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Session:	Hundred Twenty-Eigth Session (16 – 27 July 2007)
Title/Style of Cause:	Karina Montenegro, Tania Shasira Ceron Paredes, Leonor Briones, Martha Cecilia Cadena and Nancy Quiroga v. Ecuador
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Freddy Gutierrez.
Dated:	23 July 2007
Citation:	Montenegro v. Ecuador, Petition 261-03, Inter-Am. C.H.R., Report No. 48/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: the Regional Advisory Foundation on Human Rights

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I. SUMMARY

1. On April 3, 2003, May 12, 2003, December 15, 2004, December 20, 2004, and January 21, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received five petitions submitted by the Regional Advisory Foundation on Human Rights (hereinafter “the petitioner” or “INREDH”) which alleged violation on the part of the Republic of Ecuador (hereinafter “the State”) of Articles 7 (subsections 1, 2, 3, 4, 5, and 6), 11, 24, and 25 of the American Convention on Human Rights (hereinafter "the American Convention"); Articles 2 (subsections b and c), 4 (subsections b, c, and f), 6 (a), and 7 (subsections a and d) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ("Convention of Belem do Pará"); and Articles 1 and 2(c) of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) to the detriment of Tania Shasira Cerón Paredes, Karina Montenegro, Leonor Briones, Martha Cecilia Cadena, and Nancy Quiroga, respectively (“the alleged victims”).

2. The petitioner holds that the alleged victims were illegally detained because at the time of their arrest they were either pregnant or, in the case of Martha Cecilia Cadena, 68 years old, in violation of Ecuadorian law which provides that pregnant women and persons over 65 years of age shall not be deprived of liberty and that preventive custody shall be substituted with house arrest. The petitioner also argues that the detention was arbitrary, given the circumstances in which they had to spend their pregnancies and give birth, and also in light of the prison conditions in which they live to this day with their minor children. Furthermore, these conditions have led Mrs. Cadena to develop a mental illness, a situation made worse by her advanced age.

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3. The State argues that the alleged victims have not exhausted the domestic remedies available to them, such as filing an appeal against the precautionary measures issued against them or an appeal for legal protection [amparo de libertad], provided for in Articles 172 and 422, respectively, of the Ecuadorian Code of Criminal Procedure. The State adds that the conduct of the authorities that ordered and carried out the detentions was in accordance with the law in force and requested that, inasmuch as they failed to meet the requirements set down at Article 46 of the Convention, the petitions be declared inadmissible and dismissed.

4. Having examined the positions of the parties in the light of the admissibility requirements contained in Article 46 of the American Convention, the Inter-American Commission decided to declare the case admissible in relation to Articles 5, 7, 19, and 25 of the American Convention in connection with Article 1(1) of said instrument and Article 7 of the Convention of Belem do Pará. Furthermore, the Commission decided to declare the case inadmissible in relation to Articles 11 and 24 of the American Convention; and Articles 2 (subsections b and c), 4 (subsections b, c, and f), and 6(a) of the Convention of Belem do Pará. Consequently, the IACHR notifies the parties of its decision and publishes this report, which it shall include in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. The petition concerning Ms. Tania Shasira Cerón Paredes, was received by the Commission on April 3, 2003, and registered as number P-261-03. On May 20, 2004, the petitioner provided additional information. The pertinent portions of the petition were relayed to the State in a communication of October 14, 2004, and it was given two months in which to reply. As of the preparation of this report no information has been received from the State.

6. The petition regarding Ms. Karina Montenegro, was received by the Commission on May 12, 2003, and registered as number P-397-03. In a communication of May 19, 2004, the Commission requested the petitioner to provide additional information. On February 16, 2005, the Commission reiterated the request for information, which the petitioner supplied in a communication received on March 11, 2005.

7. The petition relative to Ms. Leonor Briones was received by the Commission on December 15, 2004, and registered as number P-1371-04. In a communication of January 13, 2005, the petitioner was asked for additional information, which was provided on February 17, 2005.

8. The petition concerning Ms. Martha Cecilia Cadena was received by the Commission on December 20, 2004, and registered as number P-1377-04. In a communication of May 23, 2005, the pertinent portions of the petition were transmitted to the State and it was given two months in which to reply. The State submitted its reply by means of communication No. 18941 of August 3, 2005, the pertinent portions of which were forwarded to the petitioner on August 9, 2005, and it was given one month to present observations. The petitioner requested an extension, which the Commission granted on September 23, 2005. The observations were presented in a communication received on October 13, 2005, the pertinent portions of which were forwarded to

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the State in a communication of October 28, 2005, which was given one month in which to present observations. As of the preparation of this report the State had not presented its observations.

9. The petition relating to Ms. Nancy Quiroga was received by the Commission on January 21, 2005 and registered as number P87/05.

10. In a communication of May 23, 2005, the Inter-American Commission informed the parties that, in accordance with Article 29(d) of its Rules of Procedure, it had ordered the joinder of petitions P397/03 Karina Montenegro, P1371/04 Leonor Cristina Briones Cheme, and P-87-05 Nancy Iralda Quiroga Quishpe, in petition P397/03. In the same communication, the Commission transmitted to the pertinent portions of the joined petitions to the State and granted it two months to present a response. In a communication of July 21, 2005, the State requested an extension; it was granted an extension of one month in a communication of July 29, 2005. In a communication of August 10, 2005, the State requested another extension to present its reply, and it was granted an additional 30 days in a communication of September 8, 2005

11. The State submitted its response on August 22, 2005, and the pertinent portions were conveyed to the petitioner on September 8, 2005, with a period of one month to present additional information. As of the date of preparation of this report that information had not been furnished.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

Tania Shasira Cerón Paredes

12. The petitioner says that on July 5, 2002, Ms. Tania Shasira Cerón Paredes was illegally and arbitrarily detained in the city of Quito by members of the National Police and taken to the INTERPOL police station,[FN1] where she remained for seven days. At the time of her arrest she was in the fifth month of her pregnancy.[FN2] On July 8, 2002, the Judge of the First Criminal Court of Pichincha took over the preliminary investigation and ordered that she be taken into preventive custody. On July 12, 2002, Ms. Cerón was transferred to the Women's Social Rehabilitation Center of Quito (hereinafter "the Rehabilitation Center"), where she gave birth. On July 30, 2002, the Court ordered the substitution of preventive custody with house arrest, in keeping with Article 171 of the Code of Criminal Procedure,[FN3] but the police station disregarded the order.

[FN1] Which is not under the control of the Bureau of Social Rehabilitation of Ecuador, the authority in charge of safeguarding the rights of detainees.
[FN2] According to the copy of the echograph scan performed on July 24, 2002, by Dr. Juan Parreño of the Medical Department of the Rehabilitation Center.
[FN3] Article 171 provides:

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Substitution.- The judge or court may order one or more of the following alternative measures to preventive custody, provided that the offence in question is punishable by a penalty that does not exceed five years of imprisonment and the charged person does not have a prior criminal conviction:

1. House arrest with police surveillance, as ordered by the judge or court;
2. The obligation to appear periodically before the judge or court or an authority designated thereby; and,
3. A prohibition from leaving the country, their area of residence, or an area determined by the judge or court.

Regardless of the offence, preventive custody shall be substituted with house arrest in all cases in which the charged or accused person is more than 65 years of age, is pregnant, or has given birth within the past 90 days. In all of these cases the provisions contained in Article 169 of this code shall also be void.

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13. The petitioner says that on September 5, 2002, INREDH presented a habeas corpus petition to the mayor of the city, in accordance with Article 93 of the Constitution.[FN4] To support the petition, the petitioner argued that the detention was illegal because it contravened Article 58 of the Criminal Code;[FN5] because the detained woman was not immediately taken before a competent judge; and because she was held without charge for more than 24 hours. In a resolution of September 17, 2002, the petition was found inadmissible, without an analysis made of the evidence of illegality and arbitrariness; by reason of the principle of judicial independence and because the judge ordered house arrest without revoking the preventive custody order.[FN6] The resolution was appealed before the Constitutional Court, the First Chamber of which decided to uphold the mayoral resolution and formally requested the judge to "order that the precautionary measure of house arrest issued on July 30, 2002, be carried out immediately."[FN7] The decision of the Constitutional Court, issued on October 2, 2002, found that the judge had substituted preventive custody with house arrest in accordance with Article 171 of the Code of Criminal Procedure; however, the record did not show that Ms. Cerón had left the prison. The petitioner argues that, therefore, Ms. Cerón did not have access to an effective remedy.

[FN4] Article 93 provides:

Anyone who believes him or herself to be unlawfully deprived of their liberty may invoke habeas corpus. This right may be exercised by the person themselves or by a third party, without need of a written order, before the Mayor or acting mayor in whose jurisdiction they find themselves. The municipal authority, within 24 hours of the receipt of the petition shall order that the petitioner be brought immediately before them and that the detention order be exhibited. Their resolution shall be obeyed without objection or excuse by those in charge of the rehabilitation center or the place of detention.

The Mayor shall issue his decision within 24 hours. He or she shall order the immediate release of the petitioner if the detainee is not brought before him, if the order is not exhibited, if the latter does not meet the legal requirements, if any errors of procedure were committed in the arrest, or if the petition is warranted (...).

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[FN5] Art. 58.- No pregnant woman may be deprived of her liberty or notified of a sentence ordering her imprisonment until 90 days after delivery of the child.
[FN6] Copy of the mayoral resolution of September 17, 2002.
[FN7] Copy of Constitutional Court Ruling 051-2002-HC
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14. The petitioner notes that in light of the disobedience of the order of the Constitutional Court, INREDH presented a brief in which it requested that the judge order that the ruling of the Constitutional Court be carried out immediately. In spite of that, the ruling was never carried out. Ms. Cerón is not currently at the Rehabilitation Center, and the petitioner does not know at which detention center she is being held.

Karina Montenegro

15. The petitioner says that Ms. Karina Montenegro was illegally and arbitrarily detained by members of the National police in the city of Quito on May 23, 2002, and taken to the INTERPOL station where she remained for seven months. Ms. Montenegro was pregnant at the time of her arrest. The Prosecutor of the Drug Trafficking Crimes Unit of the Office of the Attorney General of Pichincha opened the preliminary investigation on May 25, 2002. On May 28, 2002, the judge of the 18th Criminal Court of Pichincha ordered that Ms. Montenegro be taken into preventive custody at the Rehabilitation Center. On June 5, 2002, the judge revoked the preventive custody order in light of the evident fact that Ms. Montenegro was pregnant and instead ordered that she be placed her under house arrest. On June 6, 2002, Lieutenant Colonel Juan Francisco Sosa, Chief of the Pichincha Counter Narcotics Office, was instructed to carry out the order of the judge; however, said officer never carried out the order.

16. The petitioner says that INREDH lodged a habeas corpus petition with the mayor of the city, in accordance with Art. 93 of the Constitution, arguing that the detention was unlawful because: it contravened Article 58 of the Criminal Code; Ms. Montenegro was not immediately taken before a competent judge; and the order of the judge substituting preventive custody, in accordance with Article 171 of the Code of Criminal Procedure, was disobeyed.

17. The petitioner says that the Office of the Mayor refused the petition without analyzing the evidence of illegality and arbitrariness; and on the basis of the principle of judicial independence and noninterference by government agencies in organs of the judiciary.[FN8] Said resolution was appealed before the Constitutional Court, which, on November 14, 2002,[FN9] quashed the mayoral resolution, granted the habeas corpus petition, reprimanded the counter narcotics chief for disobeying the order of the judge, and ordered the substitution of preventive custody with house arrest. After having been held in the INTERPOL station cells for seven months, on December 27, 2002, Ms. Montenegro was transferred to the Rehabilitation Center, by which time her son was already born. She remains confined at the Rehabilitation Center where she lives with her five-year-old son.

[FN8] Copy of the mayoral resolution of September 9, 2002.
[FN9] By Ruling 050-2002-HC.

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Leonor Briones

18. The petitioner says that on November 15, 2003, Ms. Leonor Cristina Briones Cheme was arrested in the city of Quito by members of the Counter Narcotics Police of Pichincha and taken to the that unit's cells. She was pregnant at the time of her arrest.[FN10]

[FN10] According to the copy of the pelvic echograph scan performed at Enrique Garcés Hospital on February 2, 2004.
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19. The petitioner says that on November 16, 2003 a preliminary investigation was opened for the crime of illegal possession of narcotic drugs. On November 18, 2003, the judge of the Fourth Criminal Court of Pichincha ordered that Ms. Briones be placed under preventive custody, despite the fact that she was pregnant; she was confined in the Rehabilitation Center on December 16, 2003.

20. According to the petition, on April 26, 2004, INREDH presented a habeas corpus petition to the Metropolitan Mayor of Quito. At a hearing held on May 3, 2004, it was requested that Ms. Briones be released. By order of May 5, 2004, pursuant to Article 199 of the Constitution, which concerns the independence of the judiciary, it was decided to refuse the petition and maintain the measure "duly and lawfully imposed by a competent authority on the petitioner [and], bearing mind the stage of the proceeding, it is the judge having cognizance thereof who determines her procedural status."[FN11] An appeal was lodged with the Constitutional Court, the First Chamber of which, in a decision of July 6, 2004, considering that the judge is "the competent authority under the law to order the substitution of preventive custody,"[FN12] decided to uphold the mayoral resolution and requested the judge to act in accordance with Article 171 of the Code of Criminal Procedure.

[FN11] Copy of the mayoral resolution.
[FN12] Copy of Constitutional Court Ruling 031-2004-HC
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21. The petitioner notes that on May 11, 2004, the judge substituted preventive custody with house arrest. However, despite the notification to the Provincial Chief of the Judicial Police of Pichincha instructing him to carry out the order, the measure was never obeyed. Ms. Briones remains in detention; her son, who is two years and 10 months old, had to be separated from her after he became sick from the eating food at the Rehabilitation Center.

Martha Cecilia Cadena

22. The petitioner informs that on May 3, 2004, Ms. Martha Cecilia Cadena was arrested in the city of Quito by the Counter Narcotics Police of Pichincha after they caught her in possession

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of narcotic drugs. At the time of her arrest she was 68 years old.[FN13] She was held from May 3 to 6, 2004, at the INTERPOL station cells without being brought before a competent judge. On May 4, 2004, the District Prosecutor of the Pichincha Counter Narcotics Unit opened a preliminary investigation and requested that the judge order her to be placed in preventive custody.[FN14]

[FN13] According to the copy of her birth certificate.
[FN14] Copy of the Indictment.

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23. The petitioner also says that on May 5, 2004, INREDH filed a habeas corpus petition with the Office of the Mayor. The immediate release of Ms. Cadena was requested at a hearing held on May 10, 2004. In the mayoral resolution issued on the same day, on the basis that "it is up to the Judge of the Eighth Criminal Court of Pichincha, who has cognizance of the case, to issue a decision on the precautionary measure of preventive custody placed on the petitioner, since he is the judicial authority with due jurisdiction for that purpose and, therefore, it is he who must decide her procedural status (…),"[FN15] and of Article 199 of the Constitution, on the independence of the judiciary, it was decided to dismiss the petition as inadmissible.

[FN15] Copy of the mayoral resolution.

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24. According to the petition, on May 6, 2004, the Judge of the Eighth Criminal Court of Pichincha took over the proceeding for the crimes of trafficking and illegal possession of narcotic drugs, and ordered Ms. Cadena to be placed in preventive custody.[FN16] On that day she was transferred to the Rehabilitation Center, where she remains.

[FN16] Copy of the order issued.

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25. The petitioner says that in the criminal proceeding against her, Ms. Cadena requested the judge hearing the case to place her under house arrest on May 18, 2004, a request that she reiterated on May 19, 2004.

26. The petitioner mentions that on May 31, 2004, the judge in the case substituted preventive custody with house arrest. In official letter 631-2004-JOPP of June 1, 2004, to the Chief of the Judicial Police of Pichincha, the latter was instructed to carry out said order and that to place Ms. Cadena under house arrest at the place identified by her, which is situated in Comité del Pueblo No. 1, Barrio La Paz.

27. The petitioner informs that on June 11, 2004, INREDH appealed the mayoral resolution before the Constitutional Court, which, in a ruling of July 20, 2004, considered that "(…) judges may order preventive custody as a precautionary measure; however, upon determining the age of

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the charged person, house arrest should unquestionably be imposed as an alternative, in accordance with Article 171 of the Code of Criminal Procedure. In the instant case, it was demonstrated to the Office of the Mayor through exhibition of the birth certificate, that the charged person Martha Cecilia Cadena is currently 68 years old and that on that legal ground, the judge in the case, in light of this circumstance, should have ordered house arrest and not preventive custody as a precautionary measure, as has happened in this case."[FN17] Based on the foregoing, the Constitutional Court decided to confirm the mayoral resolution, refuse the habeas corpus petition, and instruct the judge in the case to adopt appropriate measures to order house arrest as a substitute measure for preventive custody.

[FN17] Copy of the Constitutional Court Ruling.

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28. The petitioner states that in the criminal proceeding, on June 28, 2004, Ms. Cadena reiterated the request that the Chief of the Judicial Police of Pichincha be instructed to carry out the court order. On June 29, 2004, the judge reiterated the substitution order and instructions to the judicial police in official letter 830-JOPP-2004.

29. The petition adds that in official letter 2132-JPAP-04 to the Judge of the Eighth Criminal Court of Pichincha, of July 23, 2004, the Counter Narcotics Chief of Pichincha mentioned that the domicile of Ms. Cadena:

(...) does not have basic services or offer the security conditions necessary to carry out the order (…)" and that the situation of the aforesaid domicile would lead the police personnel assigned to surveillance to be at risk of committing the acts set forth in Article 79 of the Law on Narcotic and Psychotropic Substances, owing to the precarious infrastructure, sanitation, security and other conditions (...).[FN18]

[FN18] Copy of the official letter.

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30. The petitioner adds that the judge, in a procedural decision of August 9, 2004, ordered the charged woman to identify another domicile that offered sufficient guarantees to enable substitution of her preventive custody with house arrest. The Judicial Police have not implemented the court-ordered measure to substitute preventive custody, despite being ordered to do so.

31. According to the petitioner, Ms. Cadena's mental condition shows signs of decline. In an interview with the INREDH team she said she did not understand what was happening, her ideas and speech were incoherent and, finally, she requested the assistance of another inmate, who commented that very often "she hears and understands things and later I don't know what happens because she completely forgets them."

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32. Finally, on January 18, 2007, INREDH presented a request to the Bureau of Social Rehabilitation that an evaluation be conducted of Ms. Cadena's medical condition; there has been no reply as yet.

Nancy Quiroga

33. The petitioner says that on December 25, 2003, Nancy Iralda Quiroga Quishpe was arrested in the city of Quito by guards of Men's Rehabilitation Center No. 1 as she sought admittance to visit a detainee; she was charged with illegal possession of cocaine. At the time of her arrest she was pregnant.[FN19]

[FN19] According to the report of Dr. Galo Maldonado Picerno of the Medical Department of the Rehabilitation Center.
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34. The petition notes that on December 26, 2003, the prosecutor opened a preliminary investigation for illegal possession of narcotic substances, and requested the judge to order preventive custody.[FN20] On December 29, 2003, the Judge of the Seventh Criminal Court ordered Ms. Quiroga to be placed in preventive custody.[FN21]

[FN20] Copy of the decision to open the preliminary investigation.
[FN21] Copy of the preventive custody order.
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35. According to the petition, on May 6, 2004, INREDH lodged a habeas corpus petition with the Metropolitan Mayor of Quito. At the hearing they requested the immediate release of Ms. Quiroga and submitted the corresponding medical report. By resolution of May 10, 2004, the Mayor, in consideration of Article 199 of the Constitution on judicial independence, decided to "maintain the precautionary measure of preventive custody duly and lawfully imposed by a competent authority on the petitioner [and], bearing mind the stage of proceedings, it is the competent judges having cognizance thereof who are responsible for her procedural status (…),"[FN22] and to refuse the habeas corpus petition as inadmissible.

[FN22] Copy of the resolution.
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36. The petitioner holds that at the preliminary hearing in the criminal proceeding before the Seventh Court held on May 17, 2004, Ms. Quiroga confirmed that she was pregnant and requested house arrest.[FN23]

[FN23] Copy of the record of the preliminary hearing. Point 1.
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37. The petition indicates that INREDH appealed the mayoral resolution before the Constitutional Court, which, in a ruling of July 21, 2004, found:

EIGHT.- Pages 14 and 15 of the record contain the results of the pelvic echographic scan carried out on the citizen Nancy Quiroga Quishpe, where it can be seen that she was 10 weeks pregnant at the time of the results. This scientific evidence shows that the victim is indeed pregnant, for which reason the judge hearing the case should have imposed house arrest and not preventive custody as a precautionary measure, and therefore it is illegal to confine her in a provisional detention center or a social rehabilitation center.[FN24]

Based on the foregoing, the Constitutional Court decided to confirm the mayoral resolution, refuse the habeas corpus petition, and notify "the judge in the case to take appropriate steps to order house arrest as a substitute measure for preventive custody."[FN25]

[FN24] Copy of the Ruling. 033-2004-HC. Preambular paragraph 8.
[FN25] Copy of the Ruling 033-2004-HC., Operative paragraphs 1 and 2.

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38. The petition states that on May 18, 2004, given that the detained woman was clearly pregnant, the judge in the case issued an order that she be placed under house arrest. The director of the rehabilitation center was notified of that order; however, it was not carried out.

39. The petition adds that on May 21, 2004, the Prosecutor of the Pichincha Counter Narcotics Unit appealed the decision to substitute preventive custody due to the fact that did not agree that the measure should be substituted and because Ms. Quiroga's pregnancy had not been substantiated. The Second Chamber of the Superior Court of Quito ruled on August 26, 2004, that it "lack[ed] jurisdiction to take up the matter unduly referred to a higher instance and, therefore, order[ed] that the case be returned to the lower court."[FN26]

[FN26] Copy of the Decision of the Superior Court.

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40. Ms. Quiroga remains confined in the rehabilitation center where she lives with her daughter of two years and eight months, despite the fact that conditions in the place are not ideal for the growth and development of an infant.

Alleged violations common to the three petitions

41. The petitioner holds that in the case of the alleged victims who were pregnant at the time of their arrest, confinement meant that they had to give birth in a prison environment, without access to regular medical checkups, either for themselves or for their children because there are no gynecologists or pediatricians in prison, and that to keep a women in detention in such conditions, when it is prohibited by law, constitutes a form of state violence.

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42. The petitioner argues that despite the fact that Articles 58 of the Criminal Code and 171 of the Code of Criminal Procedure prohibit the detention of pregnant women and persons over the age of 65, as well as the obligation to substitute preventive custody with house arrest, in practice, none of the alleged victims was able to enjoy their right to house arrest and, on the contrary, they remained in the judicial police jail cells or in rehabilitation centers along with other detainees who had already been convicted and in conditions unfit to guarantee their physical integrity.

43. The petitioner says that under Article 208 of the Constitution,[FN27] it was illegal to transfer the alleged victims to social rehabilitation centers because at that time of their detention none of the women had been sentenced.

[FN27] Article 208 of the Constitution of Ecuador provides:
(...) Detention centers shall have the appropriate material resources and facilities to care for the physical and mental health of inmates. They shall be administered by state institutions or by private non-profit organizations under the supervision of the State.
Suspects and persons on trial in criminal proceedings who have been deprived of their liberty shall be held in provisional detention centers.
Only persons found guilty and sentenced to terms of imprisonment by a final conviction shall be confined as inmates of social rehabilitation centers (…).

B. Position of the State

44. With respect to the three joined petitions, the State argues that the alleged victims failed to meet the requirement to exhaust domestic remedies by their omission to file an appeal for legal protection or an appeal against the precautionary measures issued against them.

45. Regarding the petition of Ms. Karina Montenegro, the State mentions that a decision is pending on the motion for review entered during the criminal proceeding. This unexhausted remedy prevents the Commission from taking up this petition because it means that one of the admissibility requirements provided for in Article 46(1) of the Convention has not been met and, since none of the exceptions provided for in Article 46(2) have been established, nor is it possible to speak of an unwarranted delay of justice because the motion for review is considered a new proceeding.

46. In reference to the petition concerning Ms. Martha Cecilia Cadena, the State argues that the disagreement of the petitioner with the decisions of the authorities, who in different proceedings examined the habeas corpus petition to secure the release of Ms. Cadena, along with the failure to exhaust other domestic remedies, prevent the Commission from declaring this petition admissible because the requirements set down in Article 46 of the Convention are not met.

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47. The State holds that the instant petition was premature because habeas corpus was not the only suitable remedy for the situation. If the alleged victim considered that her detention was unlawful, before the criminal proceeding was initiated she could have filed an appeal for legal protection as provided in Article 422 of the Code of Criminal Procedure. Furthermore, under Article 172 of the Code of Criminal Procedure, the charged woman was able to appeal the preventive custody order before the Superior Court of Justice.

48. As regards the order to substitute preventive custody, the State holds that according to the report on the technical inspection of Ms. Cadena's domicile, the building was found to be in a precarious state, which prevented the order from being carried out. The judge ordered Ms. Cadena to provide another domicile and, although "he did not have a constitutional or legal obligation to mention it," she was given the opportunity to identify another place that met the basic conditions for livability. The State says that the Commission should value this act of good faith as an effort to protect a person in a vulnerable situation and, therefore, this decision cannot be classed as discriminatory or illegal.

49. Concerning the alleged violations, the State holds that given that the illegality and arbitrariness of a detention must be analyzed from the point of view of whether or not constitutional or legal precepts have been observed, the police agents who apprehended Ms. Cadena did so in accordance with Article 24.6 of the Constitution and Article 161 of the Code of Criminal Procedure, which was consistent with international and constitutional parameters. Ms. Cadena was turned over to the authorities within a reasonable time, since she was charged and the prosecutor's preliminary investigation was opened on May 4, 2004.

50. Finally, the State, considering that the petition does not meet the requirements contained in Article 46 of the American Convention and Article 38 of the Rules of Procedure of the IACHR, requests that the Commission declare the case inadmissible and dismiss it.

IV. ANALYSIS

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

51. The petitioner has standing under Article 44 of the American Convention to lodge petitions with the Commission. The joined petitions name as alleged victims Tania Shasira Serón Paredes, Karina Montenegro, Leonor Briones, Martha Cecilia Cadena, and Nancy Quiroga, each of whom are persons on whose behalf Ecuador undertook to observe and ensure the rights recognized in the American Convention. As for the State, Ecuador has been a party to the American Convention since December 28, 1977, when it deposited the respective instrument of ratification; it has also been a party to the Convention of Belem do Pará since September 15, 1995. The Commission, therefore, has ratione personae competence to examine the petition.

52. The Commission is competent ratione loci to consider the petition inasmuch as it alleges violation of rights protected by the American Convention and the Convention of Belem do Pará which are said to have taken place within the territory of Ecuador, a state party to said treaties. The Inter-American Commission is also competent ratione temporis because the obligation to

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observe and ensure the rights protected in the American Convention and in the Convention of Belem do Pará was already binding upon the State at the time the events described in the petition are alleged to have occurred. Finally, the Commission has ratione materiae competence because the petition alleges violations of human rights protected in the American Convention and the Convention of Belem do Pará. The IACHR notes that it is not competent to enforce the Convention on the Elimination of all Forms of Discrimination Against Women but that, nevertheless, said instrument may be used in its interpretation of provisions contained in the American Convention and the Convention of Belem do Pará.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

53. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission in keeping with Article 44 of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

54. In the instant case the petitioner argues that domestic remedies were exhausted with the respective judgments of the Constitutional Court, which examined on appeal the habeas corpus petitions filed on behalf of each of the alleged victims. For its part, the State argues that those remedies have not been exhausted since no appeal either for legal protection or against the precautionary measure of preventive custody has been lodged.

55. From the information submitted by the parties, the Commission notes that:

- On July 30, 2002, the judge in the case of Ms. Tania Shasira Cerón Paredes ordered the substitution of preventive custody with house arrest. In light of the failure to carry out this order, on September 5, 2000, a habeas corpus petition was lodged and declared inadmissible by the Office of the Mayor. Said decision was appealed before the Constitutional Court, which on October 2, 2002 confirmed the mayoral resolution and requested the judge in the case to order the substitution order to be carried out immediately, which order was not fulfilled.
- On June 5, 2002, the judge in the case of Ms. Karina Montenegro ordered the substitution of preventive custody with house arrest. Owing to the failure to carry out this order, a habeas corpus petition was lodged and refused by the Office of the Mayor. That decision was appealed before the Constitutional Court, which on November 14, 2002, revoked the mayoral resolution, granted the petition and ordered the substitution of the measure. The judgment of the Constitutional Court was not carried out.
- On April 26, 2004 a habeas corpus petition was filed on behalf of Ms. Leonor Briones but refused by the Office of the Mayor. On May 11, 2004, the judge in the case substituted preventive custody with house arrest. In view of the failure to carry out this order, the resolution of the Office of the Mayor was appealed before the Constitutional Court, which, on July 6, 2004, confirmed said resolution and requested the judge to duly substitute the measure. The judgment of the Constitutional Court was not carried out.

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- On May 5, 2004, a habeas corpus petition was lodged with the Office of the Mayor on behalf of Ms. Martha Cecilia Cadena; it was denied. On May 31, 2004, the judge in the case substituted preventive custody with house arrest. In light of the failure to comply with this measure, on June 11, 2004, the mayoral resolution was appealed before the Constitutional Court, which, on July 28, 2004, confirmed the resolution, refused the petition, and instructed the judge to adopt appropriate measures to order house arrest. On June 29, 2004, the judge in the case reiterated the substitution order. On August 9, 2004, the judge in the case ordered Ms. Cadena to designate another domicile where she could serve her house arrest because, according to the report of the Counter Narcotics Chief, her domicile does not have basic services nor does it offer the requisite security conditions.
- On May 6, 2004, a habeas corpus petition was lodged on behalf of Nancy Quiroga; it was denied. On May 18, 2004, the judge in the case ordered the substitution of preventive custody with house arrest. When this order was not carried out, the mayoral resolution was appealed before the Constitutional Court, which, on July 21, 2004, confirmed the resolution, refused the petition, and instructed the judge to adopt appropriate measures to substitute preventive custody. On May 21, 2004, the Prosecutor of the Pichincha Counter Narcotics Unit appealed the substitution order. However, on August 26, 2004, the Second Chamber of the Superior Court of Quito ruled that it lacked jurisdiction and returned the case to the judge.

56. The petitioner holds that domestic remedies were exhausted with the decisions of the Constitutional Court, which examined on appeal the habeas corpus petitions, as provided in Article 93 of the Constitution of Ecuador. For its part, the State contends that the requirements set forth in Article 46(1)(a) of the American Convention have not been met inasmuch as there has been no appeal of the precautionary measures of preventive custody or an appeal for legal protection, as recognized in Articles 172 and 422 of the Code of Criminal Procedure, respectively.

57. In this connection, it is pertinent to recall what the Inter-American Court of Human Rights held in its Advisory Opinion No. 8:

In order for habeas corpus to achieve its purpose, which is to obtain a judicial determination of the lawfulness of a detention, it is necessary that the detained person be brought before a competent judge or tribunal with jurisdiction over him. Here habeas corpus performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment.[FN28]

[FN28] 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, para. 35.

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58. Furthermore, in the Dayra María Levoyer Jiménez case, the IACHR determined the following:

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The review of the legality of a detention implies confirming, not only formally but also substantively, that the detention conforms to the requirements of the judicial system and that it does not violate any of the detained person's rights. That such confirmation is carried out by a judge, invests the proceeding with certain guarantees that are not duly protected if the decision is in the hands of an administrative authority, who lacks the proper legal training and the authority to exercise judicial functions.[FN29]

[FN29] Report Nº 66/01, Case 11.992, Dayra María Levoyer Jiménez, June 14, 2001, para. 79

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59. The Commission finds in the instant case that when the petitioner filed an appeal with the Constitutional Court against the resolutions of the Office of the Mayor that refused habeas corpus, the State had the opportunity to conduct a judicial review of the detention in the terms demanded by the American Convention. Accordingly, the judgment of said Court exhausted domestic remedies in each of the cases even if the rulings of the Constitutional Court were not carried out.

1. Deadline for lodging the petition

60. Article 46(1)(b) of the American Convention provides that the petition must be lodged within a period of six months from the date on which the victims were notified of the final judgment that exhausted domestic remedies. In this connection, in the instant case the Commission confirms its doctrine, according to which

[…] failure to enforce a final judgment is an ongoing violation by States that persists as an infraction of Article 25 of the Convention, which sets forth the right to effective judicial protection. Therefore, in such cases, the requirement regarding the deadline for lodging a petition, set forth in Article 46(1)(b) of the American Convention, is not applicable.[FN30]

[FN30] IACHR, Annual Report 1999, Report Nº 75/99, César Cabrejos Bernuy. Case 11.800, Peru, para. 22. Report Nº 89/99 - Carlos Torres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Alvarez Fernández, Reymer Bartra Vásquez, and Maximiliano Gamarra Ferreira. Case 12.034, Peru, para. 23. Annual Report 2001, Report Nº 85/01, Workers of the Metropolitan Municipality of Lima and the Municipal Services Company of Lima. Case 12.084, Peru, para. 20.

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61. Accordingly, the Commission considers that the requirement contained in Article 46(1)(b) does not apply to the instant case and that the petition was lodged within a reasonable time, in the terms of Article 32 of Its Rules of Procedure.

2. Duplication of proceedings and res judicata

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62. Article 46(1)(c) of the Convention provides that admission of petitions lodged shall be subject to the requirement that “the subject of the petition or communication is not pending in another international proceeding for settlement.” Article 47 (d) of the Convention stipulates that the Commission shall not admit a petition if it “is substantially the same as one previously studied by the Commission or by another international organization.” In this case, the parties have not advanced arguments on either of these grounds for inadmissibility, nor does the Commission note their existence from the proceedings.

3. Nature of the allegations

63. For purposes of admissibility, the Commission must determine whether the facts set forth in the petition tend to establish a violation, as stipulated by Article 47(b) of the Convention.

64. The Commission finds that the detention alleged to contravene the conditions required under Ecuadorian law could constitute a violation of Article 7 of the American Convention. The alleged failure to substitute preventive custody with house arrest as ordered by the judges in the cases of the five alleged victims, as well as the failure to carry out the five judgments of the Constitutional Court that ordered the judges to adopt appropriate measures for the substitution to be carried out as ordered, could constitute violation of Article 25 of the Convention.

65. While the petitioner does not claim violation of Articles 5 and 19 of the American Convention, the Commission, in keeping with the principle of iura novit curia, finds that the conditions in which the alleged victims were made to spend their pregnancy, give birth, and raise their children could constitute violation of the said articles.

66. The detention, placement in preventive custody in contravention of Article 171 of the Code of Criminal Procedure, and the fact that the alleged victims remain in detention to date, could constitute violation of Article 7 of the Convention of Belem do Pará.

67. The detention conditions in which they had to see out their pregnancies, gave birth, and currently live with their minor children could constitute violation of Article 4(b) of the Convention of Belem do Pará.

68. As regards alleged violation of Articles 11 and 24 of the American Convention; and of Articles 2(subsections b and c), 4(subsections b, c, and f), and 6(a) of the Convention of Belem do Pará, the Commission considers that the arguments laid out by the petitioner do not tend to establish possible violations of said articles.

V. CONCLUSIONS

69. Based on the above factual and legal considerations and without prejudging the merits of the matter, the Commission concludes that the instant case meets the requirements of admissibility contained in Article 46 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

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DECIDES:

1. To declare the petition under examinations admissible as regards the rights recognized in Articles 5, 7, 19, and 25 of the American Convention, in connection with Article 1(1) of the said instrument, as well as in Article 7 of the Convention of Belem do Pará.
2. To declare the petition inadmissible as regards alleged violation of Articles 11 and 24 of the American Convention; and of Articles 2(subsections b and c), 4(subsections b, c, and f), and 6(a) of the Convention of Belem do Pará.
3. To notify the State and the petitioner of this decision.
4. To invite the parties to consider the possibility of initiating a procedure for reaching a friendly settlement of the matter, and to place itself at their disposal to that end.
5. To publish this decision and include it in its Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 2007. (Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.