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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 16/08; Petition 12.359  
Session: Hundred Thirty-First Regular Session (3 – 14 March 2008)  
Title/Style of Cause: Cristina Aguayo Ortiz, Isidro Gaona Delvalle, Karen Carolina Benitez Mereles, Pedro Osvaldo Aquino Jara, Sandra Beatriz Sanabria, Ariel Sanchez, Cecilio Valenzuela Munoz, Juan Valerio Ferreira, Luis Ignacio Alvarenga, Luz Marina Aguero Martinez, Paublino Casco, Ivan Aldemar Munoz, Adriele Pereira Dos Santos, Natanael Pereira Dos Santos, Paula Rodriguez Dos Santos, Janette Ortiz Paredes, Jazmin Ortiz Paredes, Liz Paola Ortiz Paredes, Pamela Johana Ortiz Paredes, Sebastian Aguayo, Eder Daniel Dominguez, Marco Antonio Figueredo, Nestor Fabian Sanabria, Osmar Saturnino Martinez Ganoso, Lorenzo Duarte Ganoso, Pablo Merardo Aquino Jara, Vidal Jesus Duarte Ganoso, Wiliana Blancanieves Rodriguez Guerrero, Hugo Recalde Ramirez, Andres Ricardo Velasquez, Cristian Sanabria, Eduardo Fabian Bobadilla, Eulalio Canete, Jessica Romina Sanabria, Juan Carlos Vazquez, Marco Antonio Ferreira, Carlos Daniel Recalde, Alberto Daniel Caballero, Andrea Celeste Baez Ruiz Diaz, Anibal Daniel Baez Ocampos, Carlos Antonio Bogado Leiva, Hugo Javier Martinez, Jorge Baez Ruiz Diaz, Monica Dahiana Baez Ruiz Diaz, Ramon Eduardo Baez Ruiz Diaz, Ariel Benitez Romero, Beatriz Marisol Gonzalez Cabrera, Jose David Gonzalez Cabrera, Juan Manuel Benitez Romero, Pedro Antonio Gonzalez Cabrera, Abraham Meza Ruiz Diaz, Cristian Leiva Baez, Dahiana Marifer Chavez Lesme, Dolly Aracelli Álvarez, Elias Lezcano, Graciela Leiva Baez, Ingrid Mabel Villaverde, Jorge Esteban Gonzalez, Julio Aguero Martinez, Junior Lezcano, Liliana Soledad Lesme Ortega, Marcos Daniel Villaverde, Maria Etelvina Flores, Pedro Antonio Nunez, Sergio Damian Martinez, Wilson Enrique Aquino, Johana Gladys Bogado Escalante, Liz Bogado Escalante and Haiano Rafael Duarte Maciel v. Paraguay  
Doc. Type: Decision  
Decided by: Chairman: Paolo Carozza;  
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;  
Second Vice-Chairman: Felipe Gonzalez;  
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Victor E. Abramovich, Florentin Melendez.  
Dated: 6 March 2008  
Citation: Aguayo Ortiz v. Paraguay, Petition 12.359, Inter-Am. C.H.R., Report No. 16/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)  
Represented by: APPLICANTS: the Coordinadora por los Derechos de la Infancia y Adolescencia, the Fundacion Tekojoja, and the Centro por la Justicia y el Derecho Internacional  
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## I. SUMMARY

1. This report concerns the admissibility of Case 12.359 (Cristina Aguayo Ortiz et al.). The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or “the IACHR”) initiated proceedings after it received a petition on January 11, 2001, submitted by the Coordinadora por los Derechos de la Infancia y Adolescencia (Coordinating Committee for the Rights of Children and Adolescents), the Fundación Tekojojá (Tekojojá Foundation), and the Centro por la Justicia y el Derecho Internacional (Center for Justice and International Law – CEJIL) (hereinafter “the petitioners”) against the State of Paraguay (hereinafter “Paraguay” or “the State”), concerning a possible violation of Articles 5 (right to physical integrity), 7 (right to personal liberty), 8 (judicial guarantees), 11 (protection of honor and dignity), 17 (protection of the family), 19 (rights of the child), 22 (right to freedom of movement and residence), 24 (equality before the law) and 25 (judicial protection) as they relate to Article 1.1 of the American Convention on Human Rights, to the detriment of a number of children who had been deprived of their liberty in several governmental public institutions and nongovernmental organizations in Paraguay as a result of round-ups ordered by the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters on November 27, 28, and 29, 2000. The petitioners subsequently reported on another round-up carried out on January 10, 2001.

2. The petitioners maintain that on November 27, 28, and 29, 2000, and on January 10, 2001, massive round-ups of street children were carried out in the streets of the capital Asunción by order of the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters. They maintain that during these round-ups, dozens of boys and girls were detained en masse, with no individual distinctions made, and were later interned in various temporary homes in Paraguay. It is further alleged that many of the institutions in which the presumed victims were detained were not adequately equipped to receive and support them in decent conditions. The petitioners maintain that habeas corpus applications were denied by the Paraguayan Supreme Court of Justice, thus depriving the alleged victims of a simple and appropriate remedy to resolve their situation. The petitioners allege that the presumed victims were arbitrarily deprived of their liberty and that the decision on whether to return them to their parents was entrusted to the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters, who in some cases ordered the children to be returned after several days, while in other cases the children were not returned until years later.

3. The State, for its part, has maintained that internal remedies were not exhausted in this case since the Paraguayan State was never requested to take action through the Judicial Prosecution Panel or the Supreme Court of Justice with a view to supervising and, if necessary, imposing disciplinary measures on the judge in question.

4. Without prejudging the merits of the complaint, the IACHR concludes in this report that the case is admissible, since it satisfies the requirements provided in Article 46 of the American Convention. The Inter-American Commission therefore decides to inform the parties of the decision and to continue its analysis of the merits regarding the alleged violations of the rights of the child (Article 19), the right to protection of the family (Article 17), the right of everyone to personal liberty (Article 7), to physical integrity (Article 5), to the protection of honor and

dignity (Article 11), to freedom of movement (Article 22), to judicial guarantees (Article 8), and to judicial protection (Article 25) recognized in the American Convention, in accordance with the general obligation to respect and guarantee rights as provided in Article 1.1 of that treaty, violations allegedly committed by the State of Paraguay to the detriment of 69 children aged 0 to 15 years named Cristina Aguayo, Isidro Gaona Delvalle, Karen Carolina Benítez Mereles, Pedro Osvaldo Aquino Jara, Sandra Beatriz Sanabria, Ariel Sánchez, Cecilio Valenzuela Muñoz, Juan Valerio Ferreira, Luis Ignacio Alvarenga, Luz Marina Agüero Martínez, Paublino Casco, Iván Aldemar Muñoz, Adriele Pereira Dos Santos, Natanael Pereira Dos Santos, Paula Rodríguez Dos Santos, Janette Ortiz Paredes, Jazmín Ortiz Paredes, Liz Paola Ortiz Paredes, Pamela Johana Ortiz Paredes, Sebastián Aguayo, Eder Daniel Domínguez, Marco Antonio Figueredo, Nestor Fabián Sanabria, Osmar Saturnino Martínez Ganoso, Lorenzo Duarte Ganoso, Pablo Merardo Aquino Jara, Vidal Jesús Duarte Ganoso, Wiliana Blancanieves Rodríguez Guerrero, Hugo Recalde Ramírez, Andrés Ricardo Velásquez, Cristian Sanabria, Eduardo Fabián Bobadilla, Eulalio Cañete, Jessica Romina Sanabria, Juan Carlos Vázquez, Marco Antonio Ferreira, Carlos Daniel Recalde, Alberto Daniel Caballero, Andrea Celeste Báez Ruiz Díaz, Aníbal Daniel Báez Ocampos, Carlos Antonio Bogado Leiva, Hugo Javier Martínez, Jorge Báez Ruiz Díaz, Mónica Dahiana Báez Ruiz Díaz, Ramón Eduardo Báez Ruiz Díaz, Ariel Benítez Romero, Beatriz Marisol González Cabrera, José David González Cabrera, Juan Manuel Benítez Romero, Pedro Antonio González Cabrera, Abraham Meza Ruiz Díaz, Cristian Leiva Báez, Dahiana Marifer Chávez Lesme, Dolly Aracelli Álvarez, Elías Lezcano, Graciela Leiva Báez, Ingrid Mabel Villaverde, Jorge Esteban González, Julio Agüero Martínez, Junior Lezcano, Liliana Soledad Lesme Ortega, Marcos Daniel Villaverde, María Etelvina Flores, Pedro Antonio Núñez, Sergio Damián Martínez, Wilson Enrique Aquino, Johana Gladys Bogado Escalante, Liz Bogado Escalante and Haiano Rafael Duarte Maciel (hereinafter “the alleged victims”).

5. The Commission also decides to inform the parties of this decision, to publish this admissibility report, and to include it in its Annual Report to the OAS General Assembly.

## II. PROCESSING BY THE COMMISSION

6. The IACHR received the petition, dated December 8, 2000, on January 11, 2001. On January 29, 2001, the IACHR received a note dated January 26, 2001, in which the petitioners provided additional information regarding the petition.

7. On January 26, 2001, the Commission decided to process the petition, transmitting the relevant sections to the Paraguayan State and granting it a period of 90 days to submit observations.

8. On May 21, 2001, the State of Paraguay sent its reply to the petition to the Commission. This information was forwarded to the petitioners on May 29, 2001. The petitioners responded to this information on June 18, 2001.

9. On July 23, 2001, the Inter-American Commission decided to write to both parties, requesting additional information regarding the petition, in particular on the situation of each of the children subjected to the procedures reported and on the resources available under

Paraguayan law to remedy the situation. On April 15, 2002, the IACHR reiterated this request for information to both parties.

10. On May 16, 2002, the Commission received a note dated May 2, 2002, in which the petitioners submitted updated information regarding the petition. This information was forwarded to the State on May 20, 2002. The State transmitted its observations on this information in a note dated June 27, 2002.

11. On May 17, 2002, the Commission received additional information provided by the State regarding the petition. This information was forwarded to the petitioners on June 3, 2002.

12. On August 18, 2003, the petitioners requested the IACHR to hold a working meeting in the presence of representatives of the State. On September 16, 2003, the Commission summoned the parties to a working meeting during its 118th period of sessions to discuss questions related to the petition. The working meeting was held on October 17, 2003.

13. On November 19, 2003, the Commission received a note dated November 17, 2003, in which the State of Paraguay provided additional information regarding the petition. On December 12, 2003, the Commission forwarded this information to the petitioners.

14. On March 9, 2006, the Commission received briefs from the petitioners, dated February 28, 2006, and March 1, 2006, in which they provided the Commission with updated information on the case. At the same time, the petitioners requested the Commission to grant precautionary measures in favor of one of the alleged victims, the boy Haiano Rafael Duarte Maciel, who had been detained in the round-up on November 27, 2000, at the age of seven months, and who was still being detained as of that date. The IACHR did not grant the precautionary measures requested, but it did decide to process the information received as part of the referenced case, and thus the subsequent procedures of the case made explicit references to the situation of the boy Duarte Maciel.

15. On March 16, 2006, the Inter-American Commission forwarded to the State the information submitted by the petitioners, reiterating its request for observations on the case and also requesting information regarding the situation of the boy Haiano Rafael Duarte Maciel.

16. On March 28, 2006, the State wrote to the Commission, reporting on the actions taken in favor of the boy Haiano Rafael Duarte Maciel. The Commission forwarded this information to the petitioners on March 29, 2006.

17. On April 5, 2006, the petitioners submitted their observations on the information provided by the State on March 28, 2006. These observations were forwarded to the State on April 28, 2006.

18. On May 15, 2006, the petitioners submitted to the Commission updated information on the situation of the boy Haiano Rafael Duarte Maciel, who had remained institutionalized since November 27, 2000, and whose liberty had not been restored as of that date. In their brief, the

petitioners reiterated their request to the Commission that it makes a determination on the admissibility of the instant petition.

19. On May 17, 2006, as a follow-up to the visit to Paraguay by the IACHR Rapporteur on the Rights of the Child, the Inter-American Commission sent a note to the State requesting it to provide information on the instant petition and forwarding to the State the relevant sections of the additional information provided by the petitioners. On that occasion, the Commission requested the State to report within a period of 15 days on the boy's current legal situation and the means envisaged for handing him over to his relatives.

20. On June 21, 2006, the Commission received additional information provided by the State regarding the boy Haiano Rafael Duarte Maciel. This information was forwarded to the petitioners on June 23, 2006.

### III. POSITION OF THE PARTIES

#### A. The petitioners

21. In their petition, the petitioners allege that the State of Paraguay violated the children's rights "by rounding up street children en masse, with no prior individual distinctions in each case, removing them from their families and depriving them of their liberty (which should always be a measure of last resort), and using excessive force".

22. According to the petitioners, the events that gave rise to the instant petition arose from a resolution adopted by the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters on November 22, 2000, in which she decided "I. AS A SPECIAL PRECAUTIONARY MEASURE, to order that the court be constituted in various thoroughfares of the city of Asunción on November 27, 28, and 29 this year, in order to remove any child younger than 12 (twelve) years of age who is found to be begging or in a vulnerable condition. II. TO ORDER the temporary internment (without implying deprivation of liberty) of boys and girls from 0 to 6 (zero to six) years of age who are found in the situation provided for in paragraph I of this resolution in the National Home under the authority of the Juvenile Protection Directorate; of children from 7 to 12 (seven to twelve) years of age in the Instituto del Mañana; and of girls in the Hogar María Reina under the authority of the Ministry of Justice and Labor until a new order is issued by this court". At the same time, the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters appointed two social workers, two psychologists, and one technical assistant from the Forensic Psychology Department to carry out this measure and requested cooperation from the Family Department of the National Police.

23. The petitioners maintain that pursuant to the referenced resolution, a number of actions were carried out on November 27, 2000, in the city of Asunción in which 57 children from six months to 15 years of age were detained. The petitioners attach information on the children and their parents who were deprived of their freedom pursuant to the referenced resolution.

24. In the additional information provided by the petitioners on January 29, 2001, the Commission was informed that a similar measure, based on the same resolution and dealt with in

the same case file, had been carried out on January 10, 2001. According to the petitioners, this new measure resulted in the detention of 14 children and nine women who were working as itinerant sellers, even though they had no children.

25. Among the documents that the petitioners annexed to the petition were sections of the case file entitled “Street children in a vulnerable condition”, newspaper clippings, and photographs of the round-ups. In addition, the petitioners alleged that the information transmitted by the State to the IACHR as part of the processing of this petition was incomplete.

26. According to the petitioners, the alleged victims were forcibly “rounded up” and brought to the Police Polyclinic, where, by verbal order of the magistrate, they were deloused. Subsequently, the alleged victims were interned in the National Juvenile Home, the Hogar Santa Teresita, and the Instituto del Mañana.

27. According to the petitioners, the children who were in the street and were victims of repression on the part of public officials did not live on the streets; rather, most of them were in the street with their mothers, working as itinerant sellers or returning from the Fundación DEQUENÍ (DEQUENI), a private, nonprofit organization that acts as a child-care center for working mothers. The petitioners affirm that most of the alleged victims were interned in institutions that were not able to guarantee the minimum food, lodging, and care that they needed, in particular because these were temporary homes, many of which had staff and facilities to care for children only on weekdays.

28. The petitioners allege that there was no prior study that would authorize removing children from their parents and ordering their internment as an initial measure of widespread application. They indicate that studies by psychologists and social workers were initiated only after the detention was carried out and on deadlines that they describe as irrational.

29. According to the petitioners, the situation was such that during the operation, a mother who was waiting for the bus to take her son to the doctor was rounded up, with her three children, by the judicial/police cohort. The officers even went so far as to separate nursing babies from their mothers. In some cases, the children had been born at home with the assistance of midwives, because the parents did not have documents enabling them to claim their children.

30. The petitioners affirm that in some cases, one brother was handed over to his parents while the other brother remained interned, with no legal opinion being the basis for these decisions. They also explain that in some cases, such as when the children were removed from the Instituto del Mañana, the parents were required to sign a document stating that “[the child] is in perfect physical and mental condition”. According to the petitioners, matters went to the point of involving the Adoptions Directorate, even though the detained children had parents.

31. The petitioners indicate that according to the court record, copies of which are attached, arrangements were made following the detention for a forensic gynecologist to carry out a study of the detained children’s health within 48 hours, and these examinations were conducted in the presence of several strangers, causing humiliation and indignity to the boys and girls.

32. Regarding the conditions in which the alleged victims were deprived of their liberty, the petitioners assert that the children were bewildered and extremely frightened. They allege that one of the girls who was interned had suicidal feelings owing to depression, and that the institution's administrator had allowed her to leave. They also reported that visits to the alleged victims were restricted, and that some of the detention homes were in remote places where public transportation was limited.

33. The petitioners allege that the degree of secrecy was such that there was no judicial resolution in the case file that personally justified keeping each child in an internment center and stipulated the period during which he or she should remain there.

34. In March 2006, the petitioners reported to the Commission that the boy Haiano Rafael Duarte Maciel, who had been detained in 2000 at the age of seven months, when he was a nursing baby, remained institutionalized even though his parents had requested his return. The information provided indicates that the boy Haiano Rafael Duarte Maciel was rounded up while he was with his mother, who was selling caramel candy. The petitioners affirm that his internment was ordered on a temporary basis with no period specified, and that his removal from the family environment was decreed solely on the basis of his family's lack of material resources. According to information provided by the petitioners, the boy's mother visited him practically every day after his internment, up to March 24, 2001, when she unsuccessfully attempted to run away with him. According to the petitioners, the boy Haiano Rafael Duarte remained interned for nearly six years in a shelter home, even though these types of homes are temporary.

35. The petitioners allege that the judicial measures that are the object of the instant complaint caused irreversible psychological damage in the children. The petitioners also allege that the alleged victims were subject to arbitrary detention. They assert that what is meant by "deprivation of liberty" is any form of detention, arrest, imprisonment, pretrial detention, internment, committal, or placement in judicial custody, and that the children were in effect held in police custody and prohibited from entering and leaving, with visits from their own parents restricted, so that the children were actually deprived of their liberty, notwithstanding that the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters who ordered this measure had stipulated that it did not constitute deprivation of liberty. In this regard, the petitioners allege that the children were deprived of their liberty with no grounds previously stipulated in the Constitution or the laws, without considering alternative measures, without individualization and personalization, and without taking into account the non-imputability of offenses to the children because of their age, among other factors.

36. In the view of the petitioners, by detaining the alleged victims in this judicial proceeding through the use of force, bringing them to unsuitable places, and removing them from their parents without a specialized and individualized study, the State also violated the children's right to physical and psychological integrity. The petitioners also allege a violation of the children's right to identity. They allege that, in having been treated as criminals, detained by police officers pursuant to a court order and, in some cases, led away by the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters herself, the children were arbitrarily injured with respect to their privacy, family, honor, and reputation.

37. The petitioners allege that the State of Paraguay violated the children's right to equality before the law, since the measure applied to them was discriminatory and disdainful of their poverty. The petitioners consider that the children's right to move freely through the territory of the State of Paraguay was also violated. What is more, the petitioners indicate that the State should have proceeded to remove the children as a last resort, on a specific, case-by-case basis, and not as a first step carried out en masse, and should then have conducted studies in order to decide whether to return them or not. They allege, therefore, that the State violated its obligation to ensure full protection of the family.

38. The petitioners informed the Commission of certain irregularities that had occurred in connection with the efforts to defend the alleged victims. They reported that an incident had occurred at the National Juvenile Home, as a result of which Attorney Lourdes Barboza, Legal Adviser to the Ministry of Justice and Labor, had questioned the court order issued by the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters and demanded a written order for the children's internment. This questioning had given rise to Attorney Barboza's disciplinary arrest for a term of six hours in the Judicial Custody Office, a measure that was implemented without waiting for the judicial decision to be confirmed. The petitioners also affirm that attorneys Carlos Abadie Pankow, Miguel Vargas Coluchi, and Leonardo Garofalo of the Tekojojá Foundation had been forced to remove themselves from the case as a verbal requirement imposed by the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters for returning the children to their families.

39. Regarding the steps taken under domestic law to remedy the situation, the petitioners reported that on November 27, 2000, the Coordinating Committee for the Rights of Children and Adolescents filed a restitutive generic habeas corpus application on behalf of the detained children. This application was rejected.

40. The petitioners also reported that on November 28, 2000, several parents[FN1] of detained children filed a generic habeas corpus application under the auspices of the Tekojojá Foundation, Senator Elba Recalde, and representatives of the Coordinating Committee for the Rights of Children and Adolescents. In the context of this proceeding, on November 29, 2000, the Supreme Court requested the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters to state whether her court had ordered a measure restricting the children's liberty and to provide a detailed and reasoned explanation of the grounds for such a measure. For her part, the judge informed the Supreme Court that her court had ordered "temporary internment (without implying deprivation of liberty)". In her report, the judge specified that she had removed the children from the streets in order to set them on the path to a more humane and dignified life. On December 5, 2000, the Supreme Court of Justice decided, in Judgment 717, not to grant the generic habeas corpus application on the ground that "the judge in the case has reported that [the children were] not being detained".

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[FN1] As stated in the record, the application was filed by Felicinda Ramírez, Gladis Benitez, Tomasa Ortiz, Elida Beatriz Ganoso Ruiz Díaz, Pericia Jara de Aquino, Sonia Paredes de Ortiz, Sebastiana Torres, Silvia Lorena Jiménez, Lourdes Beatriz Ramírez, Valentina Núñez, Norma

Mereles de Benítez, Graciela Duarte, Isidoro Muñoz, Epifania Agüero de Martínez, Inocencia Isabel de Bobadilla, Aparecida de Fátima Pereira dos Santos, Petrona Álvares, Juana Báez, Elvira Lesme Ortega, María Zuñidla Villaverde, and Genaro Leiva Cabellos, on behalf of themselves and their children Hugo Freddy Recalde (aged 8 years), Junior Benítez (aged 4 years), Elías Moisés Benítez (aged 3 years), Guillermina Aguayo Ortiz, Cristina Aguayo Ortiz (aged 13 years), Lorenzo Ganoso (aged 8 years), Vidal Duarte Ganoso (aged 6 years), Pedro Aquino (aged 2 years), Pablo Aquino (aged 8 years), Janet Carolina Ortiz (aged 9 years), Liz Paola Ortiz (aged 8 years), Joana Pamela Ortiz (aged 5 years), Jazmín Elizabeth Ortiz (aged 1 year), Yesica Romina Torres (aged 5 years), Cristhian Manuel Sanabria (aged 7 years), Sandra Beatriz (aged 13 years), Nestor Fabián (aged 15 years), Wilson Enrique Jiménez (aged 1 year), Pedro Antonio Nuñez (aged 10 years), Liz Cayetana Nuñez (aged 3 years), Caren Mereles Benítez (aged 1 year), Rafael Duarte (aged 6 months), Cesilio Muñoz (aged 8 years), Julio César Martínez (aged 11 years), Luz Marina Martínez (aged 9 years), Juan Carlos Vázquez Bobadilla (aged 8 years), Eduardo Fabián Vazquez Bobadilla (aged 7 years), Andreli Pereira Dos Santos (aged 7 years), Natanael Pereira Dos Santos (aged 3 years), Pamela Pereira Dos Santos (aged 3 months), Dolly Araceli Alvarez (aged 6 years), Christhian Cabello Baez (aged 5 years), and Graciela Cabello Báez (aged 9 years). The application was subsequently expanded to include Elvira Lesme Ortega, María Zuñidla Villaverde, and Genaro Leiva Cabello, on behalf of themselves and their children Liliana Soledad Lesme (aged 13 years), Marifer Lesme (aged 2 years), Ingrid Mabel Villaverde (aged 9 years), Marco Daniel Báez (aged 9 years), and Cristian Leiva (aged 5 years).

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41. In addition, on January 16, 2001, according to information provided by the petitioners, the Supreme Court of Justice of Paraguay decided to grant a habeas corpus application on behalf of the boy Wilson Aquino, aged one year and 10 months. The petitioners report that this would be the only case in which the Supreme Court granted an application that had been filed.

42. According to the petitioners, the rejection by the Supreme Court of Justice, the highest judicial body, of the habeas corpus applications filed on behalf of the alleged victims means that the appropriate internal remedies have been exhausted. The petitioners believe that with the denial of the habeas corpus applications, filed to restore the detained children's right to liberty, which had been infringed, access to an appropriate remedy became illusory.

43. The petitioners deny that administrative proceedings that might result in a penalty being imposed on the court can be used by the State as an argument for an alleged failure to exhaust domestic resources. They allege that a habeas corpus application is the appropriate remedy available under Paraguayan law in cases in which a person is deemed to have been illegally deprived of his or her liberty; that this remedy was rejected by the Supreme Court of Justice; and that it is the appropriate means of restoring the rights of the children who were in the street and who were arbitrarily deprived of their liberty. The petitioners point out that the petition they have lodged with the Commission is not a complaint against an individual judge, but against the Paraguayan State.

44. That notwithstanding, the petitioners informed the Commission of other steps taken under domestic law to resolve the situation. Thus, on November 29, 2000, the same parents of detained

children who had filed a generic habeas corpus application wrote to the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters, asking that their children be returned to them and submitting identity documents. In addition, according to information provided by the petitioners, on subsequent dates several fathers wrote separately to the judge asking that their children be returned to them, proving that they had homes and certifying that the children were going to school.

45. According to the petitioners, on November 30, 2000, the Coordinating Committee for the Rights of Children and Adolescents filed a complaint with the Supreme Court of Justice against the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters requesting that she be investigated on account of the events of November 27, 2000. This complaint had no results.

46. The petitioners allege that in the proceeding captioned “Street children in a vulnerable condition”, a motion was made for the recusal of the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters, and that on December 6, 2000, the Juvenile Court of Appeal decided not to grant the motion for recusal.

47. From the information provided by the petitioners, it appears that, beginning on December 11, 2000, the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters issued a number of resolutions ordering the return of some of the alleged victims. However, in other cases in which the parents appeared in court to request the return of their children, the judge limited herself to taking the requests into account, ordering psychological studies, or adjusting the visitation rules.

48. According to the petitioners, as a result of the second round of detentions of street children on January 10, 2001, individual habeas corpus applications were filed on behalf of nine children. However, the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters reached an agreement with DEQUENI, where the children were being detained, to hand them over to their parents on condition that the habeas corpus applications were withdrawn. The petitioners state that the parents decided to withdraw the habeas corpus applications for fear of not having their children returned to them. In the cases in which the habeas corpus applications were withdrawn, the alleged victims were handed over to their parents. The petitioners point out that this measure benefited only nine of the alleged victims, while the others remained interned until the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters ordered their return or the children escaped, and in some cases, they were interned indefinitely. However, the petitioners indicate that they are not able to report the exact whereabouts of all the alleged victims, since they are not permitted to see the case file.

## B. The State

49. The State of Paraguay responded to the instant petition by sending a note in reply from the Supreme Court of Justice, dated May 4, 2001, as well as a note from the Supervisory Council of the Supreme Court of Justice, both of which related to this case.

50. The State's reply indicates that "the complaint cannot be declared admissible by the Commission since internal remedies have not been exhausted [...], we note that the petitioners have hastened to bring the case before the IACHR before requesting the Paraguayan State to take action through the Judicial Prosecution Panel or the Supreme Court of Justice".

51. According to the State's reply, "there are two alternatives provided for under domestic law for analyzing the proceedings and penalizing the judge in question, should that be appropriate: (1) a proceeding before the Judicial Prosecution Panel; (2) an investigation carried out by the Supreme Court of Justice in exercise of its supervisory authority and disciplinary power over all agencies of the judicial branch".

52. The State's reply includes the articles of the Paraguayan Constitution and the Code on Organization of the Judiciary concerning the prosecution and removal of judges and the Supreme Court's powers to suspend judicial personnel and judges from their positions or punish negligence in the performance of their duties.

53. The note from the Supervisory Council of the Supreme Court of Justice, submitted by the Paraguayan State in response to the petition, consists of a decision elaborating upon the report of the Superintendent of the Courts on the procedure to be implemented with respect to the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters.

54. The State reported that the judge in question had ordered a total of four judicial proceedings, the last of which had been carried out on January 10, 2001. Regarding the situation of the alleged victims, the State informed the IACHR that the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters "has reported that the juveniles are with their parents, with the exception of four, and that they were handed over with a warning that if the children were exploited by being returned to the streets, the parents would lose parental rights and duties".

55. On June 27, 2002, the Paraguayan State provided information concerning the whereabouts and situation of the alleged victims. On that occasion, the State reported that "it was established that 67 children were removed from the street and interned in different public institutions. Of these 67 children, 7 are still in the Nuestra Señora de la Asunción National Juvenile Home. The juveniles are attending school regularly and are receiving medical care, shelter, and food. These juveniles are suffering from depression because they cannot go with their parents on the weekends. The home is a temporary home for children from Monday to Friday. In view of the special situation of the 'Judge's juveniles' [referring to the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters], staff have been assigned seven days a week. [...] The seven children have returned to school. However, they wish to be with their families on weekends. [...] the Judge [of First Instance in Juvenile Protection and Correctional Matters] has made it clear that she will hold a hearing with the parents of these children and give them the authorization they have requested, but will do so with a warning that if the children are exploited in the streets by their parents, the latter will lose parental rights and duties with respect to their children. [...] Juvenile Superintendent Mercedes Gómez will initiate the relevant judicial measures to enable the children to return to their families and, in some cases, to seek substitute families".

56. According to the State's arguments, the resolutions issued by the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters were based on international human rights standards ratified by the country and the Constitution. The State also affirms that "the actions taken by the judge have had positive results in those cases in which the children have resumed – and in some cases, begun – their schooling and received medical care, shelter, and food".

57. In the framework of the working meeting held on October 17, 2003, the Government of Paraguay proposed to the IACHR that the basic problem affecting children who spend most of their time in the streets must be addressed from a broader perspective and not through individual petitions.

58. On November 19, 2003, the State of Paraguay submitted to the Commission a copy of the special report entitled "Street Children", prepared by the Judge of First Instance in Protection and Correctional Matters, as well as a copy of the case file entitled "Street children in a vulnerable condition", containing a summary and breakdown of the cases and the judicial resolutions concerning them.

59. According to information provided by the State, in some cases several of the alleged victims were returned to their parents after a period of several days, in other cases of two and a half years, while in certain cases, such as that of the boy Haiano Rafael Duarte Maciel, the internment measure remained in effect.

60. In addition, according to information provided by the State to the IACHR, some cases were resolved by granting temporary guardianship of the alleged victims to their grandparents, godparents, and other relatives, even when the children had parents. The court reports that other cases were resolved by granting visitation rights to one of the parents while the children remained interned.

61. The information provided by the State indicates that in cases in which the alleged victims ran away, the National Police were instructed to find them. Without providing further details or supporting documents, the State asserts that appeals and actions for nullification were filed against the decision to inform the National Police, but these appeals were not granted. The information provided by the State also recounts cases in which it was decided that requests for the return of some of the alleged victims would not be granted "until sufficient evidence has been presented to enable the court to make a positive determination that the return requested is in the higher interest of the girls in question and, in particular, that the circumstances which compelled the court to order the removal of the girls [...] from their parents have abated, pursuant to the articles referenced above".

62. In subsequent communications, the State emphasized the failure to exhaust domestic remedies, explaining that the petitioners had not filed any complaint with the Judicial Prosecution Panel. The State adds that in following up the report of the events, the Supreme Court began investigating the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters in connection with the proceedings that gave rise to the petition. The

investigation found that there was a court record consisting of five volumes, and a report emerged, prepared by the judge herself, explaining the details of the proceedings. The State affirms that the Supreme Court of Justice carried out such measures and investigations as it deemed appropriate and that it is continuing to take measures on behalf of the juveniles rescued from the streets.

63. Regarding the situation of the boy Haiano Rafael Duarte Maciel, the State informed the Commission of various actions taken to find the boy's immediate and extended family and thus maintain the family link. As of the latest information provided by the State in the context of this petition (June 2006), the boy Duarte Maciel remained institutionalized pursuant to the court order issued in 2000.

#### IV. ANALYSIS OF ADMISSIBILITY

64. Before entering into an analysis of the admissibility of the case, the Commission deems it necessary to point out that the information submitted by both parties during the processing of the instant case varied with respect to the number and identity of the alleged victims detained in the round-ups. In particular, when the petition was submitted, the petitioners alleged that 57 children were detained in the round-up on November 27, 2000, and that 14 children and nine women were detained in the round-up on January 10, 2001. For its part, the State, in its initial reply, referred to a total of 67 children interned in various public institutions pursuant to the resolution of November 22, 2000. The initial lists provided by both parties, obtained from the court record, provide neither full names nor ages for several of the alleged victims, presumably because many of them were nursing babies or were very young at the time they were detained, which would have made it difficult to identify them.

65. From the information submitted by the State in November 2003, which is the most complete list of children detained in the round-ups carried out by the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters in November 2000 and January 2001, it is apparent that a total of 69 children from 0 to 15 years of age were detained. Of these, 53 were detained on November 27, 2000, and 16 on January 10, 2001.

66. These children<sup>[FN2]</sup> are: Cristina Aguayo, aged 12 years, detained on November 27, 2000, and returned to her family on December 11, 2000; Isidro Gaona Delvalle, aged 13 years, detained on November 27, 2000, and returned to his family on December 11, 2000; Karen Carolina Benítez Mereles, aged one year and seven months, detained on November 27, 2000, and returned to her family on December 11, 2000; Pedro Osvaldo Aquino Jara, aged 12 years, detained on November 27, 2000, and returned to his family on December 11, 2000; Sandra Beatriz Sanabria, aged 12 years, detained on November 27, 2000, and returned to her family on December 11, 2000; Ariel Sánchez, aged 12 years, detained on November 27, 2000, and returned to his family on January 11, 2001; Cecilio Valenzuela Muñoz, aged 8 years, detained on November 27, 2000, and returned to his family on January 11, 2001; Juan Valerio Ferreira, aged 11 years, detained on November 27, 2000, and returned to his family on January 11, 2001; Luis Ignacio Alvarenga, aged 10 years, detained on November 27, 2000, and returned to his family on January 11, 2001; Luz Marina Agüero Martínez, aged 8 years, detained on November 27, 2000, and returned to her family on June 11, 2003, after a decision had been taken on July 22, 2002,

not to grant the request for her return (appeals and actions for nullification were filed against this decision and were granted); Paublino Casco, aged 14 years, detained on November 27, 2000, and returned to his family on December 11, 2000; Iván Aldemar Muñoz, aged 8 years, detained on November 27, 2000, and returned to his family on March 12, 2001; Adriele Pereira Dos Santos, aged 7 years, detained on November 27, 2000, and returned to her family on December 15, 2000; Natanael Pereira Dos Santos, aged 3 years, detained on November 27, 2000, and returned to his family on December 15, 2000; Paula Rodríguez Dos Santos, aged 0 years (barely a few months old), detained on November 27, 2000, and returned to her family on December 15, 2000; Janette Ortiz Paredes, aged 8 years, detained on November 27, 2000, and returned to her family on January 19, 2001; Jazmín Ortiz Paredes, aged one year, detained on November 27, 2000, and returned to her family on January 19, 2001; Liz Paola Ortiz Paredes, aged 7 years, detained on November 27, 2000, and returned to her family on January 19, 2001; Pamela Johana Ortiz Paredes, aged 5 years, detained on November 27, 2000, and returned to her family on January 19, 2001; Sebastián Aguayo, aged 3 years, detained on November 27, 2000, and returned to his family on January 19, 2001; Eder Daniel Domínguez, aged 9 years, detained on November 27, 2000, and returned to his family on February 2, 2001; Marco Antonio Figueredo, aged 11 years, detained on November 27, 2000, and returned to his family on February 2, 2001; Nestor Fabián Sanabria, aged 15 years, detained on November 27, 2000, and returned to his family on December 26, 2000; Osmar Saturnino Martínez Gayoso, aged 13 years, detained on November 27, 2000, and returned to his family on November 28, 2000; Lorenzo Duarte Ganoso, aged 8 years, detained on November 27, 2000, and returned to his family on December 29, 2000; Pablo Merardo Aquino Jara, aged 8 years, detained on November 27, 2000, and returned to his family on December 29, 2000; Vidal Jesús Duarte Gayoso, aged 6 years, detained on November 27, 2000, and returned to his family on December 29, 2000; Wiliana Blancanieves Rodríguez Guerrero, aged 9 years, detained on November 27, 2000, and returned to her family on December 29, 2000; Hugo Recalde Ramírez, aged 8 years, detained on November 27, 2000, and returned to his family on January 4, 2001; Andrés Ricardo Velásquez, aged 10 years, detained on November 27, 2000, and returned to his family on January 9, 2001; Cristian Sanabria, aged 8 years, detained on November 27, 2000, and returned to his family on January 9, 2001; Eduardo Fabián Bobadilla, aged 7 years, detained on November 27, 2000, and returned to his family on January 9, 2001; Eulalio Cañete, aged 8 years, detained on November 27, 2000, and returned to his family on January 9, 2001; Jessica Romina Sanabria, aged 5 years, detained on November 27, 2000, and returned to her family on January 9, 2001; Juan Carlos Vázquez, aged 8 years, detained on November 27, 2000, and returned to his family on January 9, 2001; Marco Antonio Ferreira, aged 10 years, detained on November 27, 2000, and returned to his family on January 9, 2001; Carlos Daniel Recalde, age unknown, detained on January 10, 2001, and returned to his family on January 18, 2003; Alberto Daniel Caballero, age unknown, detained on January 10, 2001, and returned to his family on January 19, 2001; Andrea Celeste Báez Ruiz Díaz, age unknown, detained on January 10, 2001, and returned to her family on January 19, 2001; Aníbal Daniel Báez Ocampos, age unknown, detained on January 10, 2001, and returned to his family on January 19, 2001; Carlos Antonio Bogado Leiva, age unknown, detained on January 10, 2001, and returned to his family on January 19, 2001; Hugo Javier Martínez, age unknown, detained on January 10, 2001, and returned to his family on January 19, 2001; Jorge Báez Ruiz Díaz, age unknown, detained on January 10, 2001, and returned to his family on January 19, 2001; Mónica Dahiana Báez Ruiz Díaz, age unknown, detained on January 10, 2001, and returned to her family on January 19, 2001; Ramón Eduardo Báez Ruiz Díaz, age unknown,

detained on January 10, 2001, and returned to his family on January 19, 2001; Ariel Benítez Romero, age unknown, detained on January 10, 2001, and returned to his family on June 7, 2001; Beatriz Marisol González Cabrera, age unknown, detained on January 10, 2001, and returned to her family on June 7, 2001; José David González Cabrera, age unknown, detained on January 10, 2001, and returned to his family on June 7, 2001; Juan Manuel Benítez Romero, age unknown, detained on January 10, 2001, and returned to his family on June 7, 2001; Pedro Antonio González Cabrera, age unknown, detained on January 10, 2001, and returned to his family on June 7, 2001; Abraham Meza Ruiz Díaz, aged 12 years, detained on November 27, 2000; the information available indicates that on December 27, 2000, it was reported that he had run away, and on the same date the National Police were ordered to look for him; Cristian Leiva Báez, aged 3 years, detained on November 27, 2000; the information available indicates that on May 14, 2001, his father submitted a brief expressing his consent to the internment of his children, whereupon the court decided, on June 17, 2001, to grant him visiting rights every weekend; Dahiana Marifer Chávez Lesme, aged one year, detained on November 27, 2000; the information available indicates that on July 22, 2002, a decision was taken not to grant the request for her return (appeals and actions for nullification were filed against this decision and were granted, but she continued to be detained until May 28, 2003); Dolly Aracelli Álvarez, aged 6 years, detained on November 27, 2000; the information available indicates that on July 22, 2002, a decision was taken not to grant the request for her return (appeals and actions for nullification were filed against this decision and were granted, but she continued to be detained until May 28, 2003); Elías Lezcano, aged 4 years, detained on November 27, 2000; the information available indicates that on January 19, 2001, a decision was taken to award temporary guardianship to his grandparents; Graciela Leiva Báez, aged 7 years, detained on November 27, 2000; the information available indicates that on May 14, 2001, her father submitted a brief expressing his consent to the internment of his children, whereupon the court decided, on June 17, 2001, to grant him visiting rights every weekend; Ingrid Mabel Villaverde, aged 9 years, detained on November 27, 2000; the information available indicates that on April 5, 2001, temporary guardianship was awarded to her godfather; Jorge Esteban González, aged 7 years, detained on November 27, 2000; the information available indicates that on January 16, 2001, the court decided to award temporary guardianship of the boy to his grandfather, Ermenegildo González Sanabria; Julio Agüero Martínez, aged 11 years, detained on November 27, 2000; the information available indicates that on April 25, 2001, an order was given to look for him, since he had run away; Junior Lezcano, aged 4 years, detained on November 27, 2000; the information available indicates that on January 19, 2001, a decision was taken to award temporary guardianship to his grandparents; Liliana Soledad Lesme Ortega, aged 13 years, detained on November 27, 2000; the information available indicates that she escaped on February 13, 2001; Marcos Daniel Villaverde, aged 5 years, detained on November 27, 2000; the information available indicates that on April 5, 2001, temporary guardianship was awarded to his godfather; María Etelvina Flores, aged 14 years, detained on November 27, 2000; the information available indicates that on December 6, the Hogar María Reina reported to the court that María Etelvina Flores wanted to commit suicide, and on the same day it was reported that she had run away; Pedro Antonio Núñez, aged 10 years, detained on November 27, 2000; the information available indicates that on April 2001, an order was given to look for him, since he had run away; Sergio Damián Martínez, aged 12 years, detained on November 27, 2000; the information available indicates that he ran away from the Instituto del Mañana on December 26, 2000, and the National Police were ordered to find him (appeals and actions for nullification

were filed against the decision to order the police to find him; the appeals were not granted, but on January 19, 2001, an order was given to return him to his family); Wilson Enrique Aquino, aged one year and eight months, detained on November 27, 2000; the information available indicates that on January 4, 2001, his mother removed him from the court without authorization, whereupon the court ordered the police to find him and his mother; Johana Gladys Bogado Escalante, age unknown, detained on January 10, 2001; the information available indicates that on July 22, 2002, a decision was taken not to grant the request for her return (appeals and actions for nullification were filed against this decision and were granted, but she continued to be detained until May 28, 2003); Liz Bogado Escalante, age unknown, detained on January 10, 2001; the information available indicates that on July 22, 2002, a decision was taken not to grant the request for her return (appeals and actions for nullification were filed against this decision and were granted, but she continued to be detained until May 28, 2003). Lastly, the boy Haiano Rafael Duarte Maciel, aged six months, detained on November 27, 2000; the information available indicates that up to June 21, 2006 (the date of the latest information on the case provided by the parties), he was still being detained.

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[FN2] According to the United Nations Convention on the Rights of the Child, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

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67. Lastly, it must be pointed out that, while the Commission has received information according to which adults who were carrying in their arms or were accompanied by the children who would be interned were detained in the same round-ups, the Commission has received no detailed information on their ages, the dates on which they were released, or the remedies pursued to exhaust domestic resources. The Commission received no arguments from either of the parties concerning the situation of these adults; accordingly, the Commission’s analysis is limited to the situation of the children mentioned in the preceding paragraph.

A. The Commission’s competence

68. The petitioners are authorized by Article 44 of the American Convention to lodge petitions with the Commission. The instant petition indicates that the alleged victims were under the jurisdiction of the Paraguayan State at the time of the alleged events. Regarding the State, the Commission notes that Paraguay is a State Party to the American Convention, having ratified it on August 24, 1989. Therefore, the Commission is competent *ratione personae* to review the complaints.

69. The Commission is also competent *ratione materiae* because the petitioners allege violations of rights protected by the American Convention.

70. The Commission is competent *ratione temporis*. The petition is based on allegations regarding events that occurred after November 27, 2000. The alleged events therefore occurred when the State’s obligations as a Party to the American Convention were already in effect.

71. Lastly, the Commission is competent *ratione loci* because the alleged violations of rights protected by the American Convention occurred within the territory of a State Party to the Convention.

B. Other admissibility requirements

1. Exhaustion of domestic resources

72. Article 46.1.a of the American Convention stipulates that the admissibility of a case is subject to the requirement “that the internal remedies have been pursued and exhausted in accordance with generally recognized principles of international law.”

73. In the instant case, the petitioners allege that several remedies were pursued in connection with the events alleged to constitute violations of the Convention, while the State’s position is that domestic resources have not been exhausted. In this section, the Commission analyzes the internal remedies that were invoked in favor of the alleged victims.

74. Regarding the round-up on November 27, 2000, two habeas corpus applications were pursued. Firstly, on November 27, 2000, the General Secretary of the Coordinating Committee for the Rights of Children and Adolescents filed a restitutive generic habeas corpus application on behalf of all the children detained in the operation carried out on November 27.

75. Secondly, on November 28, 2000, several parents who had been detained along with their children in the proceedings initiated on November 27, 2000, brought a generic constitutional action for habeas corpus before the Supreme Court of Justice on behalf of themselves and their children[FN3].

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[FN3] According to the habeas corpus petition filed on November 28, 2000, a copy of which has been placed on record, the children on whose behalf this application was submitted are: Cristina Aguayo, Pablo Merardo Aquino Jara, Pedro Osvaldo Aquino Jara, Karen Carolina Benítez Mereles, Eduardo Fabián Bobadilla, Vidal Jesús Duarte Ganoso, Lorenzo Duarte Ganoso, Cristian Leiva Báez, Graciela Leiva Báez, Liz Paola Ortiz Paredes, Pamela Johana Ortiz Paredes, Jazmín Ortiz Paredes, Janette Ortiz Paredes, Adriele Pereira Dos Santos, Natanael Pereira Dos Santos, Paula Rodríguez Dos Santos, Hugo Recalde Ramírez, Nestor Fabián Sanabria, Cristian Sanabria, Jessica Romina Sanabria, Sandra Beatriz Sanabria, Juan Carlos Vázquez, Cecilio Valenzuela Muñoz, Ingrid Mabel Villaverde, Dolly Aracelli Álvarez, Dahiana Marifer Chávez Lesme, Haiano Rafael Duarte Maciel, Liliana Soledad Lesme Ortega, Julio Agüero Martínez, Pedro Antonio Núñez, and Wilson Enrique Aquino.

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76. The Paraguayan Supreme Court of Justice did not grant the request, indicating that:

generic habeas corpus is a constitutional guarantee by means of which petitioners can request the rectification of circumstances not provided for in restitutive or preventive habeas corpus that illegally restrict the liberty or threaten the personal safety of persons legally deprived of their

liberty, or the cessation of physical, mental, or psychological violence exacerbating the conditions faced by such persons. The purpose [of generic habeas corpus] is to obtain a judicial determination ordering the rectification of the circumstances. Regarding the juveniles, the judge in the case has reported that they are not being detained, and a determination has been made regarding the circumstances in which they would be returned. In short, the right of generic habeas corpus must be exercised before the court in question, since it is the logical sphere of jurisdiction, and what is requested cannot be remedied by the instant means.

77. Regarding the round-up on January 10, 2001, the information at the Commission's disposal indicates that individual habeas corpus applications were filed on behalf of nine children, but that these applications were subsequently withdrawn, allegedly pursuant to an agreement between the Sixth Duty Court of First Instance in Juvenile Protection and Correctional Matters and DEQUENI, according to which the children would be handed over to their parents if the applications were withdrawn.

78. Subsequently, the parents of around 50 of the detained children approached the judge's office and requested the return of their children.[FN4] Between December 11, 2000, and January 18, 2003, several resolutions were issued, ordering that the children be returned to their parents. With respect to 12 of the children whose return was requested, the information provided to the Commission by the State indicates that the request was not granted. In addition, the parents of the alleged victims pursued other remedies, such as a motion for the recusal of the judge in the case, or appeals against the orders given to the police to take into custody the children who had run away from the institutions in which they were interned.

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[FN4] The children whose return was requested are: Luis Ignacio Alvarenga, Cristina Aguayo, Sebastián Aguayo, Luz Marina Agüero Martínez, Iván Aldemar Muñoz, Pablo Merardo Aquino Jara, Pedro Osvaldo Aquino Jara, Ramón Eduardo Báez Ruiz Díaz, Andrea Celeste Báez Ruiz Díaz, Jorge Báez Ruiz Díaz, Mónica Dahiana Báez Ruiz Díaz, Aníbal Daniel Báez Ocampos, Juan Manuel Benítez Romero, Ariel Benítez Romero, Karen Carolina Benítez Mereles, Eduardo Fabián Bobadilla, Carlos Antonio Bogado Leiva, Alberto Daniel Caballero, Eulalio Cañete, Paublino Casco, Vidal Jesús Duarte Gayoso, Juan Valerio Ferreira, Marco Antonio Ferreira, Isidro Gaona Delvalle, Eder Daniel Domínguez, Lorenzo Duarte Gayoso, Marco Antonio Figueredo, Beatriz Marisol González Cabrera, José David González Cabrera, Pedro Antonio González Cabrera, Hugo Javier Martínez, Osmar Saturnino Martínez Gayoso, Liz Paola Ortiz Paredes, Pamela Johana Ortiz Paredes, Jazmín Ortiz Paredes, Janette Ortiz Paredes, Adriele Pereira Dos Santos, Natanael Pereira Dos Santos, Paula Rodríguez Dos Santos, Hugo Recalde Ramírez, Carlos Daniel Recalde, Wiliana Blancanieves Rodríguez Guerrero, Nestor Fabián Sanabria, Cristian Sanabria, Jessica Romina Sanabria, Sandra Beatriz Sanabria, Ariel Sánchez, Juan Carlos Vázquez, Andrés Ricardo Velásquez, and Cecilio Valenzuela Muñoz.  
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79. Regarding the situation of the alleged victims, who were deprived of their liberty by order of the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters, habeas corpus is in principle the appropriate remedy. Habeas corpus is the appropriate remedy in all cases in which a person believes that he or she has been illegally deprived of his or her

liberty. In this regard, the Inter-American Court of Human Rights has established that habeas corpus performs a vital role in ensuring that a detained person's life and physical integrity are respected, in preventing that person's disappearance or the keeping of his or her whereabouts secret.[FN5]

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[FN5] 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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80. With respect to the alleged victims detained on January 10, 2001, the Commission notes that two previous habeas corpus applications filed in similar situations were rejected by the Supreme Court on the ground that the children were not in a situation where they were being deprived of their liberty. Thus, it might be presumed that the remedy would be ineffective on behalf of the children detained on January 10, 2001 in similar circumstances, and therefore that the petitioners were not required to pursue this remedy.

81. In the present case, habeas corpus were filed in favor of the children detained on the round-ups of November 27, 28 and 29 of 2000; these habeas corpus did not produce the results for which they were designed because the judge in charge of the round-ups informed that the said children were not deprived of liberty. In light of the inefficacy of this remedy, after the round-up of January 10, 2001, the parents of the detained children pursued other remedies, even requests for restitution, recusal and appeals against the orders given to the police to take the children into custody.

82. In its allegations, the State indicates that petitioners had other available remedies, such as: a proceeding before the Judicial Prosecution Panel and an investigation carried out by the Supreme Court of Justice in exercise of its supervisory authority and disciplinary power over all agencies of the judicial branch.

83. The Commission observes that such remedies do not offer the possibility to revise or revoke a detention in a fast and efficient manner, and for these reasons the admissibility of the instant case can not be conditioned to their exhaustion.

84. In conclusion, the Commission decides that petitioners exhausted the appropriate remedies to the extent that is required.

## 2. Deadline for submission of the petition

85. Article 46.1.b of the Convention stipulates that the admissibility of a petition is subject to the requirement "that the petition or communication is 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" of a domestic court.

86. In the instant case, the final judgments of a domestic court are those that resolve not to grant the habeas corpus applications that were filed, these being the appropriate remedies. The information in the Commission's files indicates that one of these decisions is dated December 5, 2000. The Commission has no information regarding the date on which the first habeas corpus application was denied. However, when the petition was lodged with the Commission on January 11, 2001, the petitioners had already been informed of the resolution denying both applications.

87. Since the applications were filed on November 27 and 28, 2000, and the petition was lodged on January 11, 2001, there is no way in which more than six months could have elapsed between the time when the petitioners were informed of the resolutions rejecting these applications and when they lodged the petition with the Commission. In view of the foregoing, the IACHR believes that the instant petition was lodged in a timely manner.

### 3. Duplication of international proceedings and res judicata

88. Article 46.1.c of the Convention stipulates that the admissibility of a petition is subject to the requirement that the case "is not pending in another international proceeding for settlement", and Article 47.d stipulates that the Commission shall consider inadmissible any petition or communication if it "is substantially the same as one previously studied by the Commission or by another international organization". In the instant case, the parties have not claimed that either of these two circumstances determining inadmissibility exists, nor do they arise from the proceedings.

### 4. Characterization of the alleged facts

89. For purposes of admissibility, the Commission must decide whether the events alleged in the petition tend to establish a violation of the rights guaranteed by the American Convention, as required by Article 47.b thereof, or whether the petition is "manifestly groundless" or "obviously out of order", pursuant to paragraph (c) of that article. The criterion for evaluating whether those requirements have been met differs from the one used to determine the merits of a petition; the Commission must make a prima facie assessment to determine whether the petition establishes the basis for a possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination constitutes a primary analysis that does not imply prejudging the merits of the case.

90. The petitioners allege that the events reported constitute a violation of Articles 5 (right to physical integrity), 7 (right to personal liberty), 8 (judicial guarantees), 11 (protection of honor and dignity), 17 (protection of the family), 19 (rights of the child), 22 (freedom of movement and residence), 24 (equality before the law) and 25 (judicial protection) as they relate to Article 1.1 of the American Convention on Human Rights.

91. The Commission notes that, as indicated by the Inter-American Court of Human Rights in its Advisory Opinion OC-17/02 on the juridical condition and human rights of the child, the State of Paraguay is obligated to adopt affirmative measures to ensure the protection of children. However, these affirmative measures must be based on judicial or administrative proceedings that are in strict conformity with the law and that safeguard the rights of children. In the instant

case, the petitioners have presented a number of claims regarding the juridical condition and human rights of the children identified, particularly concerning their alleged deprivation of liberty and the consequent violations of the State's obligations with respect to family life, protection, and judicial guarantees available.

92. Accordingly, the IACHR believes that the events alleged, should they prove true, might tend to establish possible violations of the rights protected by Articles 19, 17, 7, 5, 11, 22, 24, 8 and 25 of the American Convention, in accordance with the general obligation to respect and guarantee rights as provided in Article 1.1 of that treaty.

## V. CONCLUSIONS

93. The Commission concludes that it is competent to examine the instant case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention.

94. Based on the de facto and de jure arguments stated above, and without prejudging the merits of the case

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible with respect to alleged violations of the rights recognized in Articles 19, 17, 7, 5, 11, 22, 24, 8 and 25 of the American Convention as they relate to the general obligation to respect and guarantee rights as provided in Article 1.1 of that treaty.
2. To declare the instant case inadmissible with respect to alleged violations of the right recognized in Article 24 of the American Convention.
3. To inform the parties of this decision.
4. To continue its analysis of the merits of the case.
5. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 6th day of the month of March, 2008.  
(Signed):, Paolo G. Carozza, President; Patricia Luz Mejía Guerrero, First Vice-President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Víctor E. Abramovich and Florentín Meléndez, Commissioners.