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## **REPORT No. 341/21**

### **PETITION 441-10**

#### REPORT ON ADMISSIBILITY

PERSONS DEPRIVED OF THEIR LIBERTY IN PUBLIC PRISONS OF  
MINAS GERAIS  
BRAZIL

Approved electronically by the Commission on November 22, 2021.

**Cite as:** IACHR, Report No. 341/21. Petition 441-10. Admissibility. Persons deprived of their liberty in public prisons of Minas Gerais. Brazil. November 22, 2021.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Public Defender's Office of the state of Minas Gerais
<b>Alleged victims:</b>	Persons deprived of their liberty in public prisons of Minas Gerais <sup>1</sup>
<b>Respondent State:</b>	Brazil <sup>2</sup>
<b>Rights invoked:</b>	Articles 4 (right to life), 5 (right to personal integrity), and 25 (judicial protection) of the American Convention on Human Rights, in relation to the obligations set forth in Articles 1.1 and 2 thereof <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	March 24, 2010
<b>Additional observations from the petitioner:</b>	March 27, 2017
<b>Notification of the petition to the State:</b>	July 22, 2019
<b>State's first response:</b>	January 2, 2020

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, the American Convention (document adopted on September 25, 1992)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 4 (right to life), 5 (right to personal integrity), 8 (right to a fair trial), 19 (rights of the child) 25 (judicial protection), 26 (right to health, right to water, right to food) of the American Convention on Human Rights, in relation to the obligations set forth in Articles 1.1 (obligation to respect and guarantee rights) and 2 (obligation to adopt provisions of domestic law) thereof; as well as the obligations related to the prevention and punishment of torture established in Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.
<b>Exhaustion of domestic remedies or admissibility of an exception to the rule:</b>	Yes, pursuant to the considerations below.

<sup>1</sup> The petition refers to the following public detention facilities located in Minas Gerais: Police Station No. 2 ("2<sup>nd</sup> Police Station") of the Municipality of Contagem; the Relocation Center of Prisons ("Ceresp") of the Municipality of Contagem; Civil Police Station No. 5 of the Municipality of Belo Horizonte ("5<sup>th</sup> Police Station"); Ceresp Centro Sur, in Belo Horizonte; District Police Station No. 16 of the Municipality of Belo Horizonte ("16<sup>th</sup> Police Station"); Unit II of the São Joaquim de Bicas Penitentiary; cells at the Department of Investigation of the Municipality of Belo Horizonte ("D.I."); and the Ceresp that was established once the D.I. cells had been refurbished.

<sup>2</sup> In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Flávia Piovesan, a Brazilian national, did not participate in the discussion and decision of the instant case.

<sup>3</sup> Hereinafter "the American Convention."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

**Timeliness of the petition:**

Yes, pursuant to the considerations below.

**V. FACTS ALLEGED**

1. The petitioner claims that the Brazilian State is responsible for the violation of the rights to personal integrity, life and judicial protection of the persons deprived of their liberty that were held in different detention units located in Minas Gerais,<sup>5</sup> given the poor conditions of the prison facilities and the failed attempts by the Judiciary to redress said situation.

2. The Public Defender's Office of the state of Minas Gerais (DPMG) visited the above-mentioned units on February 28, 2007 (2<sup>nd</sup> Police Station), March 29, 2007 (16<sup>th</sup> Police Station), March 30, 2007 (5<sup>th</sup> Police Station) and April 3, 2007 (D.I.). During those visits, it noted the following: i) overcrowding, and far less surface area per person deprived of their liberty than the minimum 6 square meters per person set forth in domestic legislation; ii) lack of essential conditions of ventilation, natural light and temperature conditioning; iii) poor maintenance and cleanliness (dirty and wet facilities, venomous insects and animals); iv) proliferation of infectious diseases and other diseases that spread due to inhumane conditions (such as tuberculosis, hepatitis, asthma, bronchitis, pneumonia and scabies, among others); v) lack or insufficient medical attention; vi) poor quality food (scarce variety, insufficient portions and even non-edible food), which not only affected all persons deprived of their liberty, but also undermined the detained mothers' capacity to breastfeed their children (one of them, held at the 5<sup>th</sup> Police Station, reported feeling weak because "food did not include vegetables or legumes, it was prepared with raw meat, uncooked rice;" "I'm not fit to breastfeed my six-month-old daughter"); vii) inhumane conditions for proper rest due to the lack of beds and insufficient space, with persons deprived of their liberty being forced to take turns to rest on the floor; viii) barriers to family visits (inmates were prevented from having regular contact with their next-of-kin; family members received last-minute notice of authorized visits; short visits; illegal charging of money to allow visits; hostile treatment by penitentiary staff members against the inmates' next-of-kin when the latter visit detainees). The petitioner also argues that units that were originally intended for persons in pretrial detention were overcrowded with convicted prisoners and non-convicted persons, who were all held in the same area.

3. The petitioner reported that several public civil actions (ACP) were filed, with the sole objective of questioning the legality of the conditions and circumstances described above, and with the aim of protecting the rights of the affected persons deprived of their liberty. According to the petitioner, these actions included preliminary requests to dismantle the units, transfer detainees to adequate facilities, and have the State be sentenced to pay compensations. The ACP corresponding to the 2<sup>nd</sup> Police Station had been filed on March 13, 2007; the ACP corresponding to the 5<sup>th</sup> Police Station had been filed on April 10, 2007; the ACP corresponding to the 16<sup>th</sup> Police Station had been filed on April 25, 2007; and the ACP corresponding to the D.I. had been filed on May 3, 2007. Nonetheless, and despite their urgency, the preliminary requests to dismantle the units and transfer the detainees were ignored or dismissed by legal authorities over the subsequent months. In addition, until the date of submission of this petition to the IACHR, there was no decision on the merits with regard to any of these actions.

4. Furthermore, the petitioner provided additional information on the conditions of the aforementioned units and underscored that poor structural, hygienic, health and food conditions were still in place. It reported that the 2<sup>nd</sup> Police Station, located in Contagem, was refurbished and became known as Ceresp (Relocation Center of Prisons). The DPMG visited that unit on November 19, 2009. The petitioner emphasized that the following conditions were noted at the Ceresp: dark, overcrowded cells without proper ventilation; elevated temperatures inside the cells as a result of overcrowding, lack of ventilation, etc.; insufficient supply of drinking water in cells (water supply only two hours a day); food containing worms or snails; proliferation of symptoms related to respiratory and skin diseases (mycosis, dry cough, among others). In addition, it reported that, similarly, the 5<sup>th</sup> Police Station was dismantled and re-established as the Ceresp Centro Sur on May 25, 2007. During its visit on February 11, 2010, the DPMG again noted poor structural, hygienic, health and food conditions. The accounts of the persons deprived of their liberty held therein included reports of poor-quality food, rats and cockroaches. They reported that the same water being supplied for drinking was used for

<sup>5</sup> See footnote 1 *supra*.

toilets, an complained about the lack of electricity, insufficient and freezing-cold water in the showers (tap water used for showering), lack of ventilation, lack of medical attention and medication, non-edible food and water, and that food was served on the floor.

5. Moreover, the petitioner reported that the 16<sup>th</sup> Police Station was dismantled on December 19, 2018, and that the women deprived of their liberty that were held therein were moved to Unit II of the São Joaquim de Bicas Penitentiary. On March 4, 2010, the DPMG visited this unit and noted adequate structural conditions, but it pointed out that conditions were poor in terms of hygiene, medical attention and food. Finally, the petitioner also indicated that the D.I.'s unit was refurbished and became the Ceresp of Belo Horizonte. Nevertheless, the problems remained. The DPMG visited this unit on November 11, 2009, and noted that there were, *inter alia*, dark, overcrowded cells, with no ventilation and poor hygiene and cleanliness; sick and healthy people confined in the same cell; lack of adequate medical attention; people requiring urgent medical attention, including persons with serious injuries; insufficient surface area, which resulted in sleep deprivation, with inmates establishing rotating sleeping shifts out of necessity.

6. The State argued that it had done its best to “improve the conditions of people under custody, as well as to reduce prison overcrowding,” and that it had also implemented measures aimed at promoting access to medical attention and education opportunities in prison units. The State also held that “the situation [of the units mentioned by the petitioner] had changed: i) the 2<sup>nd</sup> Police Station of the Municipality of Contagem, Minas Gerais, was dismantled after the DPMG had filed the ACPs, and following a small-scale refurbishment carried out in 2008, it became the Ceresp Contagem; ii) on May 2007, the 5<sup>th</sup> Civil Police Station of the Municipality of Contagem, Minas Gerais, was dismantled, and the persons deprived of their liberty held therein were moved to the Ceresp Centro Sur, in Belo Horizonte, Minas Gerais; iii) in 2008, the detainees held at the 16<sup>th</sup> District Police Station of the Municipality of Belo Horizonte were transferred to another prison unit, Bicas II, located in the city of São Joaquim de Bicas, Minas Gerais; iv) the unit of the Department of Investigation was refurbished and became the Ceresp São Cristóvão, located in Belo Horizonte, Minas Gerais.”

7. The State argues that the ACPs filed by the Public Defender’s Office proved effective, since two units were dismantled and another two were refurbished. As a result, the State “understands that it has responded appropriately to the circumstances reported in the petition.” However, the ACPs are still pending resolution. According to the information supplied by the State in January 2020 in reply to the consultations made on the procedural status of the ACPs, none of them had been completed to that date. The State understands that this proves that the petitioner has not exhausted domestic remedies.

8. Notwithstanding the foregoing, the State argues that the petition submitted to the IACHR must be declared inadmissible, given that the petitioner did not account for the exhaustion of domestic remedies at the moment it filed the petition to the Inter-American Commission. “At the moment when the petition was submitted to the IACHR, in March 2010,” claims the State, “the ACPs were following the ordinary procedure at the Judiciary of the Brazilian State, pursuant to what is set forth in procedural legislation.” The State also argues in its own defense that none of the exceptions to the rule of exhaustion of domestic remedies could be applied to the case. It underlines that there were domestic remedies still available and that the time required to process the actions did not constitute an unjustified delay, but that it resulted from the rules of domestic law on due process.

9. In conclusion, the State holds that the petition submitted to the IACHR is inadmissible, since the Commission cannot act as a fourth instance and, therefore, is not competent *ratione materiae*.

## VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

The Commission recalls that the admissibility examination is a *prima facie* analysis aimed at determining whether the facts described constitute a possible violation of the rights enshrined in the American Convention or other applicable instruments or are manifestly groundless or out of order.<sup>6</sup>

10. Furthermore, the Commission understands that the analysis of the requirements for admissibility must be conducted “in the light of the situation in effect at the time a decision [by the IACHR] is issued regarding a petition’s admissibility or inadmissibility.”<sup>7</sup>

11. With regard to the exhaustion of domestic remedies, the Commission recalls that State Parties have an obligation to provide effective judicial remedies to victims of human rights violations.<sup>8</sup> In a case similar to the instant case, the Commission stated that the State had to prove the availability of adequate and effective remedies (“the State has the obligation to demonstrate that remedies are adequate and effective for repairing the collective violation alleged.”<sup>9</sup>)

12. In similar cases, the Inter-American Commission has considered that the State must prove the availability of adequate and effective remedies,<sup>10</sup> and that the delay in resolving legal remedies such as public civil actions and the continuity or worsening of reported circumstances indicate that there has been an “unjustified delay” and that “remedies under domestic jurisdiction show little prospect of success.” For this reason, the Commission finds the rule of previous exhaustion of domestic remedies inapplicable, according to the exceptions set forth in Article 46(2), paragraphs (a) and (c), of the American Convention.<sup>11</sup>

13. In the instant case, the ACPs filed in 2007 are still pending resolution. The State emphasized that the prison units that were the subject of the ACPs had been dismantled or refurbished, but it was not proven that these actions had been a consequence of the legal remedies lodged. Likewise, the information provided by the petitioner points to the fact that transfers and refurbishments did not put an end to the circumstances reported. In the face of this situation, the Inter-American Commission concludes that the petition *sub judice* is admissible under the exceptions set forth in Article 46.2, paragraphs (a) and (c), of the American Convention.

<sup>6</sup> IACHR, Report No. 93/17, Petition 48-08. Admissibility. Ernesto Lizarralde Ardila et al. Colombia. August 8, 2017; para. 13.

<sup>7</sup> IACHR, Report No. 15/15. Admissibility. Petition No. 374-05, members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015; para. 39. See also: IACHR Court. Wong Ho Wing v. Peru. Judgement of June 30, 2015 (Preliminary objections, merits, reparations and costs.) Series C No. 297, para. 25.

<sup>8</sup> IACHR, Report No. 36/07. Admissibility. Persons deprived of liberty in the cells at the 76th Police Precinct in Niterói, Rio de Janeiro. Brazil. July 23, 2008; para. 105.

<sup>9</sup> IACHR, Report No. 36/07. Admissibility. Persons deprived of liberty in the cells at the 76th Police Precinct in Niterói, Rio de Janeiro. Brazil. July 23, 2008; para. 107.

<sup>10</sup> IACHR, Report No. 36/07. Admissibility. Persons deprived of liberty in the cells at the 76th Police Precinct in Niterói, Rio de Janeiro. Brazil. July 23, 2008; para. 107 (“the State has the obligation to demonstrate that remedies are adequate and effective for repairing the collective violation alleged.”)

<sup>11</sup> IACHR, Report No. 41/08. Admissibility. Persons deprived of liberty at the Provisional Detention Center of Guarujá, São Paulo. Brazil. July 23, 2008; para. 76 (“Pursuant to the violations charged and the judicial remedies pursued in this context, particularly considering the time period that has elapsed since the public civil actions were filed and the worsening of the situation of the persons deprived of liberty at the Provisional Detention Center of Guarujá, the Commission concludes that the petition under consideration is admissible under the exceptions set forth in Article 46(2), paragraphs (a) and (c), of the American Convention. In this connection, the Commission reiterates what has been decided in similar cases concerning the same remedies in Brazil, particularly the Public Civil Action (actions lodged in 1999, 2002, 2003 and 2004), that the amount of time since the events began to be reported, without any available remedy having been resolved to date, indicates that in this situation there has been an unjustified delay. Moreover, it has not been demonstrated in this case that the Public Civil Action was, in practice, an effective remedy to address purportedly inadequate conditions of detention and to prevent alleged human Rights violations related to inhuman conditions of detention; therefore, it seems that remedies under domestic jurisdiction show little prospect of success.”) See also: IACHR, Report No. 36/07. Admissibility. Persons deprived of liberty in the cells at the 76th Police Precinct in Niterói, Rio de Janeiro. Brazil. July 23, 2008; para. 108 (“[G]iven the time elapsed since the violations were first denounced and the fact that as of the adoption of the instant report none of the available remedies attempted has proved effective, and that a decision in the aforementioned action has been pending for more than two years, this situation constitutes an unwarranted delay and, furthermore, there is little likelihood that the remedies under domestic law will prove effective.”)

14. In relation to the timeliness of the petition, having concluded that the aforementioned exceptions established in Article 46.2 (a) and (c) of the American Convention are in order, the Commission has not identified any definitive decision that could serve as reference for the sixth-month time limit set forth in Article 46.1 (b) of the Convention. Notwithstanding the foregoing, the Commission finds that the complaint was lodged within a reasonable time as of the date on which the victims' rights were allegedly violated. Therefore, the requirement on the timeliness of the petition has been met in accordance with Article 32.2 of the Rules of Procedure of the IACHR.<sup>12</sup>

15. Finally, the Commission notes that the State also argued that the petition did not comply with the provisions set forth in Article 28.4 of its Rules of Procedure, since it referred to specific units, but requested the Commission (once it had judged the merits of the case) to order the State to adopt "policies to restructure the prison system across the territory under its jurisdiction in such a way that it would comply with national and international legal standards in the matter." The State understands that given said context, the petition would not have offered "an account of the facts or the reported circumstances, with the specific dates and locations of the alleged violations." The Inter-American Commission notes that, contrary to what has been argued, the petition provided an account that was specific enough and allowed for other counter arguments presented by the State and for the instant analysis of admissibility. The request submitted by the State, which was by no means consistent with the guarantee of non-repetition generally requested by petitioners or signaled *ex officio* by the bodies of the inter-American system, does not prevent the petition from being admitted.

## VII. ANALYSIS OF COLORABLE CLAIM

16. The instant petition includes allegations of inhumane prison conditions, such as overcrowded prison units, lack of ventilation, lack of natural light, unsanitary conditions, lack of access to drinking water, low quality or even non-edible food (to the detriment of the persons deprived of their liberty, and in the case of detained mothers, to the detriment of children of breastfeeding age), sleep deprivation due to poor resting conditions, proliferation of diseases (including respiratory and skin diseases), absence of appropriate medical attention, and barriers to the contact between detainees and their next-of-kin.

17. In view of these considerations and having examined the *de facto* and *de jure* elements stated by the parties, the Commission estimates that the petitioner's allegations are not manifestly groundless and require an analysis on the merits, since if the facts alleged were to be proven true, they could constitute violations to the rights enshrined in Articles 4 (right to life), 5 (right to personal integrity), 8 (right to a fair trial), 19 (rights of the child) 25 (judicial protection), and 26 (right to health, right to water, right to food) of the American Convention on Human Rights, in relation to the obligations set forth in Articles 1.1 (obligation to respect and guarantee rights) and 2 (obligation to adopt provisions of domestic law) thereof; as well as to obligations related to the prevention and punishment of torture established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

## VIII. DECISION

1. To declare this petition admissible pursuant to Articles 4, 5, 8, 19, 25 and 26 of the American Convention, in relation to Article 1.1 thereof, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

<sup>12</sup> The judgement passed is consistent with the stance taken by the Commission, inter alia, in its Report No. 36/07. See IACHR Report No. 36/07. Admissibility. Persons deprived of liberty in the cells at the 76th Police Precinct in Niterói, Rio de Janeiro. Brazil. July 23, 2008; para. 114 ("[S]ince the Commission has concluded that it is unlikely that the remedies under domestic law will prove effective, and that there was an unwarranted delay in processing the remedy under domestic law, a decision on which has been pending since January 18, 2005, the exceptions provided in Article 46.2 (a) and (c) of the American Convention are applicable. Therefore, there has obviously been no final decision whose notification would make it possible to calculate the six-month time limit set forth in paragraph 1(b) of said article. Without prejudice to the foregoing, the Commission finds that the complaint was lodged within a reasonable time since the date on which the victims' rights were allegedly violated. Therefore, the requirement regarding timeliness has been met in accordance with Article 32 of the Rules of Procedure of the IACHR.")

2. To notify the parties of this decision; to proceed with the merits of the case; to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 22<sup>nd</sup> day of the month of November, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández (dissident vote), and Stuardo Ralón Orellana, Commissioners.