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Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Rafael Arturo Pacheco Teruel, Allan Roberto Escalante Mayorquin, Jose Geovanny Ulloa Diaz, Melvin Isaias Lopez Recarte, Carlos Roberto Izaguirre Alva, Humberto Daniel Bruhier Carcamo, Willian Antonio Reyes Flores, David Javier Urrea Aguilar, Antony Zuniga Aguilar, Melvin Rolando Arriaga Martinez, Marvin Geovany Montoya Gamez, Jose Naun Coto Rodriguez, Fredy Enrique Gutierrez Maldonado, Juan Carlos Rivas, Nelson Geovanni Villeda Rosales, Oscar Edgardo Cruz o Isidro Mejia Mejia, Carlos Alberto Rivas Hernandez, Wilmer Alexis Aguiluz, Darwin Rolando Martinez Sanchez, Ervin Ronaldo Vallecillos Padilla, Jesus Aguilar Leiva, Jony Naun Lemus Mejia, Jose Amilcar Ramirez Rodriguez, Allan Antony Carrasco Rodriguez, Victor David Torres Funez, Walter Amilcar Serrano Alberto, Nelson Jesus Jimenez Sevilla, Henry Adalberto Regalado Suazo, Lenin Josue Galindo Ruiz, Angel Noel Sanchez Rivera, Edgardo Alejandro Hernandez Antunez, Darwin Geovanny Lopez Paz, Jose Santiago Hernandez Morter, Anuar Enrique Funez Leiva, Jose Enrique Hernandez Mayorga, Mario Roberto Velasquez Ventura, Luis Alberto Escobar Vallecillo, Gerson Magdiel Lopez Paz, Jose Neptaly Rivera Sosa, Angel Israel Meza Agurcia, Jose Dionicio Cerrato Estrada, Jorge Alberto Sierra Galeas, Marvin Yovany Rivera Santamaria, Warner Moreno Mendez, Esmelin Teruel Fernandez, Luis Gustavo Mata Aguilar, Jose Antonio Flores Mendez, Arnaldo Enrique Bautista, Jose Luis Hernandez Rodriguez, Miguel Eduardo Mercado Valle, Jorge Alberto Ortiz, Annel Antonio Cruz Vasquez, Cesar Edgardo Orellana Mendoza, Edwin Reynaldo Guerrero Villeda, Pedro Tabora Castillo, Hauner Isaias Rios, Carlos Leonardo Cruz Dubon, Walter Adalid Murcia Serrano, Alberto Antonio Tenorio Lemus, Oscar Irael Duarte Valle, Danilo Antonio Reyes Benavides, Cristhian Alberto Orellana Melendez, Victor Manuel Vigil Navas, Jose Antonio Morales o Rossel Antonio Moran Rodriguez, Luis Orlando Serrano Cano, Naun Antonio Mendez, Manuel Armando Cortes, Edwin Alberto Guzman, Javier Ivan Marroquin, Omar Neptali Valle Marquez, Hector Adan Meza, Marvin Antonio Carballo Vasquez, Eleasar Machado Figueroa, Jose Francisco Cabrera Gomes, Marcos Josue Sierra Banegas, Sergio Yanel Hernandez Avila, Alejandro Valentin Ramos, Marco Antonio Cabrera Alvarado, Gustavo Arnaldo Martinez Molina, Hector Javier Guzman Mejia, Hector Danilo Bautista Herrera, Wilmer Alexander Lopez Leiva, Onix Johe Zelaya Gomez, Luis Ramirez Hernandez, Orvil Ramirez Martinez, Jose Miguel Garay Reyes, Carlos Alberto Amaya Dubon, Andres Enrique Zepeda Romero, Osman Orlando Arriaga Soto, Miguel Angel Perez Godoy, Jose Edgardo Alvarez Sabio, Oscar Antonio Osorio o Jesus Fiallos Ulloa, Wilson Ernesto Euceda Ortiz, Jose Oswaldo Leveron Arita o Edy Ramon Ramirez Hernandez, Jose Adan Benitez, Mayro Joaquin Lopez Ardon, Gerardo Enrique Castro Garcia, Javier Alexander Maldonado o Augusto Cesar Portillo Andino, Ixel Alfredo Medina, Jose Luis Rodriguez Carcamo, Wilfredo Reyes, German Daniel Corrales, Walter Yovany Banegas Sandoval,

Josue Ramon Hernandez Lopez, Jose Antonio Rodriguez, Nelson Rafael Ortega Martinez and Edward Omar Tabora v. Honduras

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, Florentin Melendez, Victor E. Abramovich.

Dated: 17 October 2008

Citation: Pacheco Teruel v. Honduras, Petition 785-05, Inter-Am. C.H.R., Report No. 78/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)

Represented by: APPLICANTS: the Pastoral Penitenciaria, CARITAS Sampedrana, and Equipo de Reflexion, Investigacion y Comunicacion

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I. SUMMARY

1. On July 14, 2005, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission”, the “Commission” or the “IACHR”) received a petition lodged by the Pastoral Penitenciaria, CARITAS Sampedrana, and Equipo de Reflexión, Investigación y Comunicación (hereinafter “the petitioners”) against the State of Honduras (hereinafter “Honduras”, “the State” or “the Honduran State”) for alleged violation of Articles 4, 5, 8, and 25, in conjunction with Article 1(1), of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), for the alleged violations of the fundamental rights of 107 persons deprived of liberty who died at San Pedro Sula Prison (hereinafter “the alleged victims”).

2. The petitioners hold that on May 17, 2004, a fire broke out at San Pedro Sula Prison that resulted in the deaths of 107 inmates. They also note that more than four years after the events, the investigation opened by the State remains at a preliminary stage. As regards admissibility requirements, they say that the domestic judicial proceeding have not proven effective for punishing the alleged culprits and the families of the alleged victims have been denied a simple and prompt remedy by which to know what really happened and obtain fair compensation for damages.

3. For its part, the State argues that the remedies under domestic jurisdiction have not been exhausted in view of the fact that the investigations to determine the responsibility of the officials involved in this case remain ongoing. The State also says that the statute of limitations on the right of the State to prosecute the matter has not run and, therefore, it still has the possibility of affording protection to the alleged victims by means of domestic mechanisms.

4. Without prejudging the merits in the matter and having analyzed the available information and ascertained that the admissibility requirements have been met pursuant to Articles 46 and 47 of the American Convention and Articles 30 and 37 of its Rules of Procedure,

the IACHR concludes that the petition is admissible with regard to the alleged violations of the rights set forth in Articles 4, 5, 8 and 25 of the American Convention, in connection with the general obligation enshrined in Article 1(1) of said international instrument. In addition, based on the principle *iura novit curia*, the Commission concludes that the petition is admissible with regard to the alleged violation of Article 7 of the American Convention. The Commission resolves to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION[FN1]

[FN1] On May 19, 2004, the Inter-American Commission, in accordance with article 41 of the American Convention, sent a letter to the State expressing its concern over the May 17, 2004 fire in Cellblock 19 of the San Pedro Sula Prison and requested information on the “circumstances related to the tragic events and the measures adopted to investigate the facts, assess responsibility, process and sanction the responsible parties and on measures to prevent similar events from occurring in the future.” On June 3, 2004, the State submitted its reply, informing the Commission that it was proceeding with the relevant enquiries into the facts of the fire.

5. On July 14, 2005, the Commission received the petition and assigned it case number 785-05.[FN2] On October 12, 2006, it forwarded the pertinent portions to the State and gave it two months to reply, in keeping with Article 30(2) of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the “Rules of Procedure”). The State’s reply was received on February 28, 2007.

[FN2] On June 14, 2004, the IACHR received petition 724-04 lodged by the Criminal Law Department at Buenos Aires University Law School. This petition was joined with petition 785-05 because it concerned the same facts and the petitioners in the latter complaint were in direct contact with the families of the alleged victims. The decision was transmitted to the petitioners on October 12, 2006.

6. Furthermore, the IACHR received information from the petitioners on the following dates: April 23, 2007; August 29, 2007; October 2, 2007; and June 13, 2008. Said communications were duly relayed to the State.

7. In addition, the IACHR received comments from the State on the following dates: July 20, 2007; October 5, 2007; and March 5, 2008. Those communications were duly transmitted to the petitioners.

III. POSITIONS OF THE PARTIES

A. The petitioners

8. In the complaint the petitioners say that on May 17, 2004, at some time between 1:30 a.m. and 2 a.m. a fire broke out in Cellblock 19 at San Pedro Sula Prison, where 183 inmates considered members of the Mara Salvatrucha “MS 13” gang were housed. They add that at 1:55 a.m., the then-director of San Pedro Sula Prison called the Fire Department and the National Police to report the blaze, and that at 2:30 a.m., when the authorities arrived on the scene, the majority had been asphyxiated by the smoke.[FN3] As a result of the fire, 107 inmates died and 26 sustained burns.[FN4] They say that official reports attributed the cause of the fire to inadequate electrical installation.[FN5] In this connection, they say that two months before the blaze the prison director described the electrical system as “collapsed” and warned that there could be a fire. They add that according to the testimony of a number of prisoners, when the fire started, when guards noticed that the inmates were attempting to get out of the Cellblock to escape the fire, they shot at them to prevent them from doing so.

[FN3] The petitioners say that of all the inmates who lost their lives, only 10% did so as a result of third- and second-degree burns, and that 90% died from carbon monoxide poisoning.

[FN4] The petitioners note that 104 inmates were killed in the disaster and that another three of the injured died after they were taken to hospital.

[FN5] In this respect, the petitioners cite the Fire Investigation Report of the Honduras Fire Department, Noroccidental Region, and the Electrical System Inspection in Cellblock 19 performed by technical personnel from Empresa Nacional de Energía Eléctrica (ENEE).

9. The petitioners hold that at the time of the fire, Cellblock 19 was part of the general structure of the prison, isolated from the other cellblocks, poorly ventilated, and regarded as inhuman by the Enforcement Judge of San Pedro Sula. In addition, the petitioners indicate that the the overall situation in the prison was one of overcrowding, violence, unsanitary conditions, indifference on the part of the competent authorities, rampant crime, and structural deficiencies.[FN6]

[FN6] To support this statement, the petitioners cite Judicial Proceeding 1009, Attorney General v. Elías Aceituno Canaca, Enforcement Court Decision of April 21, 2004, p. 1979.

10. As regards the investigation of the incident, they say that on August 11, 2004, the Office of the Attorney General presented a formal indictment against the director of the prison at the time of the fire.[FN7] They add that at a preliminary hearing on September 1, 2004, the case was definitively dismissed. The petitioners mention that the Office of the Attorney General lodged an appeal against the decision, which the Court of Appeals rejected on November 22, 2004. On November 23, 2004, a motion was entered for reversal of the decision of the Court of Appeals, but it was found inadmissible on November 25 of that same year. Subsequently, the petitioners say that on December 17, 2004, the Office of the Prosecutor filed for a writ of amparo with the Constitutional Chamber of the Supreme Court of Justice, which was refused on September 27, 2005.

[FN7] According to the petitioners, this criminal indictment is for the crimes of manslaughter to the detriment of Rafael Arturo Pacheco et al., injuries to the detriment of Javier Alejandro Pineda et al., and breach of public duties to the detriment of the public administration.

11. The petitioners say that until 2008 the investigation of the incident at San Pedro Sula Prison has remained at the preliminary stage. They say that in cases such as this, in which there have been violations of the right to life and personal integrity, the only remedy that can be considered adequate is a criminal investigation. In this regard, they say that from the outset the State neglected to exhaust every line of inquiry to determine who was responsible for the acts or omissions of the authorities allegedly involved. They note that in this case, “time was of the essence to ensure the success of the criminal investigations in effectively safeguarding the rights that were violated.” They hold that during de process the Office of the Attorney General destroyed evidence on the case, and that according to one prosecutor,[FN8] this evidence was not included in the record of the proceeding.

[FN8] The petitioners say that this statement is based on reports in the press: “Cierran caso de masacre en penal sampedrano” [San Pedro Prison Massacre Case Closed], Diario digital Hondudiarario, August 22, 2007, and “Botan evidencias recogidas tras el incendio del presidio” [Prison Fire Evidence Tossed Out], El Tiempo, August 23, 2007.

12. The petitioners also hold that Honduras violated Article 4(1) of the American Convention in connection with Article 1(1) thereof because it allowed the electrical system to fall into disrepair without adopting preventive measures, placing the lives of the inmates at risk. In this regard, they say that at the time of their deaths the inmates were in the custody of the State, which, therefore, was required to ensure their lives and integrity. As regards Article 5(1) and (2) of the American Convention, the petitioners consider that the State has adopted an omissive attitude to its obligation to ensure the right to personal integrity of persons deprived of liberty, and that this was reflected in the overcrowded conditions and deficient structures in which they were housed, which were pivotal factors in the deaths of the inmates. They also state that the inmates were subjected to inhuman and degrading treatment, that they lived in unsanitary conditions, were poorly fed, and the medical services were deficient. As regards section 5 of the aforementioned Article, they note that at least 44 of the persons who died in the blaze were remand prisoners who had not yet been sentenced, which shows that the former lived in the same space as convicted prisoners.

13. As to the argument of the State that domestic remedies have not been exhausted, the petitioners note that in the instant case the exception to the rule of prior exhaustion of domestic remedies applies because there has been an unwarranted delay in rendering a decision at the domestic level. They allege that for the victims’ families, the domestic judicial proceeding has proved ineffective in punishing those responsible in accordance to law, and because they have been denied a simple and prompt remedy that might enable them to know the truth about what happened and receive fair compensation for damages. For the aforementioned, they affirm that

the State violated the rights enshrined in Articles 4, 5, 8(1) and 25 of the Convention, in connection with the general obligation contained in Article 1.1 of said international instrument.

B. The State

14. The State acknowledges that on May 17, 2004, a fire started in Cellblock 19 at San Pedro Sula Prison that caused the deaths of 107 inmates and that this calamity was caused by the electrical system overheating as a result of its dilapidated state and the excessive number of electrical appliances in the cellblock. The State says that "it does not refute the fact that the country's prisons, in particular in the cities of Tegucigalpa and San Pedro Sula, are in a state of crisis owing to the high number of persons deprived of liberty confined in them, in many cases with populations that exceed their design capacity. Nor do we deny that [in] many of these prisons the electrical, water, plumbing and other systems had collapsed." [FN9] However, the State adds that in the past two years, through the Ministry of Security, funds had been invested in the improvement of prison conditions, [FN10] and that a bill introducing a new Prison Law is presently before the Honduran Congress.

[FN9] Response of the State of February 28, 2007.

[FN10] In this regard, the State notes that the prison population has declined, making it possible for most prisons to operate at 80% of their installed capacity, and that ventilation and medical services have improved.

15. The State says that the fire of May 17, 2004, came about as a result of "the deplorable state of the electrical system, which was overloaded by the excessive number of electrical devices or appliances connected to it and a fire started precisely at the only point of access to Cellblock 19, from where it spread rapidly owing to the large quantity of flammable objects, such as curtains, bed linen, and clothes, among other items used by the inmates for their personal needs." [FN11]

[FN11] Response of the State of February 28, 2007.

16. The State says that the forensic medical reports show that none of the deceased died of gunshot wounds and that the spent cartridge cases were found because shots were fired to raise alert in order to ensure that the whole prison population was aware of the fire. As regards the assertion made by the petitioners that the prosecutor's office "has unilaterally destroyed evidence in the case, the State points out that this was done in accordance with legal procedure established under the Code of Criminal Procedure, the Regulations in Decree No. 9-99-E and the Regulations on Handling of Physical or Biological Evidence of a crime." [FN12]

[FN12] Response of the State of March 5, 2008.

17. The State also mentions that it does not seek to evade its responsibility to investigate and punish those responsible, either for omissions or direct actions, which is why it initiated a criminal inquiry, in the first stage of which the prosecutor's office issued a summons for the then-director of the prison. This proceeding did not prosper in spite of the fact that appeals were filed and a writ of amparo was sought against the decision to acquit him. The State notes in this respect that the former prison director took appropriate administrative steps to improve the subhuman conditions in which the inmates lived prior to their death and that he did not receive approval or the necessary assistance to implement the corrective measures that might have averted the blaze. In addition, the State says that his acquittal "does not preclude the accused from being found to bear administrative or civil liability, or other higher level civil servants, who are currently under investigation, being charged with criminal liability."

18. The State says that enquiries continue in order to ascertain which officials were present when the events occurred, what their obligations and duties were, their seniority, and what they could have done to avert the incident. The State also says that enquiries are underway in order to determine the responsibility, as appropriate, of senior officials in the Bureau of General Prevention Services or any other government official who might have been legally required to take steps to prevent such an incident. In this connection, it considers that domestic remedies to punish those responsible and provide compensation to the victims and their next of kin have not been exhausted, given that investigations are currently underway to determine the responsibility of other officials who, either by deed or omission, are involved in this case.

19. With respect to the delay in the judicial proceeding alleged by the petitioners, the State recognizes that the case has been delayed but that the procedures that arise from such acts are not prompt or simple remedies and that the time taken to complete these processes will probably be counted in years as a considerable amount of time is needed to resolve the merits of the case at trial. The reason for this is that the parties must be given the chance to collect evidence, present it at trial, and contest opposing evidence, in addition to which the tribunal must be afforded the possibility of carefully weighing all of this.

20. The State also says that it has not violated Article 4 of the Convention and, with respect to the supposed violation of Article 5, it says that efforts had been made to correct conditions for prisoners, which stem from the shortage of human and material resources in the country and not from a state policy of torture or inhuman or degrading treatment of persons deprived of liberty.

21. In short, the State requests that the instant petition be declared inadmissible under Article 31(1) of the Rules of Procedure of the Inter-American Commission because the remedies under domestic jurisdiction have not been exhausted in accordance with generally recognized principles of international law.

IV. ANALYSIS

A. Competence of the Commission *ratione loci*, *ratione personae*, *ratione temporis*, and *ratione materiae*

22. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the Commission. The petition names as alleged victims 107 persons deprived of liberty who lost their lives in a fire at San Pedro Sula Prison on May 2004, and on whose behalf the State of Honduras undertook to observe and ensure the rights enshrined in the American Convention and other international instruments.

23. The petitioners individually identify the following alleged victims:[FN13] 1) Rafael Arturo Pacheco Teruel, 2) Allan Roberto Escalante Mayorquin, 3) José Geovanny Ulloa Díaz, 4) Melvin Isaías López Recarte, 5) Carlos Roberto Izaguirre Alva, 6) Humberto Daniel Bruhier Cárcamo, 7) Willian Antonio Reyes Flores, 8) David Javier Urrea Aguilar, 9) Antony Zuniga Aguilar, 10) Melvin Rolando Arriaga Martínez, 11) Marvin Geovany Montoya Gamez, 12) José Naun Coto Rodríguez, 13) Fredy Enrique Gutiérrez Maldonado, 14) Juan Carlos Rivas, 15) Nelson Geovanni Villeda Rosales, 16) Oscar Edgardo Cruz ó Isidro Mejía Mejía, 17) Carlos Alberto Rivas Hernández, 18) Wilmer Alexis Aguiluz, 19) Darwin Rolando Martínez Sánchez, 20) Ervin Ronaldo Vallecillos Padilla, 21) Jesús Aguilar Leiva, 22) Jony Naun Lemus Mejía, 23) José Amílcar Ramírez Rodríguez, 24) Allan Antony Carrasco Rodríguez, 25) Víctor David Torres Funez, 26) Walter Amílcar Serrano Alberto, 27) Nelson Jesús Jiménez Sevilla, 28) Henry Adalberto Regalado Suazo, 29) Lenin Josué Galindo Ruiz, 30) Ángel Noel Sánchez Rivera, 31) Edgardo Alejandro Hernández Antúnez, 32) Darwin Geovanny López Paz, 33) José Santiago Hernández Morter, 34) Anuar Enrique Fúnez Leiva, 35) José Enrique Hernández Mayorga, 36) Mario Roberto Velásquez Ventura, 37) Luis Alberto Escobar Vallecillo, 38) Gerson Magdiel López Paz, 39) José Neptaly Rivera Sosa, 40) Ángel Israel Meza Agurcia, 41) José Dionicio Cerrato Estrada, 42) Jorge Alberto Sierra Galeas, 43) Marvin Yovany Rivera Santamaría, 44) Warner Moreno Méndez, 45) Esmelin Teruel Fernández, 46) Luis Gustavo Mata Aguilar, 47) José Antonio Flores Méndez, 48) Arnaldo Enrique Bautista, 49) José Luis Hernández Rodríguez, 50) Miguel Eduardo Mercado Valle, 51) Jorge Alberto Ortiz, 52) Annel Antonio Cruz Vásquez, 53) Cesar Edgardo Orellana Mendoza, 54) Edwin Reynaldo Guerrero Villeda, 55) Pedro Tabora Castillo, 56) Hauner Isaías Ríos, 57) Carlos Leonardo Cruz Dubon, 58) Walter Adalid Murcia Serrano, 59) Alberto Antonio Tenorio Lemus, 60) Oscar Irael Duarte Valle, 61) Danilo Antonio Reyes Benavides, 62) Cristhian Alberto Orellana Meléndez, 63) Víctor Manuel Vigil Navas, 64) José Antonio Morales ó Rossel Antonio Moran Rodríguez, 65) Luis Orlando Serrano Cano, 66) Naun Antonio Méndez, 67) Manuel Armando Cortes, 68) Edwin Alberto Guzmán, 69) Javier Iván Marroquín, 70) Omar Neptalí Valle Márquez, 71) Héctor Adán Meza, 72) Marvin Antonio Carballo Vásquez, 73) Eleasar Machado Figueroa, 74) José Francisco Cabrera Gomes, 75) Marcos Josué Sierra Banegas, 76) Sergio Yanel Hernández Ávila, 77) Alejandro Valentín Ramos, 78) Marco Antonio Cabrera Alvarado, 79) Gustavo Arnaldo Martínez Molina, 80) Héctor Javier Guzmán Mejía, 81) Hector Danilo Bautista Herrera, 82) Wilmer Alexander López Leiva, 83) Onix Johe Zelaya Gómez, 84) Luis Ramírez Hernández, 85) Orvil Ramírez Martínez, 86) José Miguel Garay Reyes, 87) Carlos Alberto Amaya Dubon, 88) Andrés Enrique Zepeda Romero, 89) Osman Orlando Arriaga Soto, 90) Miguel Ángel Pérez Godoy, 91) José Edgardo Álvarez Sabio, 92) Oscar Antonio Osorio ó Jesús Fiallos Ulloa, 93) Wilson Ernesto Euceda Ortiz, 94) José Oswaldo Leveron Arita ó Edy Ramón Ramírez Hernández, 95) José Adán Benítez, 96) Mayro Joaquín López Ardon, 97) Gerardo Enrique Castro García, 98) Javier Alexander Maldonado ó Augusto Cesar Portillo Andino, 99) Ixel Alfredo Medina, 100) José Luis Rodríguez Cárcamo, 101) Wilfredo Reyes, 102) Germán Daniel Corrales, 103) Walter Yovany Banegas Sandoval, 104) Josué Ramón Hernández López, 105) José Antonio Rodríguez,

106) Nelson Rafael Ortega Martínez, 107) Edward Omar Tabora. In addition, the arguments presented refer to the right of the families of the victims to protection and judicial guarantees.

[FN13] Petition received on July 14, 2005.

24. Honduras ratified the American Convention on September 8, 1977. Accordingly, the Commission has *ratione personae* jurisdiction to examine the petition.

25. The Commission is competent *ratione materiae* because the petition alleges violations of human rights protected by the American Convention. The Commission is also competent *ratione temporis*, because the facts alleged in the petition occurred when the obligation to respect and ensure rights recognized in the American Convention was already in force for the State, which ratified the Convention in September, 8, 1997. The Commission is competent *ratione loci* inasmuch as the alleged violations are said to have occurred within the territory of Honduras, which has ratified the American Convention.

B. Other admissibility requirements to be met by the petition

1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention provides that for a petition lodged with the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, it is necessary 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.

27. The prior exhaustion rule applies when there are suitable and effective remedies actually available in the national system to repair the alleged violation. In that connection, Article 46(2) specifies that the rule does not apply when: a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right in question; b) the alleged victim did not have access to the remedies under domestic law; and, c) there has been unwarranted delay in rendering a final judgment under said remedies. As Article 31 of the IACHR Rules of Procedure provides, when the petitioner invokes one of these exceptions, it is up to the State concerned to demonstrate that the remedies under domestic law have not been exhausted, unless that is clearly evident from the record.

28. In the instant case, the State requests that the petition be declared inadmissible on the ground that domestic remedies have not been exhausted since investigations are ongoing into government officials, in order to ascertain if they bear responsibility for the fire at San Pedro Sula Prison. For their part, the petitioners argue that the investigation opened *ex officio* by the State to clarify the circumstances of the fire at San Pedro Sula Prison and to prosecute and punish those responsible has been unduly delayed, plagued with serious irregularities, and ineffective. In sum, they say that in the instant case the rule of prior exhaustion of domestic

remedies has been superseded because for the victims' families the domestic judicial proceeding has proved ineffective in punishing those allegedly responsible in accordance to law, and because they have been denied a simple and prompt remedy that might enable them to know the truth about what happened and receive fair compensation for damages.

29. In this connection, the Commission considers that, as a general rule, "criminal investigations must be conducted promptly, in order to protect the interests of the victims and preserve the evidence." [FN14] As the Inter-American Court has noted, while every criminal investigation must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies should not lead international action on behalf of the victims to come to a halt or to be delayed to the point of being rendered ineffective. [FN15]

[FN14] IACHR, Report 73/05, Petition 4534-02, Admissibility, Oscar Iván Tabares Toro, Colombia, October 13, 2005, para. 29, and IACHR, Report 62/00, Case 11.727, Hernando Osorio Correa, Colombia, October 3, 2000, para. 25.

[FN15] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 93.

30. To determine whether or not an investigation has been carried out "promptly", the Commission must evaluate a series of factors such as the time elapsed since the offense was committed, if the investigation has progressed beyond the initial stages, the steps taken by the authorities, and the complexity of the case. [FN16]

[FN16] IACHR, Report 23/07, Petition 435-2006 Admissibility, Eduardo José Landaeta Mejías et al., Venezuela, March 9, 2007, para. 44; IACHR, Report 7/07, Petition 474-03, Admissibility, Oswaldo José Colmenares Mújica et al., Venezuela, February 28, 2007, para. 30, and IACHR, Report 10/05, Petition 380-03, Admissibility, Rafael Ignacio Cuesta Caputi, Ecuador, February 23, 2005, para. 48.

31. In the instant case, the Commission notes that the criminal enquiry into the events of May 17, 2004, at San Pedro Sula Prison, which cost 107 persons their lives, remains at a preliminary stage and the State has not supplied information on concrete steps or procedures meant to determine whether or not public officials bear responsibility for the events described in the petition. [FN17] The Commission also finds that the State did not explain any specially complex factors, given that this case concerns circumstances in which the identities of the government officials under whose protection the inmates found themselves was known. Furthermore, the Commission has held that when a publicly actionable offense is committed, the State has the obligation to institute criminal proceedings and pursue them to the end. [FN18]

[FN17] The scant progress made by the State in its investigations is set down for the record in the Report of the Office of the Special Prosecutor for Human Rights of March 5, 2008. Attached to the communication of the State of March 5, 2008.

[FN18] Report 14/08, Petition 652-04, Admissibility, Hugo Humberto Ruiz Fuentes, Guatemala, March 5, 2008, para. 64, and IACHR, Report 62/00, Case 11.727, Hernando Osorio Correa, Colombia, October 3, 2000, para. 24.

32. Based on the foregoing, the Commission finds that at the date of adoption of the instant report, the length of time that the State has taken to conduct the relevant investigations constitutes an unwarranted delay of justice.

33. Finally, the Commission considers that it is important to clarify that the exceptions to the rule of exhaustion of domestic remedies are closely connected to the determination of possible violations of certain rights contained in the Convention, such as the right to a fair trial (Article 8) and the right to judicial protection (Article 25). It should be borne in mind, however, that Article 46 (2), by its nature and purpose, has a content that is independent of the substantive norms of the Convention and depends on a standard of evaluation different from the one used to determine the violation of Articles 8 and 25 of this international instrument. Because of this, the applicability of the exceptions to the rule of exhaustion of domestic remedies provided for in paragraphs (a), (b), and (c) of Article 46(2) must be decided, specifically and at the outset, just as the Commission is doing now in this report. Therefore, the reasons for which domestic remedies were not exhausted and the legal effect of their lack of exhaustion will be analyzed when the Commission examines the merits of the issue, with the purpose of determining whether violations of Articles 8 and 25 have taken place.[FN19]

[FN19] IACHR, Report 14/05 Petition 3101-02, Admissibility, Oscar Daniel Medina Cortés et al., Honduras, February 23, 2005, para. 28; IACHR, Report 15/02, Admissibility, Petition 11.802, Ramón Hernández Berrios et al., Honduras, February 27, 2002, and IACHR, Report 65/01, Case 11.073, Juan Humberto Sánchez, Honduras, March 6, 2001, para. 51.

34. In light of the foregoing and of the information contained in the record, for the purposes of admissibility the Inter-American Commission finds that there has been an unwarranted delay on the part of the courts in rendering a final judgment and that domestic remedies have proved ineffective at providing a prompt solution to the situation charged in the petition. Accordingly, in the instant case the IACHR applies the exception to the rule of prior exhaustion of the remedies under domestic law provided at Article 46(2)(c) of the American Convention.

2. Timeliness of the petition

35. According to Article 46(1)(b) of the American Convention, for a petition to be admissible it must be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.” A final judgment has not yet been adopted in this case and, therefore, the six-month time period for the lodging of a petition after

the notification of said judgment has not begun to run. The Commission finds that, considering the facts complained of, the level of progress in the investigations and the date it was lodged, that the complaint was lodged within a reasonable time since the date on which the victims' rights were allegedly violated. Therefore, the requirement regarding timeliness has been met in accordance with Article 32 of the Rules of Procedure of the IACHR.

3. Duplication of proceedings and res judicata

36. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding or that it is substantially the same as one previously studied by it or by another international organization. Accordingly, the Commission concludes that the requirements established in Article 46(1)(c) and 47(d) of the Convention are met.

4. Colorable claim

37. The Commission considers that there is no evidence of any lack of grounds for, or irrelevancy of, the complaint received. It further considers that, prima facie, the claims of the petitioners regarding the alleged violation of the rights to a fair trial and judicial protection of the families of the 107 inmates who died as a result of the fire at San Pedro Sula Prison in May 2004 could eventually constitute a violation of the rights guaranteed by Articles 8 and 25 of the Convention, in connection with Article 1(1) of the same instrument. The Commission also finds that, prima facie, the facts alleged by the petitioners could constitute violations of Articles 4 and 5 of the American Convention, in connection with the 107 persons deprived of liberty who died during the aforesaid fire, given the possible failure by agents of the State to adopt preventive measures and guarantees for protection of their right to life, as well as with regard to the conditions of confinement at the time of the blaze. Also, based on the principle *iura novit curia*, the Commission will analyze a possible violation of Article 7 of the American Convention. All of the foregoing in conjunction with the obligation under Article 1(1) of the Convention.

V. CONCLUSIONS

38. The IACHR concludes that it is competent to take up the complaint presented by the petitioners concerning alleged violation of Articles 4, 5, 8, and 25 of the American Convention, in connection with Article 1(1) thereof, to the detriment of the alleged victims and their families. Also, based on the principle *iura novit curia*, the Commission concludes that the petition is admissible for the alleged violation of Article 7 of the Convention.

39. Based on the factual and legal arguments given above and without prejudging the merits in the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible as regards the alleged violations of rights protected in Articles 4, 5, 8, 25, and 1(1) of the American Convention; to the detriment of the alleged

victims and their families. Also, based on the principle *iura novit curia*, the Commission concludes that the petition is admissible for the alleged violation of Article 7 of the Convention.

2. To notify the parties of this decision;
3. To continue with its analysis of merits in the matter, and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 17th day of October, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.