

REPORT Nº 70/05
PETITION 1231/04
ADMISSIBILITY
INMATES AT MENDOZA PENITENTIARY
ARGENTINA
October 13, 2005

I. SUMMARY

1. On May 29, 2003, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition submitted by various inmates at the Penitentiary of Mendoza alleging responsibility on the part of the Republic of Argentina (hereinafter "the State" or "the Argentine State") for the violation of inmates' rights to physical integrity, health and life.

2. On July 21, 2004, the Commission received a request filed via e-mail asking that precautionary measures be issued in this matter in favor of the inmates held at the Penitentiary of the Province of Mendoza and its related units,¹ alleging the State's violation of Articles 4, 5(6), 1(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). The original and attachments of this request were sent to the Commission on July 28, 2004. On that occasion, the inmates were represented by Alfredo Ramón Guevara, Diego Jorge Lavado, Pablo Gabriel Salinas, Carlos Eduardo Varela Álvarez and Alfredo Ramón Guevara Escayola, all of whom are attorneys. That request contained aspects of an urgent nature as well as broader requests that merited treatment within the system of individual petitions. The Commission decided to deal with the aspects relating to risks of irreparable harm to life or physical integrity through precautionary measures followed by provisional measures, and to deal with the other aspects as a petition.

3. In the course of processing the petitions, the Commission, utilizing its competence under Article 29(1)(d) of its Rules of Procedure, proceeded to join and process in the same file the initial petition and aspects of the request for precautionary measures that amounted to a petition. After the Commission analyzed the information received, the inmates of the Penitentiary of Mendoza and the Gustavo André de Laval Unit, along with their representatives, were identified as "the petitioners." The joined petition was recorded under number 1231/04.

4. On November 12, 2004, the joined petition was forwarded to the State. For its part, the State deemed it pertinent not to express its views on potential objections relating to admissibility and/or the merits and limited itself to proposing a dialogue to explore a possible friendly settlement. However, as of the date of this report, the parties have not initiated a friendly settlement process in relation to this petition.

5. Without prejudging the merits of the complaint, the Commission concludes that it is competent to hear the petition relating to the alleged violations of the rights to life, personal integrity and health as contained in Articles 4 and 5 of the American Convention, with respect to the conditions under which inmates are detained at the Penitentiary of Mendoza and the Gustavo André Unit in Laval. The Commission will also analyze whether the Argentine State violated Articles 1, 2, 7 and 25 of the Convention as they relate to its obligation to ensure personal liberty, respect rights, adopt provisions in domestic law and ensure the competent authorities' enforcement of remedies granted.

II. PROCESSING BY THE COMMISSION

6. On November 12, 2004, the Commission began processing the joined petition of the inmates held at the Penitentiary of Mendoza and the Gustavo André Unit in Laval and on that same date transmitted to the State a copy of the pertinent sections of the petition, asking that

¹ According to the request, the Penitentiary System of Mendoza has three locations:

a) Provincial Penitentiary
b) Prison for the Accused in San Rafael
c) Vitale Nocera Unit in Laval.

it submit a response to the petition within a period of two months from the date of that transmission.

7. In addition to its various communications submitted in the context of precautionary measures, the State submitted its response to the petition through a communication dated June 21, 2005 and received on August 19, 2005. The Argentine State declined at that time to express its views regarding potential objections relating to admissibility and/or the merits, without prejudice to which it offered to initiate a dialogue with the petitioners to explore a friendly settlement.

8. The fourth section of this report details the proceeding before the Commission on the request for precautionary measures as well as the processing of provisional measures sought from the Inter-American Court with respect to this case.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners maintain that the State is responsible for violations of their rights to life, health and personal integrity in that approximately 2400 of them are being held in a prison with capacity for 600 inmates, so that 4 or 5 inmates are in cells measuring 3 x 2 square meters. They also allege that they lack baths, showers, enough food and adequate medical care.

10. The petitioners add that up to four persons are held in cells that are no bigger than two meters square with only one bed. There is no natural light or outside air entering the facility. They report that in many cases they are locked up for up to twenty hours and allowed outside their cells for alternating four-hour periods. They assert that they must take care of their physical needs in a nylon bag under embarrassing conditions inside the cell and in front of their cellmates. They also allege that they lack water to bathe and must use a hose and that many of them have scabies and other diseases due to the lack of hygiene.

11. The petitioners indicate that both accused and convicted inmates are continuously at risk of suffering serious attacks on their physical integrity and life, a risk that has taken the form of repeated acts of violence resulting in a series of injuries and deaths. More specifically, it is alleged that at least 11 inmates died and an indefinite number of inmates were injured during the course of 2004, with no clarification as to the circumstances surrounding these events.

12. The petitioners allege that the detention conditions at this penitentiary systematically fail to fulfill the functions and purposes of punishment involving the loss of freedom because they do not satisfy the goal of offering them treatment directed to their social rehabilitation or the need for measures to ensure security within the prison.

13. The petitioners report that most inmates have no access to any type of work or tasks oriented toward resocialization, nor can they attend school or religious services, and that there is no separation between convicts and the accused.

14. The petitioners maintain that the facility's management constantly allows a so-called "special corps" from the Mendoza Police to enter the prison; this group consists of hooded individuals accompanied by dogs trained to menace and injure the inmates.

15. The petitioners report that they have made constant complaints to the courts through habeas corpus actions for unjustified aggravation of the conditions of their detention but the obligations that the courts impose on the provincial government are not complied with.

16. The petition indicates that both the United Nations Working Group on Arbitrary Detention and Amnesty International have investigated the situation and have indicated their profound concern over its gravity, submitting recommendations to the government.

17. The petitioners add a series of press clippings on the Provincial Penitentiary and the subject of security. The press clippings indicate that during 2004 there was a series of riots, deaths and injuries at the Penitentiary, as well as cases of tuberculosis and a fire that also cost lives.

18. On October 26, 2004, the Commission received from the petitioners a copy of a report from the inmates of Cell Block 6 at the Provincial Penitentiary of Mendoza, signed by a provincial representative and submitted to the Defender of the People of the Province of Mendoza. This report corroborates the facts described above regarding the conditions of detention at the Penitentiary of Mendoza, that violate the petitioners' human rights.

B. The State

19. The State maintains that this petition presents the same problems as led to the request for precautionary measures.

20. The State feels it advisable to recall that the Inter-American Court of Human Rights resolved to adopt provisional measures in the "case of the Penitentiaries of Mendoza" on November 22, 2004 and asserts that since it learned of the request for provisional measures it has taken numerous steps in collaboration with the provincial government in an effort to seek solutions to the conflict.

21. In the response the State sent to the Commission on August 19, 2005, regarding the request for information on this petition, the State's principal argument is that "the petition under review and the provisional measures adopted by the Honorable Court are not only different cases but they have also been initiated by different petitioners. For that reason, the Argentine State does not consider it advisable - on this occasion - to express its views regarding the potential objections that could be filed in the area of admissibility and/or the merits."

22. Without prejudice to the above, the State considers it advisable to suggest opening a dialogue with the petitioners to explore a friendly settlement in response to this petition. It may be noted that, as of the date of this report, the parties have not initiated a friendly settlement process with respect to this petition.

IV. PROCESSING OF PRECAUTIONARY MEASURES AND PROVISIONAL MEASURES

23. In response to the request for precautionary measures the Commission received on July 28, 2004, recorded under number 923-04, the IACHR decided on August 3, 2004 to ask the State to adopt precautionary measures in consultation with the petitioners in order to:

- a) Ensure due conditions of security needed to safeguard the life and personal integrity of the inmates;
- b) Separate inmates in preventive detention from those convicted; and
- c) Provide adequate hygiene and health conditions, including access to sanitary services and showers.

24. While the precautionary measures were in effect, the Commission received 26 letters signed by 227 inmates at the Provincial Penitentiary indicating that the conditions prevailing in the prison had not improved. Furthermore, while the precautionary measures were fully in effect, the Commission learned that another inmate died on August 28, 2004, and that an inmate received serious injuries requiring hospitalization on October 14, 2004. Given the lack of progress in terms of security conditions at the Penitentiary of Mendoza, on October 14, 2004, the Commission asked the Inter-American Court of Human Rights to order the Argentine State to:

- a) Immediately adopt all security and control measures necessary to preserve the life and personal integrity of persons imprisoned at the Penitentiary of Mendoza and the Gustavo André Unit in Lavalley, as well as all persons entering the prisons, including employees and officers who work there;
- b) Adopt immediate measures to separate accused inmates from convicted inmates, in compliance with conditions required under the international standards applicable in this area;
- c) Conduct serious, complete and efficient investigations of the acts of violence occurring inside the Penitentiary of Mendoza and the Gustavo André Unit; identify the individuals responsible and impose the applicable punishments as a mechanism for preventing further acts of violence;
- d) Within a reasonable amount of time, submit for the consideration of the Court a plan for relocating the excess inmates held at the Penitentiary of Mendoza and the Gustavo André Unit, observing the maximum capacity and human resource requirements, but without creating a new problem of over-crowding at other prison facilities; and
- e) Within a reasonable amount of time, renovate the facilities at the Penitentiary of Mendoza and the Gustavo André Unit in order to provide the minimum conditions in terms of sanitation, space and dignity necessary to house the inmates.

25. Before the State submitted its observations on the request for information issued by the President of the Court, the IACHR received additional information on various acts of violence at the Penitentiary of Mendoza, among them the death of an inmate on October 30, 2004. The Commission provided this additional information to the Court.

26. On November 4, 2004, the State submitted its observations regarding the request for information from the President of the Court. The State indicated that it was in the process of taking a series of measures intended to comply with the Commission's request for precautionary measures. In its submission, the State asserts that it does not question "the decision of the honorable Commission to ask that precautionary measures be adopted in favor of the inmates. However, it believes that, without prejudice to the overall situation that has become more critical in recent days, it seems clear that the current state of affairs does not allow for achieving all the anticipated results immediately but will, rather, require a complex action plan involving short-, medium- and long-term measures."

27. On November 22, 2004, the Inter-American Court decided, in the relevant sections to:

- a) Request the State to immediately adopt the measures necessary to protect the life and personal integrity of all persons imprisoned at the Provincial Penitentiary of Mendoza and the Gustavo André Unit in Lavalley, as well as all persons inside these facilities.
- b) Request the State, as a protective measure appropriate to the situation, to investigate the facts that led to the adoption of these provisional measures, in order to identify those responsible and punish them accordingly.

28. At the request of the Argentine State and the representatives of the beneficiaries of the provisional measures, a delegation from the Inter-American Commission on Human Rights conducted a working visit to Argentina on December 13-17, 2004 and traveled to Mendoza Province to visit the prison facilities.

29. On April 6, 2005, the Commission submitted to the Court a brief of its observations regarding the second State report, including its observations on the working visit to the Penitentiary of Mendoza. The Commission informed the Court of its concerns regarding what it

saw during the visit, particularly the deplorable security and hygiene conditions at the Penitentiary, which had led to new acts of violence as well as the death of several inmates in incidents that had not been clarified, all while the provisional measures were in effect.

30. On May 11, 2005 a public hearing was held in Asunción, Paraguay before the Inter-American Court, with the participation of representatives from the Commission, representatives of the beneficiaries of the provisional measures and the State, in order for the Court to hear arguments regarding the facts and circumstances relating to implementation of the provisional measures ordered on November 22, 2004. On that date, a record was signed in which the parties indicated their agreement to keep the provisional measures in effect and agreed to bring to the consideration of the Inter-American Court a series of measures designed to evaluate the possibility of providing specifics on the content of the resolution of the Court of November 22, 2004.

31. According to the agreement on compliance signed by the parties in the framework of the provisional measures, those measures included, with respect to prison staff: the need to increase prison staff to ensure security within the facilities; to vary the surveillance patterns; to purge the prison officer corps; to ensure their ongoing training and instruction; and to require the authorities to report on the result of the investigations regarding operational responsibility in deaths and injuries at the Penitentiary of Mendoza and the Gustavo André Unit in Laval. They also included, with respect to separating inmates by categories: the need to adopt measures needed to separate accused inmates from convicted inmates and young adults from adults; and to develop a classification mechanism taking into account at least the criteria established in Article 8 of the United Nation's Minimum Rules for the Treatment of Prisoners. They also included measures to keep weapons out of the facilities and to establish a disciplinary regime consistent with the American Convention on Human Rights and other applicable international instruments on human rights. The agreement signed in Asunción also included measures to adopt progressive improvements in detention conditions, including implementing a census of those housed within the provincial prison system; access to showers and sanitary services that work; weekly provision of hygiene products; access to sufficient potable water; lighting of all prison areas; prohibition on extended shutdowns and hooded control groups and restrictions on visits; and prohibition on the entry of personnel with dogs in the cell blocks and in the area where visits take place.

V. ANALYSIS OF ADMISSIBILITY

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

32. In accordance with Article 44 of the American Convention, the petitioners are entitled to submit a petition to the IACHR. At first, the petition identified as petitioners the inmates of a cell block at the Penitentiary of Mendoza, and various inmates signed the petition. Subsequently, the request for precautionary measures was submitted in the name of the inmates of the Penitentiary of Mendoza and the Gustavo André Unit in Laval. When joining the petition, the Commission identified as alleged victims the inmates of the Penitentiary of Mendoza and the Gustavo André Unit in Laval, whose rights as provided under the American Convention Argentina has undertaken to guarantee and respect. It should be noted that a number of these inmates were identified by name during processing. The names of the original petitioners are among these names. In addition, the Commission received a copy of the complaint filed with the Defender of the People signed by various inmates of cell block 6 at the Provincial Penitentiary of Mendoza. The Commission has also identified various victims through copies of habeas corpus actions they filed and from other evidence submitted as part of the processing of the precautionary and provisional measures. In addition, the Commission has received hundreds of letters from inmates held at the Penitentiary of Mendoza. Other inmates can also be identified through the Penitentiary's intake records. With respect to the State, the Commission points out that Argentina has been a party to the American Convention since September 5, 1984, when it deposited the respective ratification instrument. Therefore, the Commission is competent *ratione personae* to consider the petition.

33. The Commission is competent *ratione loci* to take cognizance of the petition in that it sets forth violations of rights protected by the American Convention that allegedly took place and continue to take place in the territory of a State Party. The IACHR is also competent *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was already in effect for the State as of the date the actions referred to in the petition allegedly occurred and also because violations of inmates' human rights at the Penitentiary of Mendoza and its offices continue to occur. Finally, the Commission is competent *ratione materiae* because the petition claims violations of human rights protected by the American Convention.

B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies

34. Article 46(1)(a) of the Convention provides that the admissibility of a petition submitted to the Commission is subject to the requirement that remedies under domestic jurisdiction must have been filed and exhausted, in accordance with generally recognized principles of international law. The preamble to the Convention states that it grants international protection to support or complement the protection provided by a State's domestic laws.² The rule of prior exhaustion of domestic remedies allows the State to resolve the problem according to its internal law before facing an international proceeding, which is particularly valid in the international jurisdiction of human rights.

35. In this case, the petitioners show that they have filed a series of habeas corpus actions for unjustified aggravation of their conditions of detention. Those actions have been declared admissible in various courts of Mendoza that have established, on several occasions, a series of measures to be complied with by the Government.

36. For its part, the State has not alleged a failure to exhaust domestic remedies. As the Inter-American Court of Human Rights clearly indicated, a State that seeks to invoke a failure to exhaust domestic remedies must do so expressly in the first stage of the proceeding.³ In the instant case, the State did not expressly invoke the failure to exhaust domestic remedies; it simply acknowledged receipt of the petition and deemed it advisable not to express its views in this regard. Against this backdrop, the tacit waiver of an objection based on failure to exhaust domestic remedies can be presumed.⁴

37. Although it can be inferred from the State's communication that it reserves the right to address [the issue] on another occasion, it must be noted in this regard that the Inter-American Court has indicated that, in order to be timely, an objection based on failure to exhaust domestic remedies must be filed in the initial stages of a proceeding, in the absence of which the tacit waiver of the use of that objection by the interested State can be presumed.⁵ For the foregoing reasons, the Commission concludes that a tacit waiver has been given by the State and that this requirement has been met.

2. Timeliness of the petition

38. In accordance with the provisions of Article 46(1)(b) of the Convention, in order to be admissible, a petition must be lodged within six months of the date when the complaining party has been notified of a final decision handed down at the national level. The six months

² See second paragraph *in fine* of the Preamble to the American Convention.

³ See Inter-American Court of Human Rights, *The Awastigni (Sumo) Mayagna Community Case*, Preliminary Objections, Judgment of February 1, 2000, para. 55 and the following.

⁴ Inter-American Court of Human Rights, *Velásquez Rodríguez Case*. Preliminary Objections. Judgment of June 26, 1987, para. 88. See also IACHR, Report N° 39/96, Case 10.897, Guatemala, October 16, 1996, para. 35, and Report N° 53/96, Case 8074, Guatemala, December 6, 1996. 1996 IACHR Annual Report. See also Report N° 25/94, Case 10.508, Guatemala, September 22, 1994, p. 52. 1994 IACHR Annual Report.

⁵ Inter-American Court of Human Rights, *Velásquez Rodríguez Case*. Preliminary Objections. Judgment of June 26, 1997, para. 8; *Fairén Garbí and Solís Corrales Case*. Preliminary Objections. Judgment of June 26, 1987, para. 87; *Gangaram Panday Case*. Preliminary Objections. Judgment of December 4, 1991, para. 38; *Loayza Tamayo Case*. Preliminary Objections. Judgment of January 31, 1996, para. 40.

rule ensures legal certainty and stability once a decision has been made. The rule does not apply when an ongoing situation is alleged, wherein the rights of the victim suffer uninterrupted injury. Pursuant to Article 32(2) of the Rules of Procedure of the IACHR, in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable period of time, as determined by the Commission.

39. As for the petition being examined, the Commission established the State's tacit waiver of its right to file an objection based on failure to exhaust domestic remedies. As the Convention's requirements regarding exhaustion of domestic remedies and presentation of a petition within six months of the decision exhausting domestic jurisdiction are independent, the Commission must determine whether the petition under review was submitted within a reasonable period of time. This is because, having established the State's waiver of an objection based on exhaustion of domestic remedies, we have no specific date from which to determine the six month period. The lack of a specific date does not relieve the petitioner of the requirement of timely submission. In this respect, given the particular circumstances of the filing of the petition, which include the filing of various habeas corpus appeals both before and after submission of the petition, and considering that the petitioners allege that they are in a situation of continuous infringement of their rights, the Commission believes that the complaint was filed within a reasonable period of time.

3. Duplication of proceedings and *res judicata*

40. Article 46(1)(c) establishes that admission of a petition is subject to the requirement that the matter "is not pending in another international proceeding for settlement" and Article 47(d) of the Convention stipulates that the Commission should not admit a petition that "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, nor does the record show, the existence of either of these two circumstances of inadmissibility.

4. Characterization of the alleged facts

41. Article 47(b) of the American Convention provides that allegations that do not assert facts tending to establish a violation of rights are inadmissible.

42. The examination of the matter by the Commission, at this stage in the proceeding, is not intended to establish whether a violation of rights was committed, but rather to establish whether the facts alleged, should they be proven, tend to demonstrate the violation of a protected right. This is necessarily a preliminary or *prima facie* analysis and does not imply prejudgment as to the merits of the case.

43. The Commission wishes to note at this point in the proceeding that when a State deprives an individual of freedom, it puts itself in a special position as guarantor and must seek, by all means within its reach, to maintain the individual's enjoyment of their rights. Therefore, the State has the obligation *erga omnes*⁶ to protect inmates from attacks on their lives and integrity that may be committed by third parties, including other inmates.⁷

44. In light of these considerations, the Commission notes that the facts alleged by the petitioners regarding the conditions of detention at the Penitentiary of Mendoza and the Gustavo André Unit in Lavalle could characterize violations of the American Convention.

⁶ See on this subject, Inter-American Court of Human Rights, *Urso Branco Prison Case*, Order of July 7, 2004, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, para. 9.

⁷ See on this subject, Inter-American Court of Human Rights, *Walter David Bulacio Case*, Judgment of September 18, 2003, Series C No. 100, para. 126; *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, para. 45; *Durand and Ugarte Case*, Judgment of August 16, 2000, Series C No. 68, para. 45; *Castillo Petruzzi et al. Case*, Judgment of May 30, 1999, Series C No. 52, para. 61; *Neira Alegría Case*, Judgment of January 19, 1995, Series C No. 20, para. 60; See also IACHR, Report N° 41/99, Case 11.491, Minors in Detention, Honduras, March 10, 1999, para. 125.

45. The Commission believes that the requirements established in Article 47(b) and (c) of the American Convention with respect to complaints regarding detention conditions of the inmates at the Penitentiary of Mendoza and the Gustavo André Unit in Lavalle have been met. The Commission will examine the basis for these claims in light of the provisions of Articles 4 and 5 of the American Convention. In addition, the Commission will analyze the potential application of Articles 1, 2, 7 and 25 of the Convention as they relate to the obligation of the Argentine State to ensure personal liberty, respect rights, adopt provisions in domestic law, and ensure enforcement by competent authorities of any decision ordering a remedy.

VI. CONCLUSION

46. The Commission concludes that it is competent to examine the allegations of the petitioners and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention, with respect to alleged violations of the right to life, physical integrity and health, as contained in Articles 4 and 5 of the American Convention, as they relate to the conditions of detention of the inmates of the Penitentiary of Mendoza. In addition, the Commission will analyze the possible application of Articles 1, 2, 7 and 25 of the Convention as they relate to the obligation of the Argentine State to ensure personal liberty, respect rights, adopt provisions in domestic law, and ensure enforcement by competent authorities of any decision ordering a remedy.

47. Based on the factual and legal arguments presented above and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare the case admissible with respect to alleged violations of rights recognized in Articles 4 and 5, as well as possible violations of Articles 2, 7 and 25 of the American Convention on Human Rights, all as they relate to Article 1(1) of the Convention.
2. Notify the parties of this decision.
3. Continue with its analysis of the merits of the case.
4. Publish this decision and include it in the Commission's Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 13th day of October, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice President; Paulo Sérgio Pinheiro, Second Vice President; Commissioners Evelio Fernández Arévalo, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.