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REPORT No. 34/14
PETITION 495-07
REPORT ON ADMISSIBILITY

OVIDIO GUILTRICHS VANEGAS ET AL.
(DETENTION CONDITIONS IN POCOCÍ CAI)
COSTA RICA

Approved by the Commission at its session No. 1981 held on April 4, 2014
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April 4, 2014

I. SUMMARY

1. On April 14, 2007, the Inter-American Commission for Human Rights (hereinafter “the Commission,” “the IACHR,” or “the Inter-American Commission”) received a petition lodged by Mr. Ovidio Guiltrichs Vanegas (hereinafter “the petitioner”), on behalf of himself and another 33 persons deprived of liberty in the Centro de Atención Institucional [Center for Institutional Attention] (CAI) of Pococí Canton, Limón Province (hereinafter “Pococí CAI”) (hereinafter “the alleged victims”),¹ in which is alleged the international responsibility of the Republic of Costa Rica (hereinafter “the State” or “Costa Rica”) for the conditions of detention to which inmates in this prison and the alleged victims in this case are subjected. The petitioner’s claims essentially refer to, lack of continuous water supply and adequate sanitary and hygiene conditions; inadequate food and medical services; the de facto imposition of requirements not stipulated in law for obtaining prison benefits; and, undue restrictions on inmates’ telephone communications.

2. The petitioners allege that the State is responsible for violation of the rights to humane treatment, personal liberty, due process, freedom from ex post facto laws, privacy, and the family established in Articles 5, 7, 8, 9, 11, and 17 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), all in connection with Article 1.1 thereof, to the detriment of the alleged victims. For its part, the State, throughout the proceedings, has submitted different official reports² and information intended to show that the detention conditions in Pococí CAI, and, in general, in Costa Rica, are consistent with the applicable international standards in this area; and has consistently alleged the inadmissibility of the petition because the requirement of exhaustion of remedies under domestic law has not been met and because the petitioners are seeking to use the IACHR as a fourth instance.

3. Without prejudice to the merits of the case, and having analyzed the position of the parties in accordance with the requirements set forth in Article 46 and 47 of the American Convention, the Commission decides to declare the instant petition admissible with regard to the alleged violation of Articles 5, 11, 13, 8, and 25 of the American Convention, all in connection with Article 1.1 thereof, in relation to the claims on facts occurred from 2006 to 2012. The Commission further decides to notify the parties of this decision, to publish it, and to include it in the Commission’s Annual Report to the General Assembly of the OAS.

II. PROCESSING BEFORE THE COMMISSION

4. The petition was received by the Inter-American Commission on April 19, 2007 and registered as P-495-07. After two requests to the petitioner for additional information, the Commission

¹ These are: (1) Ovidio Guiltrichs Vanegas, (2) Francisco Miroles Lewis, (3) Luis Alberto Vargas Jiménez, (4) Mariano Sonolí Umaña, (5) M. Obando Salazar, (6) M. Arroyo González, (7) Jesús Barrantes, (8) Miguel Calvo Calderón, (9) Salomón Adolfo Víctor López, (10) Luis Ricardo Luna Sandoval, (11) Osvaldo Fonseca Rodríguez, (12) Oscar Arturo Figueroa Rodríguez, (13) Wilson Méndez Calderón, (14) José Ricardo Granados Machado, (15) Mauricio Amador Godínez, (16) Marvin Álvarez Hernández, (17) Willy Acuña Orozco, (18) H. Vargas Vargas, (19) José Francisco Rojas Hernández, (20) Milton Aguilar Maradiaga, (21) Luis Alberto Zapata, (22) Leu Ellis, (23) Carlos M. Goyle, (24) Leonel Díaz, (25) Álvaro Silva Silva, (26) Joaquín Garner, (27) José Rodríguez, (28) Geovanny Guevara Álvarez, (29) Luis Chávez Solano, (30) Luis Guillermo Fonseca, (31) Marlon Solano Redondo, (32) Jeison López Rivera, (33) Álvaro Solano Jiménez, and (34) Jeremy James Gavlas.

² Notable among them, the report of the Office of Societal Adaptation of July 7, 2009 (D.G. 1742-2009), and the report of the Assistant Deputy Public Prosecutor for Enforcement of Sentences of Pococí, of April 22, 2010 (FEPG-09-2010), produced subsequent to a visit to this prison, during which the petitioner was heard.

forwarded the relevant parts of the petition to the State of Costa Rica on July 2, 2008, granting it two months to submit observations, pursuant to Article 30.3 of the Rules of Procedure of the IACHR.

5. On September 3, 2008, observations from the State were received, which were forwarded to the petitioner on November 12, 2008 (the annexes to the observations of the State were received on December 3, 2008, and forwarded to the petitioner on March 23, 2009). On January 16, 2009, a reply to the observations submitted by the State was received from the petitioner, which was forwarded to the State on March 9, 2009. After receiving an extension, the State submitted its observations on said forwarded reply on April 13, 2009, which were, in turn, forwarded to the petitioner on May 5, 2009.

6. Thereafter, additional information was received from the petitioner on the following dates: May 19, 2009, May 29, 2009, October 6, 2009, October 23, 2009, February 1, 2010, July 23, 2010, February 28, 2011, November 22, 2011, and July 31, 2012, information that was duly forwarded to the State. Information was also received from the State on the following dates: July 24, 2009, August 17, 2009, December 1, 2009, April 23, 2010, November 11, 2010, April 29, 2011, February 22, 2012, and October 22, 2012, information that was duly forwarded to the petitioner.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

7. The petitioner complains that conditions of detention in Pococí CAI were not in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners, nor with the criteria set by the Supreme Court of Justice of Costa Rica for persons deprived of liberty, which conditions, taken together, violated different rights enshrined in both the American Convention and in domestic law. The petition refers to the conditions of detention present before the petition was lodge and after that moment; moreover the petitioner informed about a deterioration in the conditions of detention from 2009 on, when the levels of overcrowding increased.

8. To summarize, the petitioner denounced the following in the time period covered by the petition:

(a) Serious deficiencies existed in Pococí CAI's health care, and preventive medical care was virtually absent (no physical exams or tests, blood tests or dental checkups were performed, among others), nor are older persons or those with chronic diseases given adequate treatment; there was no properly equipped consulting room; medical care was available for only eight hours three days a week; medical care was not available at night and on weekends; no dental care or nursing staff was available to handle emergencies; doctors did not visit inmates; rather they must seek to be receive care "however they can"; and only generic palliative care was prescribed for a variety of ailments.

(b) The food provided to inmates lacked nutritional value, consisting essentially of starches and carbohydrates, distributed at odd hours by prison authorities. This situation led inmates to seek to obtain other more nutritional food themselves or through their families.

(c) The Pococí CAI had water rationing hours, during which water is supplied to inmates only four hours a day (from 6:00 to 8:00 a.m., from 11:00 a.m. to 12:00 p.m., 4:00 to 5:00 p.m., and 7:00 to 8:00 p.m.). These water supply hours were insufficient to cover inmates' personal hygiene and cleaning needs. Moreover, often the indicated water schedule was not followed by the authorities, thus sometimes inmates went for entire days without any water. It is further alleged that water potability was not property controlled.

(d) The CAI Pococi allegedly had problems related to removal and treatment of sewage, solid waste (garbage), and waste water; no supervision of hygiene in food processing; and lack of adequate insect and vermin control. In regard to the latter, the petitioner indicates that Limón Province is the country's area with highest incidence of dengue. In that context, rampant pests, flies and mosquitoes, and illnesses such as diarrhea, influenza and dengue were reported.

(e) Both the Administrative Office and administrative authorities of Pococí CAI, and prison authorities in general had allegedly adopted the practice of systematically ignoring the requests and verbal complaints made to them by inmates, by telephone or in writing.

(f) The Pococí CAI prison authorities and interdisciplinary technical committee deemed as an essential requirement for granting prison benefits inherent in the sentence enforcement process an obligation on the part of the inmate (once convicted) to show repentance and accept the charges and the harm caused, a requirement not stipulated in the law. According to the petitioner, this obliged persons deprived of liberty to testify against themselves and impacts their opportunities subsequently to lodge appeals.

(g) Also alleged that there were significant deficiencies in the job and educational services and in the facilities offered by Pococí CAI for these purposes. For example, literacy classes and elementary, highschool, and college-level education classes are taught in the general dining rooms because there are no classrooms equipped for these purposes.

(h) It is alleged that the automatic warning message played at the start and during telephone calls made from prison telephones violates the liberty and privacy of inmates' telephone communications. The persistence of this message, which plays automatically every minute during the course of the call, intimidates the speaker, and is irritating and offensive. Additionally, in the case of calls to public officials, this mechanism gives them an opportunity to ignore the prison population.

9. The petitioner indicates that in addition to the conditions denounced in Pococí CAI, the Costa Rican prison system has serious structural deficiencies arising from, among other factors, growing overcrowding in jails. He even mentions that the detention conditions imposed by the State are a form of societal retaliation against persons deprived of liberty; and that, the only solution proposed by the Government with regard to citizen security issues is the raise of the prison time for criminal sentences and the use of imprisonment as a form of social control.

B. Position of the State

10. The State indicated that Pococí CAI is a institutional program closed facility where (in August 2008, timeframe to which the reply of the State to the petition refers) approximately 464 inmates were housed, separated by legal status (tried or convicted) and distributed in three blocks, each with two modules, each in turn subdivided into four dormitories. This center had industrial, agricultural, and livestock production projects. The inmates also had the right to one regular visit per week, one conjugal visit every two weeks, and special supervised visits whenever required. They also had access to electronic media such as fax, use of the public telephone (four units per dormitory), and the national newspapers and television.

11. The State alleges that with regard to health, the center provided the medical care services of one general physician and one male nurse on eight hour shifts and, at night or in emergencies, inmates were transferred to external clinics or hospitals. The medical area provides primary care utilizing its available resources and the basic medical supplies provided by the Caja Costarricense de Seguro Social [Costa Rican Social Security Fund] (CCSS). Medical care was also provided in keeping with CCSS standards and under its supervision. Furthermore, the prison has an annual pest control program established by the Administrative Office with assistance from the Ministry of Health.

12. The food provided to inmates was determined by the prison administration in coordination with the Department of Nutrition of the Ministry of Justice at the beginning of each week.

13. The State adds that the water used in the prison was supplied by the Water and Sewerage Service, so it was "completely potable." The water supplied to the jail is the same as that supplied to the community where it is located. Water rationing was not arbitrary or exclusive to Pococí CAI; it is as is

generally provided in all prisons, given the tremendous waste that would be involved if water were provided without restricting hours of supply.

14. The State alleges that at the time of the facts denounced, educational activities were carried out in the dining rooms at times other than meal times. However, in October 2012, the State reported that four classrooms were being built. It further alleges that prison had one teacher, guaranteed by the Ministry of Public Education. Additionally, according to the State, in April 2010, its numbers of professional and security personnel were considerably increased, on that date having 210 security agents, three attorneys, five social workers, four counselors, three psychologists, and one administrator. And major improvements had been made to prison infrastructure.

15. As regards the call warning mechanisms, the State explained that in 2004, authorities started to identify a series of crimes, such as extortion and vehicle theft, which had been planned, coordinated, or implemented by prisoners from public phones located in prisons. In view of this, orders were given to install a security and monitoring system consisting of an automatic voice message that issued a warning that a call received by an external call recipient came from a prison. In addition to the initial warning, once the call was accepted, the warning that it came from a prison was repeated once a minute. This system also operated when calls were made from outside the prison to public telephones inside jails. The State indicates that this system did not limit the length of the user's call, prevent the inmate from dialing certain numbers, or enable the conversation to be monitored. Therefore, the call was made in full privacy.

16. The State reported that the Constitutional Chamber of the Supreme Court issued a decision regarding this call warning mechanism,³ considering that that restriction of inmates' right to communication was consistent with the criteria of reasonability and proportionality, taking into account that the measure was in response to evidence that telephones located in prison were being used for illicit activities. In this decision, the Supreme Court concluded that the principle contained in Rule 37 of the United Nations Standard Minimum Rules for the Treatment of Prisoners and Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment accept that communications with the outside world by persons deprived of liberty should be subject to reasonable conditions and restrictions. The Supreme Court also took into consideration that calls made from or to prisons were not listened to or intercepted by third parties, and that they were made in full privacy.

17. With regards to the alleged arbitrary restrictions on access to prison benefits, the State indicated that these were governed by the Technical Regulations of the Prison System, under Decree 33876, of August 3, 2007, and that they were granted in accordance with the inmate's response to the Technical Care Plan and the existence of personal, family, social, and criminological factors that indicated whether the inmate could be moved to a minimum technical and physical security area. To that end, the prison's technical team evaluated the inmate's situation and sent reports to the National Institute of Criminology, which, having reviewed the evaluations, issued a recommendation to the Judge in Charge of the Execution of Sentences, who set a date on which to issue, together with the inmate, a final decision. Therefore, the State alleges that the access to these benefits did not arise from deliberate or arbitrary policy on the part of the prison authorities. The State emphasized that for a person deprived of liberty to be granted a benefit did not depend on accepting the facts imputed to him; still less his or her guilt.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence *ratione personae*, *ratione temporis*, *ratione loci*, and *ratione materiae*

18. The petitioner is entitled, under Article 44 of the American Convention, to lodge petitions with the Commission. The petition names the alleged victims as being individuals for whom the Costa Rican State has undertaken to respect and guarantee the rights enshrined in the American Convention. As for the State, the Commission notes that the Republic of Costa Rica has been a State Party to the American

³ In its resolutions Nos. 2006-000322, of January 24, 2006; and 2005-07982, of June 22, 2005.

Convention since April 8, 1970, the date of deposit of its instrument of ratification. The Commission, therefore, has competence *ratione personae* to examine the petition. The Commission also has competence *ratione loci* to examine the petition in that the alleged violations of rights protected by the American Convention have taken place within the territory of the Republic of Costa Rica, a State Party to that treaty.

19. The Commission has competence *ratione temporis* in that the obligation to respect and ensure the rights protected in that the American Convention was already in force for the State when the facts alleged in the petition occurred.

20. Lastly, the Commission has competence *ratione materiae* in that the petitioner alleges violations of human rights enshrined in the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

21. For the Commission to admit a complaint for alleged violation of provisions of the American Convention, it must meet the requirements stipulated in Article 46.1 of that international instrument. Article 46.1.a of the American Convention stipulates that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 thereof 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 requirement of prior exhaustion of domestic remedies applies when remedies are effectively available under the national system that are adequate and effective to remedy the alleged violation, unless any of the exceptions contained in Article 46.2 of the Convention exists. The aim of this admissibility condition is to enable national authorities to consider the alleged violation of a protected right and, if appropriate, to resolve it before it is considered by an international proceeding for settlement.

23. As regards the burden of proof in determining fulfillment of the requirement of exhaustion of domestic remedies, when the State alleges failure to exhaust, it has the burden of indicating the remedies that must be exhausted, as well as their effectiveness. If the State alleging failure to exhaust demonstrates the existence of specific domestic remedies that should have been pursued, the petitioners must show that those remedies were exhausted or that one of the exceptions stipulated in Article 46.2 of the Convention exists.⁴

24. In the instant case, the State has indicated since the start of processing of the petition that the appropriate and effective remedies in connection with the conditions of detention of persons deprived of liberty are: the corresponding complaints to the Judges for Enforcement of Criminal Sentences and the remedy of amparo before the Constitutional Chamber of the Supreme Court.

25. In that regard, the State alleges that the Code of Criminal Procedure authorizes the Judges for Enforcement of Criminal Sentences to decide matters related to violations of the fundamental rights of persons deprived of liberty. That Code stipulates that the Judge in Charge of the Execution of Sentences has responsibility for guaranteeing and verifying that the fundamental rights of inmates are respected, and for ordering corrective measures to that end. On numerous occasions, the Constitutional Chamber of the Supreme Court has also handed down decisions regarding both general conditions of detention and imprisonment in some prisons and the specific situation of persons deprived of liberty who have sought amparo for violations of fundamental rights. The State provides many examples of judgments regarding the situation of persons deprived of liberty.

⁴ Article 31.3 of the Rules of Procedure of the IACHR. See also, *inter alia*, IACHR, Report No. 8/05 (Admissibility), Petition 12.238, Miriam Larrea Pintado, Ecuador, February 23, 2005, para. 29; IACHR, Report No. 48/04 (Inadmissibility – Petition 12.210, Felix Román Esparragoza González and Nerio Molina Peñaloza v. Venezuela); October 13, 2004, para. 52.

26. For his part, although the petitioner indicated in June 2008, that he had not formally instituted judicial actions in connection with the detention conditions described in the petition,⁵—which the State has emphasized—, he has consistently alleged throughout the processing of the instant petition that it was the practice of prison authorities in general, and those of Pococí CAI in particular, to systematically ignore requests and formal complaints made to them by inmates. As illustration, he indicates that some individuals had sent ten or more letters to the prison Director or to the corresponding administrative areas without them making any reply to these requests. In that regard, he even alleges that on April 21, 2009, at a general meeting in which all D-1 module inmates and prison authorities took part, including the prison Director and Chief of Security, the two officials indicated to them that “from this day forward, complaints by persons deprived of liberty to the prison’s administrative authorities are prohibited.” And that, at the same meeting, the prison’s Director “proceeded to throw into the garbage bin a large number of complaints regarding different issues complained of by those deprived of liberty in this area of the prison, such as water rationing, poor food, and hordes of mosquitoes ...”. He also indicates that “at that meeting, the Chief of Security [...] promised that, depending on the source of the complaints or requests, neither the prison administration nor its management would deal with them.”⁶

27. The petitioner further alleges that the complaints lodged in case P-495-07 were duly submitted to the judicial authorities of the State for their information. For example, he notes a complaint filed with Judge in Charge of the Execution of Sentences, First and Second Judicial Circuit, Atlantic Area, by the inmates of Module C-2 which cited de facto noncompliance by the Pococí CAI Technical Evaluation Committee with the legal requirements applicable to sentence enforcement process. This complaint was dismissed by said court, by decision issued as resolution No. 690-08, of November 12, 2008.⁷ He also cites a complaint filed on December 8, 2008, by the inmates of Module C-2 with the Judge in Charge of the Execution of Sentences, First and Second Judicial Circuit, Atlantic Area, which indicated that the prison had serious deficiencies in areas such as medical care and basic services, and that this situation had worsened as of 2009, when two new blocks were opened and the prison inmate population nearly doubled as a result, while prison staff and prison service capacities remained unchanged. This complaint was also forwarded by the inmates to the Ministry of Justice on November 13, 2008, in a note describing in depth the main structural deficiencies of the prison indicated in the instant petition.⁸

28. Moreover, as examples of the different requests made by the Pococí CAI inmates to the prison authorities, the petitioner attaches copies of 20 complaints filed by himself and other inmates of area D-1 in the first half of 2010, which, he emphasizes, refer to the same chronic problems alleged in the petition. He also submits copies of three amparo proceedings instituted with the Constitutional Chamber that raised the issue of water rationing, and one regarding overcrowding.⁹

29. Additionally, as the State reported, the file shows that the complaint regarding the alleged abusive nature of the control mechanism for telephone calls made by prisoners from the jail has already been heard by the Constitutional Chamber of the Supreme Court of Justice, which had ruled in resolutions No. 2006-000322, of January 24, 2006 and 2005-07982, of June 22, 2005. Their scope covers the entire prison population. Therefore, it would not be appropriate to require the petitioner to institute proceedings regarding this matter, which has already been the subject of proceedings and a decision issued by the State’s highest court in the area of fundamental rights.

30. In cases such as the one at hand regarding alleged detention conditions for a group of persons in State custody, analysis of the requirement of exhaustion of remedies under domestic law cannot

⁵ Communication from the petitioner received by the IACHR on June 6, 2008, p. 1.

⁶ Communication from the petitioner received by the IACHR on May 19, 2009, Annexes 2 and 3.

⁷ Communication from the petitioner received on January 16, 2009, Annexes.

⁸ Communication from the petitioner received on January 16, 2009, Annexes.

⁹ Communication from the petitioner received on July 23, 2010, Annexes; and communication from the petitioner received on February 28, 2011, Annex.

be confined to an examination limited strictly to the institution of proceedings at the start of processing of the petition, still less when it has been noted *prima facie* that the main structural deficiencies denounced have been prolonged throughout the processing of this petition. In fact, it is alleged that since early 2009, overcrowding has been added to the list of deficiencies originally denounced. The petitioner alleges that in 2009 the population of the prison doubled, in a penitentiary already overcrowded, due to some criminal law reforms in force at that time, and without an improvement in the capacity of the services of the prison.

31. The Commission notes that the conditions of detention denounced by the petitioner from 2007, which appear to have worsened at the beginning of 2009, were consistently brought to the attention of the competent authorities through all available venues, from complains lodged before the administration of the prison to judicial remedies and actions; however, at this stage no significant improvement in those conditions was observed during that period of time. In this regard, the Commission observes that, according to the evidence in the file of the petition, those complains and judicial remedies were lodged in the period of time from the beginning of 2006 to the end of 2012; therefore, the scope of analysis of the merits of the instant case will be limited to the conditions of detention present at the Pococi CAI within that time frame.

32. In view of these considerations and of the elements contained in the file, the Inter-American Commission considers that the requirement of exhaustion of domestic remedies stipulated in Article 46.1.a of the American Convention on Human Rights has been met.

2. Timeliness of the petition

33. Article 46.1.b of the Convention provides that a petition must be lodged within a period of six months from the date on which the petitioner is notified of the final judgment exhausting remedies under domestic law. In the instant case, the IACHR notes that the petition was filed on April 14, 2007, before domestic remedies had been exhausted. In that regard, the Commission has held that in those situations where the evolution of the facts regarding which proceedings were initially brought at the domestic level implies a change as regards the fulfillment or non fulfillment of the admissibility requirements, —or the persistence of the facts alleged— a petition's requirements for admissibility must be examined at the time when the Commission decides its admissibility.¹⁰ Therefore, the IACHR considers that the requirement set forth in 46.1.b of the Convention has been met.

3. Duplication of proceedings and res judicata

34. Article 46.1.c of the Convention stipulates that admission by the Commission of a petition shall be subject to the requirement that that the subject of the petition or communication is not pending in another international proceeding for settlement; and, in its Article 47.d, that the petition or communication is not substantially the same as one previously studied by the Commission or by another international organization. In the case under consideration, the Commission notes that neither of these grounds for inadmissibility has been alleged, nor can they be deduced from the case file. Therefore, the IACHR considers that the requirements set forth in 46.1.c and 47.d of the Convention have been met.

4. Characterization of the facts alleged

35. To determine admissibility, the Commission must decide whether the facts alleged, if proven, can be characterized as violations of rights as stipulated in Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to Article 47.c thereof. The criterion for evaluation of these requirements differs from that used to decide on the merits of a petition. The Commission must make a *prima facie* evaluation as to whether the petition establishes grounds for possible or potential violation of a right guaranteed by the Convention, but not demonstrating the existence of

¹⁰ IACHR, Report No. 94/13, Petition 790-05, Admissibility, Patients of the Psychiatric Service of Santo Tomás Hospital, November 4, 2013, para. 32. IACHR, Report No. 2/08, Petition 506/05, Inadmissibility, *José Rodríguez Dañín* (Bolivia), March 6, 2008, para. 56.

a violation of rights. This determination constitutes primary analysis, and does not prejudge the merits of the matter.

36. Neither the American Convention nor the Rules of Procedure of the IACHR require petitioners to identify the specific rights allegedly violated by the State in the matter submitted to the Commission, although they may do so. In its admissibility reports, the Commission must decide, based on the jurisprudence of the system, which provision of the relevant inter-American instruments is applicable, whose violation may be established if the facts alleged are demonstrated through sufficient elements.

37. The complaints lodged by the petitioner refer primarily to detention conditions in the Institutional Care Center of Pococí Canton as they relate to matters such as lack of appropriate medical care and regular water supply, overcrowding, dietary deficiencies, deficiencies of job and educational services, and alleged arbitrariness in the enforcement process. According to the information provided, the Commission considers that the time frame refers essentially to the facts occurred from 2006 to 2012. This set of claims as a whole are related to minimum services and conditions that have to be provided by the States to all persons under their custody, and are related directly to the State's duty to provide a humane treatment to persons deprived of liberty, which falls within the content and scope of article 5 of the American Convention. Furthermore, it is denounced the lack of effective judicial remedies and complaint mechanisms available to inmates in this prison facility, which if true, would constitute an infringement of articles 8 and 25 of the Convention. All these articles in connection to article 1.1 of the Convention.

38. In addition, it is further alleged that the warning mechanism used to identify calls made from or to telephones in the prison are excessively and arbitrarily intrusive in inmates' communications. In this regard, the Commission acknowledges, as it has pointed out, that States "should adopt the measures necessary to prevent the prisoners from committing, directing, or ordering criminal acts within or from the prisons."¹¹ However, the Commission also considers that the means and methods used to achieve this legitimate aim should be accord with principles of necessity and proportionality, when those methods and means might constitute an interference in the enjoyment of other rights of the inmates. Therefore, the Commission will conduct a balancing test in light of the content and scope of articles 11 and 13 of the American Convention, in connection to the article 1.1 of the same treaty, in the merits stage of the present case.

39. In that regard, the Commission [notes] that the petitioner's allegations may *prima facie* be characterized violations of Articles 5, 11, 8, and 25 of the American Convention, in connection with Article 1.1 thereof. At the merits stage, the Commission will also analyze the compatibility of the restrictions imposed on inmates' telephone calls with the content and scope of Article 13 de the American Convention.

V. CONCLUSION

40. The Commission concludes that it is competent to hear the case at hand under Articles 46 and 47 of the American Convention for the alleged violation of Articles 5, 11, 13, 8, and 25 of the American Convention, all in connection with Article 1.1 thereof.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible regarding alleged violations of the rights recognized by Articles 5, 11, 13, 8, and 25 of the American Convention on Human Rights, all in connection with Article 1.1 thereof.
2. To forward this report to the petitioners and to the State.

¹¹ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 78.

3. To continue with its analysis of the merits of the case.
4. To publish this report and to include it in the Commission's Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 4th day of April 2013. (Signed): Tracy Robinson, President, First Vice-President; Rose-Marie Belle Antoine, Second Vice-President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James Cavallaro, Commissioners.