I. SUMMARY

1. On August 26, 1997, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition presented by the Center for Justice and International Law (CEJIL) and Asociación Casa Alianza América Latina (Casa Alianza) (hereinafter "the petitioners") alleging the international responsibility of the Republic of Honduras (hereinafter "the State" or "the Honduran State") for the illegal detention and torture of the minors Ramón Antonio Hernández Berrios, Juan Benito Hernández Berrios, Ever Rolando Boquín Donaire, and Osmán Antonio Cáceres Muñoz. The petitioners allege that the facts denounced in the petition violate several provisions contained in the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"): Article 5 (physical and moral integrity), Article 7 (personal liberty), Article 19 (rights of the child), Article 8 (fair trial) and Article 25 (judicial protection).

2. The petitioners alleged that on November 21, 1995, the minors Ramón Antonio Hernández Berrios, Juan Benito Hernández Berrios, Ever Rolando Boquín Donaire, and Osmán Antonio Cáceres Muñoz were tortured at Comayagua Prison Farm for adults by the prisoner in charge of the inmates, who allegedly acted on the orders of the Prison Warden, Mr. Aquilino Sorto. The petitioners alleged that the unwarranted delay in the investigation, prosecution, and punishment of all those responsible releases the petitioners from compliance with the requirement of prior exhaustion of remedies under domestic law based on the exception provided in Article 46(2)(c) of the American Convention.

3. The State denied that the minors had been tortured and said that the criminal accusation against Mr. Sorto had ended in the verdict of acquittal of June 26, 1998, which acquired the authority of res judicata after it was confirmed at all higher instances. With respect to the other person implicated in the case, Pablo Argueta, the prisoner in charge of the inmates, the State said that the Attorney-General's Office was collecting evidence to institute criminal proceedings against him. As to admissibility, the State expressly raised the objection of failure to exhaust remedies under domestic law.

4. After examination of the factual and legal arguments advanced by the parties, and of the evidence adduced, and without prejudging the merits of the case, the IACHR concludes in this report that the case is admissible in accordance with the exception provided in Article 46(2)(a) and (c) of the American Convention.

II. PROCESSING BY THE INTER-AMERICAN COMMISSION

5. The petition was received on August 26, 1997 and transmitted to the State on September 2, 1997. On March 9 and June 11, 1998, the petitioners requested information on the status of the petition. On August 29, 1997, the petitioners submitted additional information, which was transmitted to the State on September 25, 1997. On June 16, 1998 the Commission reiterated its request to the State to reply to the petition, with due warning that if it failed to do so it would apply Article 42 of the Regulations of the IACHR. On July 22 the petitioners presented additional information, which was promptly forwarded to the State.

6. On August 11, 1998, the State submitted its reply to the petition, which was conveyed to the petitioners on August 24, 1998. On October 9, 1998, the petitioners requested an extension of the deadline to present its comments on the State's reply. On October 15, 1998, it was granted an extension of 30 days. On November 12, 1998, the petitioners requested another extension of deadline, this one for three months, due to the state of emergency in Honduras as a result of Hurricane Mitch. This extension was granted.

7. On August 24, 1999, the petitioners presented their observations regarding the State's reply, which the Commission transmitted on September 27 to the State, granting it 30 days to submit its comments.

8. On October 1, 1999, at its 104th session, the Commission held a hearing attended by both parties at which the petitioners presented a friendly settlement proposal. On March 27, 2000, after various rounds of negotiations, the State presented its comments and a compensation proposal to the Commission for consideration "in the framework of the friendly settlement before the Inter-American Commission on Human Rights". This information was forwarded to the petitioners on April 12, 2000. In a communication of May 26 the petitioners presented additional information and mentioned the compensation criteria that they thought necessary to apply in this case. They said, furthermore, that if the State did not accept its responsibility for the acts of torture alleged in the petition it would withdraw from the friendly settlement procedure. This communication was transmitted to the State on June 15, 2000, and it was granted a period of 30 days to reply.

9. On October 11, 2000, at its 108th regular session, the Commission held another hearing in connection with this and other cases involving minors. At the hearing it was decided to hold a meeting on October 20, 2000, with the representatives of the State and of the petitioners at the headquarters of the Commission. With the consent of the parties, the aforementioned meeting was postponed until October 26, 2000. By a communication of October 20, the Executive Secretariat asked the parties to state their opinions, at the above-mentioned meeting, on certain specific points related to the draft friendly settlement agreement. On the aforesaid date the Executive Secretariat and the parties met and after a lengthy exchange of views, the State undertook to submit its counterproposal to the draft agreement presented by the petitioners. On November 16, 2000, the State presented its comments on the proposal of the petitioners. The Commission transmitted the pertinent portions of these comments to the petitioners on December 4, 2000, and gave them 30 days to submit their observations.

10. On December 21, 2000 the petitioners requested a 30-day extension of that time period. On December 22, the Commission informed the parties that it had granted that extension. By communication of January 20, 2001, received at the Commission on April 27, 2001, the petitioners presented their observations on the counterproposal of the State. On April 18, 2001, the petitioners requested information about the status of the conciliation process. By communication of June 26, 2001, received on July 16, the State submitted additional information which was transmitted to the petitioners on July 18, 2001. In a note of July 20, 2001, received on July 13 that year, the State presented comments on the observations of the petitioners with regard to the draft friendly settlement agreement. That information was transmitted to the petitioners on July 27. In view of the fact that the petitioners announced that they were withdrawing from the conciliation process and that the parties had not reached an agreement to resolve the matter, the Commission concluded the friendly settlement procedure.

III. POSITIONS OF THE PARTIES

A. The petitioners

11. The petitioners alleged that on November 21, 1995, the minors Ramón Antonio Hernández Berrios, Juan Benito Hernández Berrios, Ever Rolando Boquín Donaire, and Osmán Antonio Cáceres Muñoz, while illegally detained at Comayagua Prison Farm for adults, were the victims of abuse and mistreatment. The petitioners say that according to the complaints filed by the minors at the Attorney-General’s Office, they were playing with their companions in the so-called "punishment cell" when the Warden, Aquilino Sorto Gonzáles, annoyed at the noise, ordered them to be silent. When they continued to make noise the Warden ordered the prisoner in charge of the inmates, Pablo Argueta, to handcuff the minors with their hands behind them and to hang them from the bars of the cell. The minors were kept handcuffed and hanging from the bars for more than two hours without touching the ground. While they were hanging they were suspended by a rope through the handcuffs and dropped with a violent jerk. According to the petitioners, such was the violence exercised against these minors that the coroner said in his evaluation that he found "external evidence of injuries that caused temporary incapacity for three days,”[FN1] which proves the torture suffered by these youngsters.

[FN1] See copy of the opinions of the coroners attached to the complaint presented by the Attorney-General's Office on May 14, 1996.

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12. The petitioners say that, while it is true that the minors retracted their complaints against Mr. Aquilino Sorto, saying they had "self-flagellated" themselves to harm him, these retractions are invalid because they were not properly investigated. They add that when they made their retractions and while the criminal proceeding against Mr. Sorto was underway, the victims were confined in the prison which the former continued to run. Further, the accused admitted in his statements having "punished" the young boys and one of them, Osman Antonio Cáceres Muñoz, said that the Warden of the prison farm offered to pay him the sum of two hundred lempiras so that he would not file a complaint against him.[FN2]

[FN2] See copy of the opinions of the coroners attached to the complaint presented by the Attorney-General's Office on May 14, 1996.

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13. The petitioners said that although the Honduran supreme court returned a verdict of acquittal, the corpus delicti is fully recognized in that decision. According to them, this means that the crime of torture is found proven by a judicial decision that has the authority of res judicata, but the person responsible for that crime has not been identified, with the result that said crime still remains unpunished. Based on the exception provided in Article 46(2)(a) of the Convention, the petitioners hold that they do not have to exhaust domestic proceedings because the judicial remedies available to the victims have been neither effective nor suitable and, to the contrary, they have prevented clarification of the facts and delayed the investigation.

B. THE STATE

14. In its reply to the petition, the Honduran State expressly invoked the objection of failure to exhaust remedies under domestic law. With respect to Mr. Aquilino Sorto, the Warden of Comayagua Prison Farm, the Honduran State argued that on June 26, 1998, he had been acquitted of the criminal charge brought against him because of the testimony submitted by the injured minors, whereby they retracted their accusations and said they had been pressured into harming the accused. According to the State, Mrs. María Reyes Zavala Donaire, the mother of Ever Rolando Boquin Donaire, also retracted. It was she who complained to the human rights agency and testified as a witness in the trial. In a later brief, the State informed that the decision to acquit was confirmed at the higher judicial instances and had aquired the authority of res judicata.

15. With respect to the other person implicated in the case, Pablo Argueta, the prisoner in charge of the inmates, the State said that the Prosecutor's Office was collecting evidence to institute criminal proceedings against him.

IV. ANALYSIS

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

16. The Commission has ratione loci competence to take up the petition because it claims violations of rights protected in the American Convention that allegedly took place in the territory of a state party to that treaty.

17. The Commission has ratione personae competence by virtue of standing to be sued, since the petition is lodged against a state party, in accordance with the generic provisions contained in Articles 44 and 45 of the Convention. This competence arises from the very nature of the inter-American system of protection of human rights, under which states parties undertake to respect and ensure the rights and freedoms recognized in the Convention (Article 1).

18. The Commission has ratione personae competence because of the standing to sue of the petitioners in the instant case, in accordance with Article 44 of the Convention, which provides that "any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party," to the detriment of one or more individuals.

19. The IACHR has ratione temporis competence inasmuch as the events alleged in the petition occurred when the duty to respect and ensure the rights recognized in the Convention was in force for the Honduran State, which ratified it on September 8, 1977.

20. Finally, the Commission has ratione materiae competence because the petition alleges facts that, if proven, would tend to establish a violation of Articles 5 (right to humane treatment); 7 (right to personal liberty); 19 (rights of the child); 8(1) (right to a fair trial), and 25 (right to judicial protection) of the American Convention.

B. Other admissibility requirements for the petition

a. Exhaustion of domestic remedies

21. Article 46(1) of the American Convention on Human Rights provides that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the requirement "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

22. The petitioners have alleged that the investigation that the State should have opened ex officio in order to shed light on the alleged acts of torture, to initiate proceedings, and to punish those responsible has been unreasonably protracted, not been effective, and resulted in impunity. They request, therefore, that the case be found admissible in accordance with Article 46(2) of the American Convention, which provides that the rule on prior exhaustion of domestic remedies and on timeliness of the petition are not applicable when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. The Honduran State invoked the objection of non-exhaustion of domestic remedies at the initial stages of the proceeding.[FN3] However, the Commission finds that more than six years have passed since the events and that they remain in complete impunity, despite the fact that the Honduran authorities have themselves taken as proven the existence of torture marks on the bodies of the boys. Indeed, one of the alleged culprits, Mr. Aquilino Sorto, has been prosecuted; however, a final judgment has been issued acquitting him. The other suspect has not even been charged, and yet--like the alleged victims--he was an inmate at Comayagua Prison Farm, in other words in the custody of the State at the time of the events.

[FN3] Inter-Am. Ct. H.R., Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, Series C. No. 24, para. 41.

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24. It is important to mention that it is not enough for the State to assert non-exhaustion of domestic remedies for that objection to succeed. As the Inter-American Court has ruled, the State invoking this objection must also identify the domestic remedies that remain to be exhausted and show their effectiveness in such circumstances, which Honduras has not done.

25. In order to provide an adequate remedy for the alleged violations, which constitute crimes against public order, it was incumbent on the State, particularly in light of its obligation to take punitive action, to institute, ex officio, proceedings to identify, prosecute, and punish all those responsible, diligently pursuing every stage of the proceedings to a conclusion. In the opinion of the Commission, the time elapsed between the events and the date of the instant report was more than enough for the Honduran State to determine responsibilities, initiate proceedings, and punish those responsible in the domestic sphere.

26. The Inter-American Court of Human Rights and the IACHR have repeatedly found that the general rule of prior exhaustion of domestic remedies recognizes the right of the State “to resolve the problem under its internal law before being confronted with an international proceeding,”[FN4] in this case, in the international jurisdiction of human rights, which “reinforces or complements” the domestic jurisdiction.[FN5] This general rule not only recognizes the above-cited right of the State, but imposes on it the duty to provide the persons under its jurisdiction with remedies that are suitable to address the infringement of a legal right and capable of producing the result for which they were designed.

[FN4] Inter-Am. Ct. H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C., No. 4, para. 61.
[FN5] Inter-Am. Ct. H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C., No. 4, para. 61.

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27. The exceptions provided in Article 46(2) of the Convention have been established precisely with the aim of guaranteeing international action when remedies under domestic law and the domestic judicial system are not expeditious and capable of ensuring respect for the human rights of victims.

28. The first of these exceptions, regarding non-existence of domestic remedies that guarantee the principle of due process, provided in section (a) of that provision, refers not only to the formal absence of remedies under domestic law, but also to their unsuitableness to address an infringement of a legal right. The effectiveness of domestic remedies is also affected by denial and unwarranted delay of justice, provided for in sections (b) and (c), respectively of the same provision. Accordingly, the rule of exhaustion of domestic remedies should not be understood to require mechanical attempts at formal procedures but, rather, to require a case-by-case analysis of their potential effectiveness; in other words, the reasonable possibility of obtaining in each case the remedy or result for which they were designed.

29. In this context, it is clear that the right of the State to allege that a petition is not admissible due to non-exhaustion of remedies under domestic law cannot be grounds to halt or delay indefinitely an international action in support of the defenseless victim. If in a given case there is unwarranted delay in the proceedings under domestic remedies, it may be deduced that those remedies no longer have the possibility of producing the result for which they were designed and, therefore, that it is necessary to apply the mechanisms of international protection, among which are the aforementioned exceptions, which remove the requirement for said remedies to have been exhausted.

30. The Commission takes account of the fact that the retractions of the boys that led to the acquittal of the only accused [FN6] occurred after this petition was lodged with the Commission and at a time when Mr. Sorto was presumably in a position to intimidate the minors. The record before the Commission shows that by official communication from the Prisons Bureau dated June 30, 1997, Mr. Sorto was provisionally suspended from his duties, effective as of July 1, 1997 and was transferred to the Office of the Director General of Prisons. In other words, although he was under temporary suspension from his duties on October 8, 1997, the date the retractions were made[FN7], Mr. Sorto remained in his position from November 21, 1995 (the date of the events) until June 30, 1997, during which time he was formally brought up on charges and the preliminary investigation was carried out. On July 1 that year Sorto was “provisionally” suspended from his duties as Warden of Comayagua Prison Farm but continued to work for the Prisons Bureau, the state entity in charge of that prison. From these circumstances it may be presumed that from November 21, 1995 to June 30, 1997, the boys remained in the custody of the accused and that he was still the warden of the prison when the retractions were made, although he had been temporarily transferred to the department responsible for the supervision of that prison, which leads to the assumption that the boys were still in a position of vulnerability when the retractions were made.

[FN6] See copy of "Examination of the victims’ testimony” of October 8, 1997.

[FN7] See copy of "Examination of the victims' testimony" of October 8, 1997.

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31. It is important to mention that from the complaint presented on May 14, 1996 by the prosecutor from the Attorney General's Office, Mrs. Karen Herrera, it is presumed that this official, foreseeing this risk, had a notarial record drawn up of the original statements of the boys. In the third paragraph of the complaint filed with the First Sectional Court, the prosecutor said:

THIRD. Due to the delicacy of the incident and to prevent its later denial by the inmates out of fear, a notarial record was drawn up of their statements, which I enclose herewith.

32. For his part, the prosecutor from the Attorney-General's Office, Mr. Aldo Francisco Santos Sosa, on presenting the indictment in the proceeding instituted against Aquilino Sorto, said in the third paragraph of his brief of April 7, 1997, that in the opinion of the Attorney-General's Office, the crime termed "Offences Committed by Public Officials against the Exercise of Rights Guaranteed by the Constitution" (Articles 333 and 334 of the Criminal Code in force) was duly attested by the documentary evidence submitted. Among this evidence the Attorney-General's Office included, inter alia, the opinion of the coroner which contains the statements of the boys (pages 17, 18, and 19 of the court file) and the report duly signed and stamped by Aquilino Sorto in his capacity as Warden of Comayagua Prison Farm, where he expressly brings to the attention of the Director General of Prisons , Mr. Gustavo Manzanares, the following:

...that on November sixteen, nineteen hundred and five, Aquilino Sorto took the decision to punish the minors in cell Nº 9, because they had been insubordinate, saying by way of clarification that they were only punished for a period of "one hour" and not "four hours" as they say. (pages 24 and 38 of the court file).

33. In the sixth paragraph of its indictment the Attorney-General's Office asserts that Mr. Sorto, in his signed declaration:

... admitted having signed the report that on November twenty-second, nineteen hundred and ninety-five ....he sent to the Prisons Bureau ... and ... expressly admitted having punished the injured parties for one hour, because of the bad behavior of those persons at that time.

34. The Commission believes that the fear expressed by the prosecutor that the children might be intimidated into retracting their complaint; the written declaration of the prison warden admitting to having punished the children for one hour and not for four, as they alleged; the coroner's report,[FN8] which confirms the injuries suffered by the boys and certifies that the latter were incapacitated from going about their customary activities for three days, should have led to a careful, independent, and thorough investigation of the circumstances in which the alleged events and the retractions occurred.

[FN8] See copy of the complaint filed by the Attorney-General's Office of May 14, 1996 and the opinions of the coroner attached thereto of November 21, 1995.

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35. The Commission finds that, as a general rule, a criminal investigation should be carried out promptly to protect the interests of the victims and to preserve evidence, and that, in this case, the time elapsed without an effective investigation, prosecution, and punishment of all those responsible, constitutes unwarranted delay and is an indication of the scant probability of the effectiveness of this remedy, since:

A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective……as when there is an unjustified delay in the decision.[FN9]

[FN9] Inter-Am. Ct. H.R., Judicial Guarantees in States of Emergency, Advisory Opinion OC-9-87 of October 6, 1987, (Ser. A) No. 9 (1987) para. 24.

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36. Finally, the Commission considers it important to clarify that the exceptions to the rule of exhaustion of domestic remedies are closely associated with examination of the existence of possible violations of certain rights enshrined 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, is a self-contained provision vis á vis the substantive provisions contained in the Convention and depends on a different standard of appreciation to that used to establish whether or not there has been a violation of Articles 8 and 25 of that international instrument. Therefore, the applicability of the exceptions to the rule of exhaustion of domestic remedies provided in Article 46(2), sections (a), (b), and (c), is a matter to be resolved by means of a special decision rendered in advance, as the Commission is doing by issuing this report.

37. Accordingly, the reasons why domestic remedies were not exhausted and the legal effect of their non-exhaustion will be examined when the Commission studies the merits of the case in order to determine whether or not the above-cited Articles 8 and 25 have been violated.[FN10]

[FN10] See IACHR, Report 54/01, Case 12.250, Massacre of Mapiripán, Colombia, para. 38; and IACHR, Juan Humberto Sánchez- Honduras, Report 65/01, Case 11.073, March 6, 2001, para. 51.

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38. In light of the foregoing, the Commission concludes that the petition sub judice is admissible by reason of the exceptions provided in Article 42(2)(a) and (c) of the American Convention.

b. Timeliness of the petition

39. Article 46(1)(b) of the American Convention provides that admission by the Commission of a petition requires that it 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."

40. The Commission having concluded that there has been unwarranted delay in the remedies under domestic law and that the exception provided in Article 46(2)(c) of the American Convention applies, it is clear that a final judgment has not yet been adopted, from whose notification it might possible to 1 calculate the six-month period set down in paragraph 1, section (b) of same provision. Without prejudice to the above, the Commission finds that the petition has been lodged within a reasonable time after the date on which the rights of the victims were allegedly violated and that, therefore, the requirement of timely presentation is met in accordance with Article 32 of its Rules of Procedure.

c. Duplication of proceedings and res judicata

41. Article 46(1)(c) of the Convention provides as a requirement of admissibility "that the subject of the petition or communication is not pending in another international proceeding for settlement."

42. The Commission finds that the subject matter of the instant petition is not pending in another international proceeding for settlement, nor is the petition substantially the same as one previously studied by the Commission or by another international organization. Accordingly, the requirement set forth in Article 46(1)(c) has been met.

d. Nature of the alleged violations

43. Article 47(b) of the Convention provides that the Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if it "does not state facts that tend to establish a violation of the rights guaranteed by this Convention."

44. The facts in this case concern the detention of Ramón Antonio Hernández Berrios, Juan Benito Hernández Berrios, Ever Rolando Boquin Donaire, and Osmán Antonio Cáceres Muñoz at Comayagua Prison Farm for adults and the alleged torture to which they were subjected there. It also concerns the lack of effectiveness of the State in processing the domestic legal remedies designed to investigate, identify, prosecute, and punish all those allegedly responsible.

45. The Commission finds that the allegations of the petitioners, if proven, could establish violations of the rights recognized in the American Convention. Therefore, it finds that the requirement laid down in the above-transcribed Article 47(b) of the Convention has been met.

V. CONCLUSIONS

46. The Inter-American Commission concludes that the petition is admissible in accordance with the exceptions provided in Article 46(2)(a) and (c) of the American Convention. Based on the factual and legal arguments given above and without prejudging the merits of the case,

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 5, 7, 8, 19, and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue with its analysis of the merits of the case; and
4. To publish this decision and to 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., the 27th day of February 2002. (Signed): Juan Méndez, President; Marta Altolaguirre; First Vice-President, José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, and Clare K. Roberts, Commission members.