Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 36/07; Petition 1113-06
Session:	Hundred Twenty-Eigth Session (16 – 27 July 2007)
Title/Style of Cause:	Persons deprived of liberty at the 76th Police Precinct in Niteroi v. Brazil
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Clare K. Roberts, Evelio Fernandez Arevalos, Freddy Gutierrez. Pursuant to the provision of article 17(2)(a) of the IACHR's Rules of Procedure, Commissioner Paulo Sergio Pinheiro, of Brazilian nationality, did not participate in the decision of this petition.
Dated:	17 July 2007
Citation:	Persons deprived of liberty v. Brazil, Petition 1113-06, Inter-Am. C.H.R., Report No. 36/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANTS: Justicia Global, Associacao Pela Reforma Prisional, Tortura Nunca Mais do Rio de Janeiro, Associacao dos Defensores Publicos do Estado do Rio de Janeiro and Laboratorio de Analise de Violencia da Universidade do Estado do Rio de Janeiro
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I. SUMMARY

1. On June 14, 2006, Justicia Global, Associação Pela Reforma Prisional (ARP), Tortura Nunca Mais do Rio de Janeiro, Associação dos Defensores Públicos do Estado do Rio de Janeiro (hereinafter APDERJ), and Laboratório de Análise de Violência da Universidade do Estado do Rio de Janeiro (hereinafter the petitioners) filed a request for precautionary measures with the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Commission") so that the Federative Republic of Brazil (hereinafter "Brazil" or "the State") might protect the lives and physical integrity of approximately 400 men held in the cells (carceragem) of the 76th Police Precinct (Delegacia de Polícia) in the city of Niterói, Rio de Janeiro, from a situation of permanent risk, as a result of the overcrowded and poor prison conditions. In exercise of its power under Article 24 of its Rules of Procedure, at its 126th Regular Session the Commission decided, motu proprio, to initiate the processing of a petition in light of the alleged violence and danger to which the individuals detained at the 76th Police Precinct are exposed, inasmuch as those circumstances could constitute violations of human rights recognized by the American Convention on Human Rights (hereinafter, "the Convention" or the "American Convention") at its Articles 5, 8, and 25.

2. The State holds that the Commission lacks jurisdiction to initiate the processing of a case motu proprio and that Article 24 of the Rules of Procedure is incompatible with due process of law. The State further contends that the domestic remedies available to repair the rights allegedly violated have not been exhausted, and that the petition is time-barred; therefore, it should be declared inadmissible.

3. Having examined the petition in accordance with Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible as regards alleged violation of Articles 5, 8(1), and 25 of the American Convention, in connection with Articles 1(1) and 2 of the instrument. The Commission also decided to notify the parties of this decision, publish it, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION AND PRECAUTIONARY MEASURES

4. On June 14, 2006, the petitioners asked the IACHR to request the Brazilian government to adopt precautionary measures to protect the lives and physical integrity of the individuals deprived of liberty at the 76th Police Precinct. The Commission requested the State to provide information on the matter on June 22, 2006.

5. On August 17, 2006, the State replied to the request for information that was sent to it, confirming its receipt. This information was transmitted to the petitioners on August 30, 2006.

6. On September 13, 2006, the petitioners sought information on the status of the request for precautionary measures.

7. On September 15, 2006 petitioners submitted observations on the reply of the State.

8. On October 19, 2006, the Commission informed the State that it had decided to adopt precautionary measures in favor of the individuals deprived of liberty at the 76th Police Precinct, to which end it requested that the State:

1) Adopt the necessary measures to protect the lives, health, and physical integrity of the individuals deprived of liberty at the 76th Police Precinct.
2) Transfer the convicted criminals so that they might serve their sentences at detention centers that offer suitable conditions such that they might enjoy their basic rights.
3) Substantially reduce overcrowding in the cells at the 76th Police Precinct.
4) Provide the necessary medical care to all the beneficiaries, in particular to those with serious diseases, persons with disabilities, and the elderly.
5) Conduct a meaningful and thorough investigation of the facts that led to the adoption of precautionary measures, identify those responsible, and, as appropriate, impose on them the corresponding criminal and administrative penalties.
6) Confer with the representatives of the beneficiaries in order to coordinate steps to implement the precautionary measures.

9. These precautionary measures were adopted for a period of six months, after which the Commission would decide if they should be extended or lifted. On the aforementioned date, the Commission gave the State 15 days in which to report on measures adopted and further requested it to update said information on a monthly basis.

10. All of the foregoing was brought to the attention of the petitioners on the same date.

11. In the framework of its 126th Regular Session, the Commission, in exercise of its power under Article 24 of its Rules of Procedure, decided, motu proprio, to initiate the processing of a petition, based on information received. The State was notified of this fact on October 19, 2006, and given two months to present observations, in keeping with Article 30(3) of the IACHR Rules of Procedure.

12. On October 23, 2006, the State requested the Commission for an explanation of its communication of October 19, 2006, to which a reply was sent on the same date.

13. On November 7, 2006, the State requested an extension of 15 days to present the information requested of it in connection with the precautionary measures.

14. On December 19, 2006, the State requested an extension of 30 days to present the information requested of it in connection with petition 1113-06. An extension was granted on January 3, 2007, and brought to the attention of the petitioners that same day.

15. On February 7, 2007, the State submitted its reply to the petition, receipt of which was confirmed.

16. On March 5, 2007, the reply was transmitted to the petitioners so that they might submit their observations within one month.

17. On April 9, 2007, the petitioners presented their comments on the reply of the State, receipt of which was confirmed. Likewise, said information was forwarded to the State for comment. The comments of the State were received by the Commission on June 27, 2007, and these comments were duly submitted to the petitioners on July 18, 2007.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

18. The petitioners hold that the State of Brazil violated the American Convention in the sense that by the conditions in which prisoners are held at the 76th Police Precinct it allegedly infringed the right of the inmates to have their physical, mental, and moral integrity respected, the foregoing in connection with the obligation to respect and ensure the rights recognized in the Convention (Article 1(1)) and, furthermore, to the extent that none of the domestic remedies that they attempted to repair the situation proved effective.

19. According to the petitioners, approximately 400 men are detained in the cells of the 76th Police Precinct in Niterói, where they are exposed to inhumane, degrading, and unsanitary conditions, with the attendant aforesaid violation of their rights. They say that this situation grows worse day by day.

20. The petitioners hold that the State of Rio de Janeiro created the "Clean Police Stations" (Delegacia Legal) Program in 1998, the purpose of which is to transform police stations in order to ensure the comfort of citizens and improve working conditions for police personnel. They say that as part of this project the jail cells at new police stations were closed, leaving only two holding rooms, one male and one female, for persons arrested in the act of committing a crime. They say that these individuals should be sent to a remand center (casa de custodia) immediately after an incident record is made. They say there are currently 87 "clean police stations" in operation and 15 under construction.

21. According to the petitioners, the clean police stations represented an improvement as regards observance of the rights of detainees, since police station jail cells were traditionally overcrowded places where abuses were committed against inmates. However, they hold that the construction rate of remand centers failed to keep pace with the parallel demand created by the absence of jail cells at the "clean police stations" that were created. They say that the creation of 87 "clean police stations" and the elimination of jail cells without a sufficient number of detention centers created overcrowding among inmates at a number of police precincts.

22. The petitioners say that on April 26, 2006, the Permanent Committee for Protection of Human Rights and the Citizenry of the Rio de Janeiro State Legislature (CPDDHC/ALERJ), accompanied by the Assistant Prosecutor for Human Rights, representatives of the Office of the Attorney General (Ministerio Público), the Ombudsman, and civil society organizations, including the petitioners, visited the cells at the 76th Police Precinct. The findings of the visit were recorded in a report, which noted that at least 390 individuals were living in degrading, cruel, vermin-infested, foul-smelling, dirty, hot conditions, all of which contributed to the proliferation of physical diseases and psychological disorders. The report found such a situation to be inexcusable.

23. According to the petitioners, the building that houses the cells of the 76th Police Precinct is located in the center of the city of Niterói, adjacent to the Municipal Council Chamber and across the road from the Courts of Justice. It was opened in 1917 as the offices of the Public Security Secretariat of Rio de Janeiro. The petitioners say that despite having undergone structural alterations, the cells of the 76th Police Precinct are in an appalling state as attested by the photographs provided.

24. The petitioners say that on May 5, 2006, they visited the cells of the 76th police precinct in the company of the Judge of the Third Criminal Circuit of the District of Niterói, a representative or the Ombudsman, and the Chief of Police, on which occasion they were informed that the holding capacity of the cells was 76 individuals, despite which it was found during the visit that there were close to 400 persons confined in the 76th Police Precinct. The petitioners say that it was also noted that the profile of the inmates matched that of the large

majority of the prison population in Brazil, which is to say that they were mainly young, black, poorly educated, and from low-income backgrounds.

25. The petitioners mention that the area for family visits is located by the entrance to the 76th Police Precint, measures approximately eight square meters, and only has two wooden benches for people to sit on, with the result that there are not enough seats for everyone, so that several people have to stand. They say that each inmate is entitled to one 40-minute visit per week, which is the only time that they are permitted to leave the cell, since they are given no time in the open air. The petition states that inmates who do not receive visits from relatives never leave their cells. The petitioners say that inmates have a yellowish tinge to their skin and a sickly appearance because they are not allowed to go outside.

26. The petitioners also say that some family members generally prefer not to identify themselves for fear of reprisals. Furthermore, they claim that guards subject visitors to humiliating searches, and there are women who have reported that, though pregnant, they were made to undress and bend over to be examined. They allege that some relatives of inmates avoid visiting so as not to be searched in the above-described manner.

27. According to the petitioners, on the same visit they were led to Gallery A, where members of the criminal gang known as "Amigos dos Amigos" (ADA) ["Friends of Friends"] are kept in cells that measure two meters by three meters, with an average of 14 men to a cell, despite the fact that the Law on Execution of Criminal Sentences provides that the minimum size for a single-occupant cell is six square meters. They say that there are no beds and that inmates sleep on the floor or in hammocks on parallel horizontal levels because there is not enough room for them all to lie down or stand up. The lighting is dim and each cell has a single light bulb, and if that goes out it is left in semi-darkness because there are no windows. Due to the fact that there are no windows, the petitioners also say that the galleries lack of ventilation. They also say that the exposed electrical fittings and wiring pose a serious risk to inmates. They report that the cells are extremely damp and the ceilings are cracked and covered with mildew. The cells are also infested with all kinds of pests, show no signs of being cleaned, and are unbearably hot and smelly.

28. The petitioners say that they were told by inmates that the food is not only insufficient but also unpalatable. Breakfast is served at 11 a.m. together with lunch. They say that they receive two cups of coffee and a liter of milk, in addition to an individual serving of food for lunch. They say that in the late afternoon they are given soup and two small loaves of bread. They claimed that the food is bitter tasting and often uncooked, the soup is very greasy, and drinking it leads to intestinal problems and fungal infections of the skin, for which reason most inmates prefer not to drink it and go hungry.

29. The petitioners say that in Gallery A, Cell 6, they found the inmate Cristiano Santos Silva who had burns over 80% of his body and ran the risk of infection given dirty conditions. They say that another inmate, Genilson da Silva, has a steel plate in one arm, which was exposed and also ran the risk of infection. They alleged that another inmate, Fabio Ventura, has problems with one hip and his legs making it necessary for him to perform exercises. However, he spends all day standing or lying in a hammock. The petitioners say that according to the inmates, the only

medicines to which they have access are the ones brought to them by relatives because there are none available in the jail.

30. According to the petitioners there is no access to healthcare services. There is a group of inmates who are in charge of safety and cleaning, called faxinas [cleaners] (hereinafter referred to by this term). There is an order from the Corrections Secretariat (Secretária de Administração Penitenciária) to the effect that the sending of inmates to the Prison Hospital should be avoided because it was undergoing alterations and, therefore, it was not possible to provide care to inmates from the 76th Police Precinct. They say that, based on this order, the Emergency Mobile Assistance Service is called whenever an emergency arises but patients are not transferred to the hospital.

31. The petitioners claimed that this unsanitary environment and exposure to bacteria leaves inmates vulnerable to a host of infectious diseases, including tuberculosis, meningitis, pneumonia, conjunctivitis, and others, because these illnesses spread through direct, person-to-person contact, all of which are grounds for immediate medical care for individuals infected.

32. Also in Gallery A, Cell 6, the petitioners say they met Nilton Geraldo dos Santos, Tiago Martins, and Saulo Jorge Lima dos Santos, who were transferred from Polinter Police Station and should have been sent to a remand center [casa de custodia].[FN2] However, they were confined in the 76th Police Precinct, a facility with even worse conditions than the one where they were originally incarcerated. The petitioners say that in other cells there were also inmates who have not received legal assistance for some time, as in the case of Aloir Castorino dos Passos, who had been at the 76th Police Precinct for more than eight months and had only been taken to the Courts of Justice to make a statement on two occasions; he did not know who the defense attorney was in his case or what stage the trial was at. The petitioners also mention the case of Wellington Martins, who has been detained at the 76th Police Precinct for 16 months, when he should already be serving the sentence that he was given at a semi-open facility. They also draw attention to the cases of Reinaldo Dias Pereira and Aldair da Silva: the former is a recaptured inmate who should have been transferred long ago, and the latter has been awaiting trial at the precinct for 26 months. The petitioners say that these prisoners have no families or are from another state in Brazil and are completely lost and defenseless.

[FN2] See IACHR. Annual Report of the Inter-American Commission on Human Rights 2005. Chapter III.C.1 (Precautionary measures granted by the Commission), section on Brazil.

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33. The petitioners say that they then entered Gallery B (also known as Maracanã), where inmates belonging to the criminal gang known as “Comando Vermelho” (CV) [“Red Command”] are housed. They say that in this gallery, which appears to be larger than the first, the cell doors are left open and inmates are able to come and go freely. However, the filth and stench are just as bad as in Gallery A.

34. According to the petitioners on the second floor there are eight other cells, seven of which are occupied by inmates of the Comando Vermelho gang and are more unsanitary and in a

worse condition than the cells in the other two galleries because the water distribution system is defective and, as a result, the gallery has an insufficient water supply. The first seven of the aforementioned cells contain an average of 14 inmates each, while the eighth is a so-called "safe" cell that houses the inmates who have been threatened with death; on the day of the visit there were 96 people living in this cell.

35. The petitioners say they heard reports of corruption in all the cells. Its practice is managed by the faxinas and police personnel. They allege that an extra visit costs 20 reals, approximately equivalent to US$ 9; an electric fan, 10 reals or approximately US$ 4; a television, 20 reals; a transfer to a closed facility, 250 reals or approximately US$ 110; and a transfer to a semi-open or open facility, 400 reals. Even when a court issues an order for an inmate's release,[FN3] which must be delivered to the Officer of the Court for presentation to the police station, a payment of thirty reals is demanded for its delivery.

[FN3] Alvará de soltura (release permit).

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36. The petitioners say that on December 8, 2001, the Judge of the Third Criminal Circuit of the District of Niterói first ordered the transfer of 139 inmates who were confined in the cells of the 76th Police Precinct, 70 of whom had been given sentences which they were supposed to serve in a prison system facility. The petitioners say that at that time the precinct was holding 289 individuals, which exceeded its structural capacity by 160 people. They say that at around this time the Public Security Secretariat informed that work was underway to repair the electricity and water distribution systems in the facility.

37. According to the petitioners, another inspection was carried out by municipal officials and representatives of the Office of the Ombudsman in November 2002, in the course of which conditions in the cells at the 76 Police Precinct were again found to be overcrowded and unsanitary. They say that on that occasion, 370 inmates were found to be housed there in temperatures upward of 40° C without adequate food or sleeping quarters. The visitors allegedly said that they would report the situation to the State Governor, and on November 7, 2002, the urgent removal was ordered of 76 inmates for their transfer to Agua Santa Prison. They say that the transfer was carried out because the district judge warned the director that he faced a prison sentence unless the transfers were made.

38. According to the petitioners, on September 10, 2003, the Office of the Attorney General and the Ombudsman conducted another visit to the facility and found that there were 520 inmates in the place. They also say that the same overcrowding was noted, making conditions degrading, and that these facts were disclosed by a television network. The petitioners say that following this last report, which was made public, the then-Secretary for Public Security ordered 200 inmates to be transferred to Ary Franco Prison even though occupancy at that facility was at twice its capacity. According to the petitioners, at around this time a judge ordered the interdiction of the 76th Police Precinct and prohibited the admission of more inmates.

39. The petition adds that seven days after the visit mentioned in the foregoing paragraph, the Secretariat for Public Security announced that eight new remand centers (Casas de Custodia) were under construction and that this project would absorb half the prisoners housed in degrading conditions. The petition also says that the Secretariat mentioned that the remand centers would be built in parallel to the implementation of "Clean Police Stations".

40. According to the petitioners, the court order not to admit further inmates to the cells of the 76th Police Precinct was disregarded and overcrowding became the chief problem. They say that on April 9, 2006, the newspaper O Globo published articles on the matter and described the situation as a "time bomb" that could explode at any moment because the facility remained in a state of total neglect, inmates continued to be exposed to the damp, filth, high temperatures, pests, atrocious sanitary conditions, and an inadequate water supply, with the attendant risk to the lives of inmates and an increased likelihood of unrest.

41. The petitioners say that various judicial remedies were attempted to relieve the overcrowded, unsanitary, and unsafe conditions for inmates in the cells at the 76th Police Precinct. Inter alia, they informed the Commission that on November 4, 2002, the Judge of the Third Criminal Circuit of the District of Niterói, State of Rio de Janeiro, in response to a petition presented by the Ombudsman for the same State, ordered the immediate transfer of sentenced inmates to units of the Rio de Janeiro state corrections system; the transfer to remand centers of any non-sentenced inmates that numbered in excess of 150 (the facility's holding capacity); the non admission of new inmates, and the immediate transfer of sick inmates to the corrections system hospital. However, the petitioners say that this measure was suspended by the Tribunal of Justice of the State of Rio de Janeiro on November 2, 2002, with the argument that it would cause undue constraint on the State authorities inasmuch as it encroached on areas that were the exclusive jurisdiction of the executive branch and could give rise to unrest at other prisons, in addition to the possible risk posed to society by the removal of inmates without adequate planning, which could seriously disrupt public order and security.

42. The petitioners mention that due to the lack of any improvement in living conditions for inmates at the 76th Police Precinct, the Ombudsman and the Office of the Attorney General of Rio de Janeiro presented another petition for measures to the same Judge of the Third Criminal Circuit of the District of Niterói, which was granted on September 16, 2003, in identical terms to the first measures. However, the order was annulled by the Tribunal of Justice of the State of Rio de Janeiro on October 17, 2003, with the argument that such measures would pose a serious public security and economic risk because the transfer had not been properly planned. The Tribunal also said that the measures would supposedly constitute encroachment on functions that were the exclusive purview of the executive branch.

43. The petitioners mention that following the annulment by the Tribunal of Justice of the State of Rio de Janeiro mentioned in the preceding paragraph, the Ombudsman for the State of Rio de Janeiro filed a habeas corpus petition with the Superior Tribunal of Justice, in order to secure the transfer of inmates to an adequate facility or house arrest for those eligible. Said petition was refused on September 28, 2004, with the argument that it was not the suitable remedy.

44. The petitioners say that all the measures provided under the domestic system were duly attempted to repair the situation. However, they proved ineffective and, as a result, 400 men remain confined in subhuman prison conditions in the 76th Police Precinct cells.

45. According to the petitioners, incarceration conditions in the cells at the 76th Police Precinct do not come up to either international or domestic standards for persons deprived of liberty because the facility is overpopulated; has deplorable infrastructure, with poor ventilation, lighting, and water supply; inmates are badly fed; there is a lack of medical attention; and sentenced inmates and prisoners awaiting trial are not separately housed.

46. After the Commission decided to process the petition, the petitioners, with respect to admissibility, argued that Brazilian positive law does not provide effective recourse by which to bring the corrections system into line with international standards in this area. They hold that, as the evidence shows, none of the domestic remedies has been effective.

47. The petitioners say that under Article 2 of the American Convention, states parties have the obligation to adopt the necessary domestic legal provisions to give effect to the rights and guarantees recognized in the Convention. They hold that, specifically with respect to prison facilities, states are required to create the necessary internal mechanisms, whether in the judicial or administrative sphere, to ensure that prisons conform to international standards for protection of persons deprived of liberty

48. The petitioners note that Brazilian law provides three domestic remedies that technically would be suitable to protect the human rights of the inmates and ensure them fit conditions in which to serve their sentences: habeas corpus in criminal proceedings; a public civil action in civil proceedings; and the interdiction of the prison facility ordered by the sentencing judge (Juez de la Vara de Ejecuciones Penales) in the judicial administrative sphere.

49. They also say that Article 2 of the American Convention has to do with the effectiveness that remedies available under domestic law must demonstrate and, therefore, insofar as all of the remedies they attempted to repair the situation proved ineffective, the exception to the requirement to exhaust domestic remedies applies.

50. According to the petitioners, the order of the Judge of the Third Criminal Circuit of the District of Niterói, of November 4, 2002, was suspended by the Tribunal of Justice of the State of Rio de Janeiro on November 8 of that year, and a subsequent order issued by the same judge on September 16, 2003, was also annulled by said Superior Tribunal on October 17, 2003.

51. As regards the habeas corpus petition lodged by the Ombudsman with the aforementioned Superior Tribunal of Justice, said petition was rejected on September 20, 2004.

52. The petitioners say that on January 18, 2005, the Office of the Attorney General of Rio de Janeiro filed a public civil action concerning implementation of improvements at the prison facility in question with the Sixth Civil Circuit of the District of Niterói, a decision on which is pending.

53. According to the petitioners, on June 27, 2005, the judge presiding over the aforesaid action granted the Office of the Attorney General's request that the State adopt reforms in respect of the cells at the 76th Police Precinct, and further ordered the State on January 4, 2006, to transfer inmates to facilities of state corrections system. However, the deadline set by the court for its order to be carried out lapsed on January 27, 2006, without any meaningful measures adopted.

54. The petitioners say that the current status of the public civil action is cause for concern, bearing in mind that according to the enquiry made on April 2, 2007, the proceeding has not yet reached the decision stage, and a number of procedural steps remains pending.

55. The petitioners say in an attempt to corroborate the information regarding inmate numbers supplied by the State in its reply to the petition, on April 5, 2006, they sought to visit the facility but were refused entry. They say that they were told by a guard that the current inmate population was 238 and that they were housed in the same unsanitary conditions as described above. Accordingly, they conclude that the State continues to violate the inmates' human rights and, therefore, the petition should be declared admissible and the State found responsible for the facts alleged in the petition.

B. Position of the State

56. In its reply of February 7, 2007, the State contended that the Commission is not competent to process petitions motu proprio exclusively on the basis of a regulatory provision that it issued, as is the case in this instance, and that, therefore, the Commission is in violation of Articles 41(f), 44 and 45 of the American Convention, 19(a) and 23(1) of its Statutes, in addition to the principles of due process of law, égalité des armes, and the impartiality that it is required to observe in processing petitions lodged with it.

57. According to the State, every action of the Commission is subject to observance of the provisions contained in Articles 44 to 51 of the American Convention, which concern its examination of petitions and communications. It argues that neither of said texts recognize the authority of the Commission to process petitions ex officio, something that is forbidden under the Convention, based not merely on an a contrario sensu interpretation of the rules involved, but on a systematic interpretation of the petitions procedure under the inter-American system and the principles that govern it, which leads the State to affirm that the Commission has neither the legitimacy nor a mandate to act on petitions and communications in a manner contrary to the provisions contained in Articles 44 and 51 of the American Convention, and it may not arrogate itself powers beyond the limits of the Convention and its Statutes by the oblique path of its Rules of Procedure, the preparation of which involved neither the General Assembly of the American States nor the states parties to the Convention.

58. The State considers that the autonomy of the Commission to prepare its Rules of Procedure recognized by Article 39 of the Convention and Article 22(2) of its Statutes tends to afford it greater leeway in determining how it should proceed in the exercise of its functions and powers under the two above-cited instruments, but it does not give it carte blanche to alter its mandate as it sees fit.

59. According to the State, the scope of the right to lodge individual petitions contained in Article 44 of the American Convention is unique among the human rights protection systems in place to the extent that anyone may petition the Commission, irrespective of their nature as victims, be it direct, indirect, potential, or any other kind; or of their relationship to the victims, since they may belong to any group of persons, regardless even of whether they are nationals or residents of the state concerned, or to any nongovernmental entity, whether or not they are recognized by the country with which the petition is concerned, all of which constitutes a genuine actio popularis.

60. The State says that the right to lodge individual petitions in the inter-American system for protection of human rights belongs to humanity as a whole and is exercised by any person or group of persons, or any nongovernmental entity, under the terms of Article 44 of the Convention. However, the State affirms that a contrario sensu, said provision prohibits the right of petition to governmental and inter-governmental entities, including the Commission, which, operational independence notwithstanding, remains an organ of the Organization of American States.

61. According to the State, given the broad latitude which the American Convention affords for lodging individual petitions with the Commission, the way in which the latter has acted ex officio, in an inquisitorial manner, only serves to impair its impartiality and the rights of the State to defense and égalité des armes, under the argument of the system's noble purpose of protection of human rights.

62. The State holds that, in the instant case, the possibility for the Commission to process a petition motu proprio, apart from being implicitly forbidden, is unnecessary and incidental to the functions of advancement and protection of human rights incumbent upon it, since the American Convention recognizes to any person the right to petition the Commission, regardless of whether they are victims, or if they are even acquainted with them.

63. According to the State, an essential and necessary factor in the Commission's performance of its functions in processing petitions is to ensure its impartiality and égalité des armes, something that would be truly difficult or perhaps impossible to ensure when the organ becomes the petitioning party in cases before it.

64. The State argues that the quasi-judicial nature of the Commission's functions in processing petitions in the inter-American human rights system has consequences with respect to its actions, which must be bound by the guarantees and rigors of balance and impartiality that judicial organs are required to observe. The State holds that it arises from the provisions contained in Articles 44 to 51 of the American Convention that the Commission should act as an independent and impartial third party, equidistant between the petitioners and the State, endeavoring to ensure an appropriate procedural balance between the two parties. The State maintains that only before the Inter-American Court, after the procedure provided in the aforesaid provisions has concluded and the State has failed to comply with the recommendations made, does the Commission adopt a partial position as applicant, which is a different procedural role before a full-blown jurisdictional organ (i.e., the Court). According to these affirmations, it

is the State's understanding that a partial position is not compatible with the function that the Commission performs during the analysis of petitions lodged with it in accordance with Articles 44 to 51 of the American Convention.

65. According to the State, the principle of due process of the law, whose recognition in the framework of Article 8 of the American Convention is the subject of a wealth of peaceful jurisprudence developed by the Inter-American Court, is in no way restricted to the field of human rights since it constitutes one of the basic pillars of the rule of law in general. It says that on that basis, the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature or for the determination of rights and obligations of a civil, labor, fiscal, or any other nature, is not the exclusive right of the individual before state, but the inherent right of any person, whether natural or legal, governed by public or private law, or under domestic or international law.

66. The State holds that both persons and groups of persons who lodge petitions with the Commission, a quasi-judicial organ, are entitled to a "conventional due process" and to impartiality and independence on the part of the Commission, in accordance with Article 8 of the American Convention, and that respondent states enjoy the same right by virtue of the generally recognized principle of law enshrined in the constitutions of every American State and implicitly guaranteed in the protective procedures provided in the American Convention.

67. The State considers that by initiating the processing of a petition ex officio, the Commission adopts a dual role of both petitioner and decision-making organ, in patent violation of conventional due process, its independence, and the impartiality with which it must act in processing petitions, in order to ensure égalité des armes between legitimate petitioners and the State. The State says that the foregoing leads to the conclusion that in the instant petition, apart from the aforementioned obvious violations of the procedural rules contained in the Convention, there is a breach, in particular, of the principle of procedural equality, of the égalité de armes that should prevail between State and petitioners in the framework of the Commission and which, as the Inter-American Court has found, ensures the stability and reliability of the international mechanism for protection of human rights.

68. According to the State, in the instant petition, the Brazilian State is clearly at a disadvantage vis-á-vis the IACHR, which abandoned its role of impartial examiner, in order to become petitioner-decision maker in the proceeding, just like a medieval inquisitor. The State also holds that it is also inappropriate to speak of equivalent rights and obligations in the course of the proceeding between the State and the Commission as the latter intends to have the decision on competence, admissibility, and possible merits in a petition that it processed motu proprio, while the Brazilian state, for its part, is compelled to exercise its right to contest and defend itself against charges made by the very organ that will decide the petition and ought to act as an impartial third party. The State also deems it appropriate to mention that the petitioners in precautionary measures proceeding MC 130/06 never requested the processing of a petition and, therefore, consider this proceeding to be flawed ab ovo, which will heighten the imbalance and inequality between the parties rather than correct it.

69. In the opinion of the State, the quasi-judicial nature of the functions of the Commission with respect to the system of petitions and communications provided in the Convention, necessarily entails a guarantee of independence and impartiality in its actions. In its view, this impartiality, which does not present in the human rights promotion activities carried out by the Commission or when the latter presents an application or a request for provisional measures to the Court, is imperative when the Commission examines complaints alleging violations of human rights.

70. According to the State, impartiality is defined as the absence of any favorable or contrary preconceptions or predispositions with regard to the parties or any other matter on which a decision is to be adopted. In support of the foregoing the State cites the case law of the European Court of Human Rights, saying that it tends to presume personal impartiality until there is proof to the contrary, while objective impartiality requires the tribunal or the judge to offer sufficient guarantees of their impartiality. The State adds that in mentioning the foregoing it does not seek to speculate about the subjective impartiality of the illustrious members of the Commission, but that in the instant case, however, the impartiality of the organ, per se, does not stand the test of objectivity and, therefore, the State wonders what kind of guarantee of impartiality the Commission could offer the State in determining the admissibility of a petition initiated motu proprio, in deciding the merits of a petition which it processed, or in monitoring compliance with any recommendations arising from a petition which it, on its own initiative, processed and resolved.

71. The State, again citing the jurisprudence of the European Court, notes that the Commission will certainly not give the appearance of imparting justice or protecting human rights in an independent and impartial manner if it decides in favor of a petition that it initiated itself, in violation of the right to lodge individual petitions.

72. Based on the foregoing, the State holds that it is not hard to grasp why the petitioners in precautionary measures proceeding MC-130/06, who were aware of the broad compass of the right to lodge individual petitions enshrined in Article 44 of the American Convention, only chose to request the Commission to grant precautionary measures; at no time did they ask it to process a petition. The State says that the reason for this, however, lies in the question of exhaustion of domestic remedies: the petitioners have said that they have attempted several remedies in the domestic jurisdiction, some of which remain in process and clearly, therefore, those remedies have not been exhausted.

73. The State observes that the rule of prior exhaustion of domestic remedies is essential to guarantee the subsidiary nature of the inter-American system, whereby the Commission and, subsequently, the Court must be called on to act after the interested parties have exhausted the possibility of securing relief in the domestic jurisdiction of the State concerned for alleged violations unless exceptional circumstances exist that preclude that requirement. The State holds that, in processing petitions motu proprio, the Commission violates the subsidiary nature of its functions, denying the Brazilian State the opportunity to comply with its chief obligation under the Convention to ensure and respect human rights through its own standards, mechanisms, and institutions, without the need to resort to an international proceeding.

74. With respect to the foregoing, the State says that it has adopted several measures to rectify the matter, such as the decision of the Judge of the Third Criminal Circuit of Niterói December 8, 2001, which ordered the immediate transfer of 139 inmates from the 76th Police Precinct. However, the situation was exacerbated by the arrival of new prisoners, which again resulted in overcrowded conditions two years later. Nevertheless, once again, the efforts of the Ombudsman made it possible to adopt new measures, this time for the transfer of 200 inmates to Ary Franco Prison.

75. According to the State, in this interval, various judicial remedies were invoked in an effort to reach a definitive solution to the problems of overcrowding and living conditions of inmates in the cells at the 76th Police Precinct, which shows the concern felt by the Brazilian authorities for this issue. To demonstrate that concern the State cites the decision of November 4, 2002, whereby a judge ordered the transfer of sentenced prisoners and prohibited the admission of new inmates. Said decision, however, was suspended by the Tribunal of Justice of the State of Rio de Janeiro because it was not feasible to carry out the order at that time.

76. The State says that the Office of the Attorney General, in conjunction with the Office of the Ombudsman, entered a new petition which was accepted on September 16, 2003. However, the decision to grant the petition was annulled by the Tribunal of Justice of Rio de Janeiro on the grounds that a serious threat of disruption of public order existed, bearing in mind the risk entailed by the untimely transfer of the prisoners without proper planning, in addition to the problems posed by the encroachment on functions that were the purview of the executive branch.

77. According to the State, following the annulment decision by the Tribunal of Justice, the State Ombudsman filed a habeas corpus petition with the Superior Tribunal of Justice in order to bring about the immediate transfer of inmates to an adequate facility and so that house arrest might be granted to those eligible for it, in light of the unfit conditions in the jail. However, the petition was refused because it was not the appropriate legal mechanism for the ends sought; said decision has not been appealed. The foregoing notwithstanding, the State says that judicial mechanisms could be used at any time in an attempt to remedy the above described situation, including by state organs for protection of the rights of people who lack resources, such as the Office of the Attorney General or the Ombudsman, as they have in the past.

78. The State affirms that in spite of anything that might be alleged, the efforts it has made to implement the precautionary measures already render the instant “petition” pointless and preclude the need to petition the courts to remedy the situation.

79. According to the State, based on information provided by the Corrections Secretariat of the State of Rio de Janeiro, the State authorities are taking urgent steps to enable the transfer of a group of inmates from the 76th Police Precinct according to a preset timetable that would culminate with its interdiction. In the framework of this process, on December 15, 2006, 94 inmates were transferred, accompanied by the petitioners of the precautionary measures and representatives of the Attorney General’s office. Of those inmates, 41 were taken to Pedro Melo da Silva Remand Center, 50 to Jorge Santana Remand Center, and three to Benjamin Moraes Filho Penal Institute. In the framework of this same process, the State notes that 100 inmates were transferred on December 18, 2006 to Romeiro Neto and Paulo Roberto Rocha Remand

Centers, while another 28 inmates were transferred on December 21 of that year, 24 of whom were taken to Jonas Lopez de Carvalho Penitentiary and four to Ary Franco Prison, which reduced the inmate population in the cells at the 76th Police Precinct to 357. As of February 7, 2007, there were reportedly 135 inmates in strictly provisional custody whose removal was soon expected. The State affirms that these measures render the petition pointless, because it had complied with the precautionary measures and, therefore, what was being asked in the proceeding at the international level had been satisfied at the domestic level.

80. Finally, all of the foregoing notwithstanding, the State holds that even though domestic remedies have still to be exhausted, the final decision on the matter was made on September 20, 2004, and the communication from the Commission informing the State of the processing of the petition ex officio was dated October 23, 2006, an interval four times longer than the six-month time limit allowed by Article 32(2) of the Commission's Rules of Procedure, a core requirement to be met by the petitioners.

81. With the conviction that the preliminary considerations put forward by the State will be favorably received, and conscious of the process set out in the Rules of Procedure, whereby the processing of the petition by the Commission is divided into two phases, namely, one on admissibility and one on merits, the State reserves the right to advance submissions on the merits of the matter when the time provided in Article 38(1) of the Rules of Procedure of the IACHR arose, assuming a report declaring the petition admissible was adopted.

82. Based on all of the foregoing, the State requests that the petition be declared inadmissible, first, on the grounds that the Commission lacks competence to lodge petitions independently of the will of those legitimately entitled to do so under the Convention, which leads to the conclusion that Article 24 of the Rules of Procedure is unlawful; or, subsidiarily, should this argument not be accepted, the petition should be declared inadmissible because the remedies afforded by domestic law have not been exhausted.

83. In conclusion, the State requests that petition 1113-06 be dismissed without further processing since the Commission is not competent to process petitions motu proprio, and that the Commission adopt measures to make its Rules of Procedure compatible with the American Convention and its Statutes.

IV. ANALYSIS

84. During the processing of the petition by the Commission and in the framework of the precautionary measures requested from the Commission, the petitioners and the State presented successive facts concerning the precautionary measures and updated information in connection with the alleged violations.

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

85. According to Article 44 of the American Convention, any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the

Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of that treaty by a State Party. This right is also recognized in Article 23 of the Rules of Procedure of the IACHR. Brazil is required to respond at the international level to such denunciations or complaints of violation of the American Convention since it ratified that treaty on September 25, 1992. Accordingly, the Commission is competent rationae personae to examine the allegations.

86. Upon weighing the allegations, the Commission, taking into account the provisions contained in Article 24 of its Rules of Procedure, decided to initiate the processing of petition No. 1113-06 in the framework of its 126th Regular Session.

87. The Commission considers the alleged victims to be the persons confined in the cells of the 76th Police Precinct in Niterói, State of Rio de Janeiro, from the moment the first remedy was invoked in the framework of the domestic jurisdiction in 2002, until the present. From the evidence furnished by the petitioners, the Commission managed to identify the inmates referred to in the body of the petition: Cristiano Santos Silva, Genilson da Silva, Fabio Ventura, Nilton Geraldo dos Santos, Tiago Martins, Saulo Jorge Lima dos Santos, Aloir Castorino dos Passos, Wellington Martins, Reinaldo Dias Pereira y Aldair da Silva, as well as the following others who were identified in the annexes: Adriano de Andrade Pinto, Afonso Bruno Francisco, Aguinaldo Luiz Gocalves dos Santos, Alessandro Muniz de Azevedo, Alex Carlos da Silva, Alex da Veiga Sant Ana, Alexandre de Souza, Alexandre Moraes de Andrade, Anderson de Andrade Zampires, Andre Luiz Figueiredo da Costa, Andre Luiz Gomes dos Santos, Andre Luiz Pinheiro Santos, Antonio Carlos da Silva, Antonio Correia de Araujo, Alessandro de Oliveira Cuzano, Alex Carlos da Silva, Bruno Conceiçao de Oliveira, Bruno Lima de Freitas, Diego Luiz Barbosa Guimaraes, Daniel da Rosa Gonçalves, Edmilson da Silva, Ednaldo Lima da Silva, Eduardo Ferreira Felizardo, Evandro Araujo Costa, Evandro Basson Caldas, Eiebenil Campos da Conceiçao, Fabio Becerra da Silva, Fabricio Avila Rangel, Fernando da Costa Ribeiro, Francisco Jose Batista de Abreu, Georg Arnold Schrage, Ilzimar Jardim Lopes, Jailton Machado de Oliveira, Jeronimo da Cruz Oliveira, Johanes Barbosa da Silva Junior, Jocimar Laranjeiras Avelar, Jose Ricardo da Silva Bastos, Lineu da Costa Amorim, Marcelo Jose Moreira da Silva, Marcio Marlon Silva de Assis, Marcelo Quintanilha Marinho, Marco Aurelio Menezes Araujo, Marco Jose da Silva, Marcos de Oliveira Botelho Junior, Max Marcelo Sant Anna da Silva, Paulo Henrique Andrade do Rosario, Paulo Cesar do Nascimento Pereira, Paulo Roberto da Silva Lessa, Rafael Gomes Vianna, Renato de Almeida Barbosa, Robson Rosa, Robson Pereira Guimaraes, Wagner Vaz da Silva, Wanderlei da Guia Oliveira, Wanderson dos Santos de Carvalho, Wellington Luiz Cardoso Ribeiro.[FN4] This list was prepared for the purposes of the petition's admissibility and should be lengthened once access is gained to the prison admission records.

[FN4] The foregoing is surmised from a facsimile of the Prisoner Rolls of the Civil Police of Rio de Janeiro dated May 5, 2006, and September 12, 2006, contained in Annex II of the information presented by the petitioners on June 5, 2006, and Annex I of the information presented by the petitioners on September 15, 2006.

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88. The Commission's competence rationae materiae arises from the fact that the alleged violations concern human rights protected at Articles 1(1), 5, 8, and 25 of the American Convention. Competence rationae temporis is confirmed by the fact that the alleged violations are said to have occurred when the obligation of the State to respect and ensure the rights enshrined in the Convention was already in force; in other words, after September 25, 1992. The Commission is competent rationae loci because the alleged facts reputedly occurred in the territory of the Federative Republic of Brazil, a country that has ratified the American Convention.

B. The opening motu proprio of the petition by the Commission

89. The State holds that by initiating the processing of the petition ex officio, the Commission became both petitioner and decision-making organ, in clear violation of conventional due process, its independence, and the impartiality with which it must act in processing petitions, there by failing to not ensure equality or balance between the parties. Accordingly, the State is of the opinion that the instant petition contravenes the procedural rules of the Convention.

90. Article 24 of the Rules of Procedure of the Commission provides:

The Commission may also, motu proprio, initiate the processing of a petition which, in its view, meets the necessary requirements.

91. A petition lodged with the Inter-American Commission on Human Rights must meet the admissibility requirements set forth in the American Convention, as well as the Commission's Statutes and Rules of Procedure. The competence of the Commission to receive individual petitions is founded on Article 44 of the Convention and Article 19(a) of its Statutes for states parties to the American Convention, and Article 26(1) of the Rules of Procedure of the IACHR.

92. The Commission is competent to examine cases concerning violations of rights protected under the American Convention. Furthermore, the above-transcribed Article 24 of the Commission's Rules of the Procedure gives it sufficient jurisdiction to receive and examine a complaint alleging violation of rights protected in the Convention and, therefore, to process a petition which meets the necessary requirements.

93. The Court has recognized the authority of the Commission to process a petition motu proprio based on information received in the framework of a request for precautionary measures. In that connection, the Court found that,

once the Commission is given specific information regarding alleged human rights violations, it is the Commission that determines the procedure through which this information should be channeled, within the sphere of its extensive mandate, established in both the Charter of the Organization of American States and the American Convention, for the promotion and protection of such rights.[FN5]

[FN5] I/A Court H. R., Case of the Dismissed Congressional Employees (Aguado Alfaro et al.). Judgment of November 24, 2006. Series C No. 158., para. 67.

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94. The object of international human rights protection is to guarantee the individual's basic human dignity by means of the system established in the Convention. Therefore, the Court and the Commission have an obligation to preserve all of the remedies that the Convention affords victims of violations of human rights so that they are accorded the protection to which they are entitled under the Convention.[FN6]

[FN6] I/A Court H. R., In the Matter of Viviana Gallardo et al. Series A No G 101/81. Order of the President of July 15, 1981, para. 15.

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95. Article 24 of the Rules of Procedure of the Commission affords broad access to the system by vesting in the organ the power to weigh a complaint according to the standards of the Convention, and it may process a petition if the facts constitute potential violations of those standards and the requirements that the treaty establishes for that purpose have been met prima facie.

96. The Court has adopted the view that motu proprio processing of petitions by the Commission, upon receiving information in connection with precautionary measures does not imply an imbalance to the detriment of the State during the proceedings before that organ of protection.[FN7] According to the interpretation of the Court, the organs of the inter-American system must "preserve a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of the international protection mechanism."[FN8]

[FN7] Mutatis mutandi: I/A Court H. R., Case of the Dismissed Congressional Employees (Aguado Alfaro et al.). Judgment of November 24, 2006. Series C No. 158, para. 66.
[FN8] I/A Court H. R., Cayara Case. Preliminary Objections. Judgment of February 3, 1993. Series C No. 14, para. 63.

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97. In the opinion of the Court, for "the due process of law" a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants.[FN9]

[FN9] I/A Court H. R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 117.

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98. The Commission observed the aforesaid principles at all times in the proceedings, in spite of having processed the petition motu proprio in response to information received in the context of precautionary measures. The State was notified of all the procedural decisions adopted. Therefore, it was able to exercise its right to defend itself and presented information in that connection on October 23, 2006, and February 7, 2007.

99. In acting in the aforementioned manner, the Commission did not prejudge the situation but, rather, upon determining prima facie that there was sufficient information in the request for precautionary measures concerning alleged violations of rights enshrined in the Convention, merely exercised its authority under Article 24 of its Rules of Procedure and proceeded to initiate the processing of a petition, in the same way as it would with any other complaint alleging violation of rights recognized in the Convention.

100. Based on the foregoing, the Commission concludes that it has competence to process petitions motu proprio, and since the State was ensured its exercise of the right of defense throughout, the balance of the procedural system has not been breached. Accordingly the State has been ensured the right to equality, certainty, and equity. Moreover, as stated above, the Court has found that said regulatory provision does not contravene the stipulations of the American Convention.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

101. Under Article 46(1) of the Convention, for the Commission to find a petition admissible, the remedies under domestic law must first have been exhausted in accordance with generally recognized principles of international law. Article 46(2) of the Convention provides that said provision shall not apply when the domestic legislation of the state concerned does not afford due process of law for the protection of the right in question; the alleged victim has been denied access to the remedies under domestic law; or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

102. The State, observes in its reply that when the Tribunal of Justice of Rio de Janeiro annulled, on October 17, 2003, the decision adopted on September 16 of that year by the Judge of the Third Criminal Circuit of the District of Niterói, the State Ombudsman filed a habeas corpus petition with the Superior Tribunal of Justice in order to bring about the immediate transfer of inmates to an adequate facility or so that house arrest might be granted to those eligible for it. Said petition was denied on September 28, 2004, because as a legal remedy it was not appropriate for the ends sought, which decision became final because it was not appealed. The State said that despite the rejection of these actions, judicial mechanisms could be used at any time to remedy the above-described situation and, therefore, domestic remedies had not been exhausted.

103. The Commission observes that the first court decision ordering the adoption of measures to remedy the wrongdoings that were occurring in the cells of the 76th Police Precinct was issued on December 8, 2001, by the Judge of the Third Criminal Circuit of Niterói but quashed by the

higher court. Thereafter, other actions were attempted for the same purpose but proved unsuccessful. Accordingly, the Commission finds that the record shows that, to date, all of the remedies attempted in the domestic jurisdiction have proved ineffective.

104. However, the petitioners have stated that on January 18, 2005, a public civil action was brought by the Office of the State Attorney General and the State Ombudsman, in which, on April 2, 2007, proceedings had not progressed sufficiently for a final decision to be adopted.

105. The rule of prior exhaustion of domestic remedies under the international law of human rights has certain implications that are present in the Convention. Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8 (1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).[FN10]

[FN10] I/A Court H. R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 91.

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106. Under Article 46(1)(a) of the Convention and in accordance with generally recognized principles of international law, it is up to the State asserting non-exhaustion of domestic remedies to prove that there are remedies within its domestic system that remain to be exhausted.[FN11]

[FN11] I/A Court H. R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 88; I/A Court H. R., Fairén Garbi and Solís Corrales Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2. para. 87, and I/A Court H. R., Godínez Cruz Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para. 90

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107. Based on the foregoing, in general situations such as the one in the instant case, the State has the obligation to demonstrate that remedies are adequate and effective for repairing the collective violation alleged,[FN12] which it did not in this case.

[FN12] I/A Court H. R., Case of Nogueira de Carvalho et al. v. Brazil. Judgment of November 28, 2006. Series C No. 161, para. 51.

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108. In light of the foregoing considerations, the Commission finds that, given the time elapsed since the violations were first denounced and the fact that as of the adoption of the instant report none of the available remedies attempted has proved effective, and that a decision

in the aforementioned action has been pending for more than two years, this situation constitutes an unwarranted delay and, furthermore, there is little likelihood that the remedies under domestic law will prove effective.

109. Finally, the Commission considers it important to clarify that the exceptions to the rule of exhaustion of domestic remedies are closely linked to the definition of possible violations of certain rights contained in the Convention, such as the right to a fair trial (Article 8), and the right to judicial protection (Article 25). It should be remembered, however, that the content of Article 46(2), in its nature and subject, is independent of the substantive norms of the Convention and the criteria used to arrive at its definitions are distinct from the criteria used to establish violations of Articles 8 and 25 of the Convention. The result of this is that the applicability of the exceptions to the rule of exhaustion of the remedies available under domestic law defined in subsections (a), (b), and (c) of Article 46(2) should be resolved prior to proceedings in a special pronouncement, as the Commission is doing by publishing the present report.

110. Consequently, in its examination of the merits of the matter in dispute the Commission shall analyze the reasons why domestic remedies were not exhausted and the legal effects of non-exhaustion, in order to determine if the aforesaid Articles 8 and 25 have been violated.[FN13]

[FN13] See IACHR, Report 54/01, Case 12.250, Mapiripán Massacre, Colombia, para. 38 and IACHR Juan Humberto Sánchez, Honduras, Report 65/01, Case 11.073, March 6, 2001, par. 51. IACHR, Report 15/02, Admissibility, Petition 11.802, Ramón Hernández Berrios et al., Honduras, February 27, 2002.

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111. In light of the foregoing, the Commission concludes that the petition sub iudice is admissible based on the exceptions set down in Article 46(2)(a) and (c) of the American Convention.

2. Timeliness of the petition

112. Article 46(1)(b) of the American Convention provides that for a petition to be admitted it shall be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment“.

113. With regard to the domestic remedies, the State alleged that they had not been exhausted. Contradictorily, the State said in its reply that the last judicial decision in the matter was rendered on October 28, 2004, and that it had not been appealed. Therefore, according to the State, by the time the complaint was presented an interval four times longer than the six-month time limit allowed under the appropriate rules had elapsed.

114. However, since the Commission has concluded that it is unlikely that the remedies under domestic law will prove effective, and that there was an unwarranted delay in processing the

remedy under domestic law, a decision on which has been pending since January 18, 2005, the exceptions provided in Article 46(2)(a) and (c) of the American Convention are applicable. Therefore, there has obviously been no final decision whose notification would make it possible to calculate the six-month time limit set down in paragraph 1(b) of said article. Without prejudice to the foregoing, the Commission finds that the complaint was lodged within a reasonable time since the date on which the victims' rights were allegedly violated. Therefore, the requirement regarding timeliness has been met in accordance with Article 32 of the Rules of Procedure of the IACHR.

3. Duplication of proceedings and res judicata

115. The Commission finds that there is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement and that it has not received any information that might indicate that such a situation exists. The Commission further finds that it is not substantially the same as a petition or communication previously studied by it. Therefore, the Commission concludes that the requirements established in Article 46(1)(c) and 47(d) are met.

4. Nature of the allegations

116. The Commission considers that, prima facie, the facts alleged by the petitioners with regard to the prison conditions for detainees in the cells of the 76th Police Precinct could constitute violations of Article 5 and 1(1) of the Convention.

117. The petitioners also say that the fact that no effective remedy exists in Brazil by which to secure fit accommodation and treatment for prison inmates also gives rise to a potential violation of Article 2 of the aforesaid treaty. In light of the allegations and the judicial remedies attempted in the framework thereof, the Commission finds that they could constitute violations of the rights enshrined in Articles 8(1) and 25 of the American Convention, in conjunction with the general obligations contained in Articles 1(1) and 2 of that treaty.

THEREFORE, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition admissible as regards Articles 5, 8(1), and 25 of the American Convention, in connection with Articles 1(1) and 2 of that instrument.
2. To notify the State and the petitioners of this decision.
3. To publish this report and included in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 17th day of the month of July, 2007. (Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President, Víctor E. Abramovich, Second Vice-President; Clare K. Roberts, Evelio Fernández Arévalos, and Freddy Gutiérrez, Commissioners.