the alleged lack of recourse to sue the State for damages could tend to establish a violation of Article 25 of the American Convention. The existence of domestic laws that prohibit the exercise of the right recognized in Article 7(5) of the Convention may tend to establish a violation of Article 24 of the Convention.[FN20]

[FN20] I/A Court H.R., Suárez Rosero Case. Judgment of November 12, 1997. Series C No. 35, paragraphs 97 and 98.

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49. The Commission believes that if true, the allegations made pertaining to acts of torture and inhuman and degrading treatment that Mr. Centeno Rosales was alleged to have suffered at the time of his detention and during his preventive detention, the inefficacy of the remedies filed for his protection in that situation and the allegations of the inhuman treatment that the other alleged victims purportedly suffered during their preventive detention, would tend to establish violations of the rights guaranteed under articles 5(2) and 25 of the American Convention, and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

50. The Commission further considers that if true, the alleged violations would tend to establish noncompliance with the State’s generic obligations to respect and ensure those rights and its obligation to adopt legislative and whatever other measures necessary to give effect to those rights, as provided in articles 1(1) and 2, respectively, of the American Convention.

51. Finally, the Commission does not find sufficient grounds for considering a possible violation of article 6 of the American Convention.

V. CONCLUSION

52. The Commission concludes that the case is admissible and that it is competent to examine the complaint the petitioner filed alleging violation of articles 5, 7, 8, 24 and 25 of the American Convention, in combination with articles 1(1) and 2 thereof, and that the complaint complies with articles 46(1)(c) and (d), 46(2)(a) of the American Convention and articles 28 and 37 of the Commission's Rules of Procedure. It also considers the petition admissible with respect to the alleged violation of articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

53. Based on the foregoing arguments of fact and of law and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible with regard to articles 5, 7, 8, 24 and 25 of the American Convention, in combination with articles 1(1) and 2 thereof, and with regard to articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.
2. To declare inadmissible the petition with respect to article 6 of the American Convention.
3. To notify the State and the petitioner of this decision.
4. To proceed with the analysis of the merits of the case.
5. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 27th day of the month of February, 2007. (Signed): Florentín Meléndez, President; Paolo Carozza, First Vice-President; Victor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Freddy Gutierrez Trejo, Commissioners.