

**REPORT N° 54/07**  
PETITION 4614-02  
ADMISSIBILITY  
WILMER ANTONIO GONZÁLEZ ROJAS  
NICARAGUA  
July 24, 2007

**I. SUMMARY**

1. The Inter-American Commission on Human Rights (hereinafter “the Commission”) initiated proceedings after it received a petition on December 10, 2002, submitted by Mrs. Viviana Krsticevic and Messrs. Juan Carlos Gutiérrez and Bruce Harris, representatives of the Center for Justice and International Law (CEJIL) and Casa Alianza (hereinafter “the petitioners”) against the Republic of Nicaragua (hereinafter “the State”) for the alleged violation of the right to life (Article 4), to personal integrity (Article 5), to personal liberty (Article 7), to a fair trial (Article 8), the rights of the child (Article 19), to judicial protection (Article 25), and to progressive development (Article 26) in conjunction with a violation of the obligation to respect the rights (Article 1(1)) established in the American Convention on Human Rights (hereinafter “the American Convention”) to the detriment of the child<sup>1</sup> Wilmer Antonio González Rojas, which allegedly occurred due to the events surrounding the suicide of the alleged victim in the cells at the Tipitapa Detention Center in Nicaragua.

2. The petitioners maintain that neither the administrative nor the judicial investigations conducted into the death of the child Wilmer have been effective and they fail to satisfy the requirements of the American Convention. The petitioners also claim that “the initial petition in the instant case meets all the admissibility requirements embodied in that international treaty.” In response, the State asked that the petition be declared inadmissible in accordance with the provisions of Articles 46(1)(a), 46(1)(b), 46(1)(c), 47(a), and 47(d) of the American Convention. The State argued in its favor that the petitioners had access to adequate domestic remedies but did not make use of them at the proper procedural time. The State also alleged that the petition was not submitted within a period of six months. Finally, the State alleged that the case had been previously studied by the Working Group on Situations of the United Nations Commission on Human Rights and thus could not be heard by the Inter-American Commission.

3. Without prejudging the merits of the petition, the Commission concludes that it is competent to hear the case relating to the death of the child Wilmer Antonio González Rojas, with respect to alleged violations of Articles 4, 5, 7, 8, 19 and 25 of the American Convention, in conjunction with violation of the general obligation to respect and ensure rights as provided in Article 1(1) of the same convention. The Commission also decides to inform the parties of this decision, to continue its analysis of the merits regarding the aforementioned alleged violations of the

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<sup>1</sup> According to the UN Convention on the Rights of the Child, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” Nicaraguan laws applicable to children and time relevant for the events in this case are the Minors’ Protection Law (Law No. 107 of March 14, 1973) and the Code on Children and Adolescents (Law No. 287 of March 24, 1998). Article 2 of the Minors’ Protection Law established that, “for the purposes of this law, a minor is understood to mean anyone who has not reached the age of eighteen, regardless of his or her current legal status.” On the other hand, Article 2 of the Code on Children and Adolescents establishes that “this Code considers as boys or girls those who have not reached thirteen years of age and considers as adolescents those from the ages of 13 up to the age of 18.” The Commission, following the definition of the Convention on the Rights of the Child uses the expression “child” in this report to refer to the alleged victim, Wilmer Antonio González Rojas, who according to the file was born on March 4, 1983, and thus was 15 years old at the time of his arrest on April 13, 1998, and 16 years old at the time of his death on August 17, 1999 (Ministry of the Interior, General Directorate of the National Penitentiary System. *Report from Inspector General Julio Orozco Rivas dated August 27, 1999*, General Data on the Inmate – Annex 2 to the State’s Response dated June 11, 2003).

American Convention, to publish this admissibility report, and to include it in its Annual Report to the OAS General Assembly.

## **II. PROCESSING BY THE COMMISSION**

4. The Commission received the petition on December 10, 2002 and recorded it under number 4614-02. On March 21, 2003, the Commission forwarded the relevant sections to the State, granting it a period of two months to submit its response.

5. On June 11, 2003, the State submitted its response, the relevant sections of which were sent to the petitioners by the Commission on July 31, 2003.

6. On November 25, 2003, the petitioners submitted their observations regarding the response submitted by the State. On December 8, 2003, the Commission sent the relevant sections of the petitioners' observations to the State, granting it a one-month period to submit its observations.

7. On December 22, 2003, the State asked for a one-month extension for submitting its observations; this was granted by the Commission on January 7, 2004.

8. On January 8, 2004, the petitioners asked the Commission to hold a hearing on the case during the 119<sup>th</sup> period of sessions. On February 4 of the same year the Commission reported that it could not hold that hearing.

9. On February 26, 2004, the State submitted its observations regarding the petitioners' observations of November 25, 2003. On March 1, 2004, the Commission sent the relevant sections of the State's observations to the petitioners, granting them a one-month period to submit their observations. On March 5, 2004, the petitioners submitted observations on the State's brief, which were expanded on May 5, 2004. On May 9, 2004, the petitioners submitted the annexes to their observations.

10. On September 1, 2004, the petitioners asked the Commission to hold a hearing on the case during the 121<sup>st</sup> period of sessions. On October 22, 2004, a hearing was held between the parties at Commission headquarters to address the admissibility of the petition.

11. On January 17, 2006, the petitioners asked for a second hearing during the 124<sup>th</sup> period of sessions regarding the admissibility of the case. On March 3, 2006, a second hearing was held between the parties at Commission headquarters regarding the admissibility of the petition.

12. On April 24, 2006, the State sent additional information and the Commission sent the relevant sections to the petitioners on May 3, 2006. On May 18, 2006, the petitioners provided information on the case, the relevant sections of which were sent to the State on June 1, 2006. On August 8, 2006, the State submitted its observations regarding the additional information submitted by the petitioners, and the relevant sections of those observations were sent to the petitioners on the same day.

## **III. POSITIONS OF THE PARTIES**

### **A. Petitioners**

13. The petition indicates that on April 15, 1998, Wilmer Antonio González Rojas was arrested for stealing a watch. For this crime, he was imprisoned at the La Modelo Penitentiary Center in Tipitapa for adult prisoners. This provisional order of imprisonment was confirmed through

a decision of April 25, 1998 issued by the Seventh Court of the Criminal District of Managua, despite Wilmer's status as a child. According to the petitioners, on June 8, 1998, the Human Promotion Institute (INPRHU) asked the court to transfer the child to the Patriarca Youth Center, an institution intended especially for children and adolescents. This request was never resolved.

14. The petitioners allege that on August 13, 1998, the child was condemned to three years in prison for the crime of robbery with violence to persons and continued to serve his sentence at the Penitentiary Center in Tipitapa. The Code on Children and Adolescents took effect two months later, in October of 1998 and on April 12, 1999, at the request of the defense, the District Criminal Court for Adolescents reviewed the conviction and ordered a reduction of the sentence to 18 months. According to the legislation in effect, this decision should have been reported to the parties within 24 hours of being issued. However, the defense attorney was not notified of the decision until June 7, 1999 or nearly two months after it was issued. The alleged victim was never informed of the decision.

15. As indicated in the petition, on July 6, 1999 the child's defense attorney sought application of a conditional sentence for Wilmer. On July 16 the Judge in the case sent an official letter to the Penitentiary Center seeking information on the child's conduct. This letter was never answered.

16. As indicated by the petitioners, at the time of his arrest Wilmer was imprisoned in Hall Number 7 at the Tipitapa prison (a block specifically intended to house adolescents). In the initial months of his imprisonment, there was no misbehavior on the child's part but his conduct changed over the course of his detention.<sup>2</sup> On January 29, 1999, Wilmer took part in a fight and on April 21 of the same year the boy climbed up on a roof and was admonished for this by the head of the National Penal System.

17. The petitioners also allege that on May 28, 1999 Wilmer stole things belonging to other inmates and threatened to assault an officer, and on June 4 of the same year the boy stole five bolts (padlocks) from a Penitentiary Center officer. On June 9, 1999, as a disciplinary measure, Wilmer was sent for six months to Hall Number 2, intended for very dangerous adult inmates. The child objected to his transfer and was beaten by the guards at the prison. This disciplinary measure was confirmed by the Disciplinary Board a month later on July 9, 1999.

18. The complaint states that on August 7, 1999, two months after being transferred to Hall Number 2, the boy tried to take his own life by hanging himself. He was prevented from doing so by the guards on duty. The guard officer ordered that the rope be removed and that he be locked up naked for two days in isolation in Hall Number 10. After these two days, Wilmer was again sent to Hall Number 2.

19. According to the petitioners, on August 17, 1999 the boy tried to kill himself again by inflicting upon himself a 12 centimeter wound in both arms. The petitioners alleged that Wilmer had hurt himself as a protest against being held in Hall Number 2. Wilmer refused to be treated at first, [but] was later convinced that the wounds needed suturing. On that same day, the prison psychologist interviewed the boy. The petitioners state that Wilmer indicated to the psychologist that he couldn't stand being imprisoned in Hall Number 2 anymore and asked that he be returned Hall Number 7, promising to behave. The psychologist told him that the methods he was using to

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<sup>2</sup> According to the State, with respect to discipline, the alleged victim remained resistant to complying with the rules and regulations and was the subject of four disciplinary measures, on 08/24/98 for failure to obey an order, on 01/29/99 for fighting with another prisoner, on 06/04/99 for stealing State property, and again on 06/04/99 he was also involved in violating security measures, stealing belongings, resistance, attempted assault on an officer, and death threats. As a result, he was sent to the disciplinary board and his transfer to the security contingent was approved.

force his transfer were not the right methods and that he was not an inmate whose promises could be trusted. The prison's chief of education ordered that Wilmer remain in Hall Number 2.

20. The petition maintains that two hours after his interview with the psychologist Wilmer hanged himself with a sheet inside his cell. The Director of the National Penal System ordered an investigation and in August 1999, based on the results of that investigation, some of the individuals charged with the child's custody were administratively sanctioned.<sup>3</sup> According to the petitioners, despite the results of the administrative investigation, prison authorities did not report the matter in order to determine whether those who had committed the disciplinary errors had committed criminal offenses. The petitioners argued that the administrative investigation did not relieve the State of its duty to conduct a judicial investigation, all the more so since the initial investigation had established obvious negligence on the part of state officials.

21. The petitioners argued that given the absence of an official investigation by the State, on August 21, 2000, the relatives of Wilmer filed a criminal complaint for the alleged crime of "unintentional or negligent homicide" (*homicidio preterintencional*) against the Director of the National Penitentiary System and the Director of the La Modelo Penitentiary Center in Tipitapa. The complaint was expanded on March 6, 2002, claiming abuses of authority against the child, causing him to have mental health problems.

22. Regarding admissibility, the petitioners stated in the initial complaint brief that by the date the international petition was submitted, two years after the domestic complaint, the case proceeding was completely inactive in the court. For this reason, the petitioners asked the Commission to declare an exception due to unwarranted delay with respect to the exhaustion of domestic remedies.

23. Subsequently, the petitioners referred to the objections submitted by the State. Regarding the alleged inadmissibility under the terms of Article 47(d) of the American Convention (duplication), the petitioners stated that in order for a case to be declared inadmissible under Article 47(d), the petition must be substantially a reproduction of another case, which means that the cases must be identical with respect to three elements: the parties must be the same, the subject must be the same, and the legal basis must be the same. The petition must also have already been examined by the international body. According to the petitioners, none of these elements would apply to the case under review.

24. Regarding the failure to exhaust domestic remedies, the petitioners claimed a lack of timeliness in the state objection regarding failure to exhaust domestic remedies in that the State omitted reference to that objection in its initial response to the petition on June 11, 2003, and did not submit this objection until its second communication to the Commission dated February 26, 2004. Therefore, the Commission should reject it as untimely. In addition, the petitioners alleged that criminal investigation is the responsibility of the State, that the Office of the Attorney General did not appeal the decision of March 11, 2002, and that the domestic remedies were totally ineffective.

25. Finally, regarding the allegedly untimely submission of the petition beyond the six-month deadline, based on the date on which the party whose rights were allegedly harmed was notified of the final decision, the petitioners made no direct reference to this. However, in its brief submitted to the IACHR on May 5, 2004, the petitioners indicated that "strangely the judicial file

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<sup>3</sup> The officer who ordered the isolation after his first suicide attempt, the officer who ordered that he be placed in the same cell after the second suicide attempt and the psychologist were removed from their positions. The officers who decided on the disciplinary measure of sending him to Hall No. 2 were suspended for 30 days.

indicates that Casa Alianza was notified by means of the judicial notice on the Notices Board the same day as the decision was issued [March 11, 2002]. Since Casa Alianza was notified in this way, the petitioners did not receive notice of the decision until the State of Nicaragua reported it in its communication dated February 26, 2004." In their final brief to the Commission, dated May 18, 2006, the petitioners indicated the following with respect to the decision of March 11, 2002 and its notification, "the decision was handed down on March 11, 2002. On that same date, only one of the parties to the proceeding was notified. Six months later the decision was entered in the copy book (October 1, 2002) and eight days later the other party to the proceeding [Office of the Attorney General] was notified."

26. Based on the above considerations, the petitioners ask that the Commission declare this petition admissible with respect to alleged violations of Articles 1(1), 4, 5, 7, 8, 19, 25, and 26 of the American Convention, to the detriment of Wilmer Antonio González Rojas.

#### **B. The State**

27. In successive briefs submitted to the IACHR during the processing of this petition, the State asked that the petition be declared inadmissible in accordance with the provisions of Articles 46(1)(a), 46(1)(b), 46(1)(c), 47(a), and 47(d) of the American Convention.

28. In its first response to the petition, received by the IACHR on June 11, 2003, the State alleged that the case of the child Wilmer Antonio González Rojas was previously the subject of a hearing in 2001 by the Working Group on Situations of the United Nations Commission on Human Rights, as part of a procedure provided under Resolution 1503 and in accordance with Resolution 2000/3 of the Economic and Social Council. The State alleged that, after examining the report submitted by the State of Nicaragua, the Working Group decided to conclude its review of the matter. The State indicated that the facts on the basis of which the petition was submitted to the Inter-American Commission are the same facts that led to the communication submitted to United Nations Commission on Human Rights by the World Organization against Torture. As a result, in the judgment of the State, declaring the instant case to be admissible would violate the *non bis in idem* principle. The State alleged that, although the two international petitions were submitted by two different organizations, this is not an obstacle to declaring the case inadmissible, since States may not be subject to multiple procedures bearing on the same facts, even when the petitioners are different. This objection was repeated by the State in all its later briefs, as well as during the admissibility hearings conducted on October 22, 2004 and March 3, 2006.

29. In its second brief, submitted to the IACHR on February 26, 2004, in addition to the duplication of international proceedings, the State argued that domestic remedies had not been exhausted. In this respect, the State alleged that the judicial proceeding regarding the facts began through a complaint filed by an official of Casa Alianza who later became a complainant representing the parents of the alleged victim. The State alleges that the criminal proceeding was handled in accordance with the applicable rules of the Code of Criminal Procedure. The judicial investigation's conclusion was based on the forensic report that there was no "external criminal involvement" and that the case consisted of a suicide. For that reason, the court issued its decision on March 11, 2002, which consisted of a final ruling in favor of the accused officers dismissing the case.

30. Regarding the failure to exhaust [domestic remedies], the State specifically emphasized that Casa Alianza, "a petitioning party before the IACHR, did not make use of the ordinary remedies established by law, and that in the Nicaraguan case, based on legal procedure, the petitioner could have used the Remedy of Appeal, a remedy established by legislation so that parties may have access to challenge a decision when they disagree with the result contained therein. Not having used this remedy is evidence of their satisfaction with the decision issued by the

First Instance Judge.” This objection was reiterated by the State in all its later briefs, as well as during the admissibility hearings held on October 22, 2004 and March 3, 2006.

31. Starting with the first hearing to address the admissibility of the petition, held on October 22, 2004 during the Commission’s 121<sup>st</sup> period of sessions, the State alleged that the petition was submitted after the period established by Article 46(1)(b) of the Convention had lapsed. According to the State, if the clock for the submission deadline runs from the time when the alleged facts occurred to the complaint submission date, nearly three years had elapsed, clearly beyond the deadline under the Convention. In addition, the State alleged that 8 months and 25 days would have elapsed between March 11, 2002, the date on which the allegedly injured party was informed of the dismissal (of the same date), and December 5, 2002,<sup>4</sup> the date on which the petition was filed. Accordingly, the petition was not submitted on a timely basis in accordance with Article 46(1)(b) of the Convention.

32. The objection based on untimely submission of the petition was reiterated in the later briefs submitted by the State as well as at the hearing held on March 3, 2006 during the Commission’s 124<sup>th</sup> period of sessions. In this regard, the State also clarified the point that with respect to notification by means of the Notices Board, the Code of Civil Procedure<sup>5</sup> supplements the Code of Criminal Procedure. In this case, the court complied with the law, and in the hypothetical case where notification was not made correctly, the petitioners could have filed an appeal claiming procedural errors.<sup>6</sup> According to the State, notification by means of the Notices Board did not amount to a violation of the law and this was the only way to notify<sup>7</sup> because the legal representative of the alleged victim failed to comply with the obligation to indicate a domicile or address in the city or within the jurisdiction of the court, for the purposes of receiving notifications.

33. In conclusion, the State emphasized that the case in question was investigated and resolved by a competent authority in the decision dated March 11, 2002. Thus, with respect to the State’s responsibility to seriously investigate the alleged violations, the State heard the case and imposed the respective sanctions both administratively and judicially. Regarding the State’s responsibility to reasonably prevent, the State concluded that the instant case was an isolated case, far from being general prison practice in Nicaragua.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

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

34. The petitioners are authorized by Article 44 of the American Convention to lodge complaints with the Commission. The complaint points to a child as the alleged victim, whose rights as embodied in the Convention the State of Nicaragua undertook to respect and guarantee.

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<sup>4</sup> The petition was received by the Executive Secretariat of the Commission on December 10, 2002.

<sup>5</sup> Art. 110 of the Code of Civil Procedure: “All parties to a case shall be notified of all orders, rulings and decisions on the date they are issued or published, and if this is not possible, on the following day (...).”

<sup>6</sup> Art. 125 of the Code of Civil Procedure: “Although there may have been no verification of notification or notification may have been effected in some way other than the legally prescribed form, notification of a decree, order, or resolution shall be considered to have been made as soon as the party affected by it takes any step in the case that presupposes knowledge of that resolution, without having complained previously of the lack of or nullity of notification; however, the person required to make notification shall not for that reason be relieved of the fine (...).”

<sup>7</sup> Art 121 of the Code of Civil Procedure “a resolution shall be considered to have been the subject of notification solely upon the passage of twenty-four hours since its issue:

1. With respect to the party who in its first brief failed to designate an address for notification purposes; (...).”

As regards the State, the Commission notes that Nicaragua is a State Party to the American Convention, having ratified it on September 25, 1979. Therefore, the Commission is competent *ratione personae* to review the petition.

35. The Commission is competent *ratione materiae* because the petitioners allege violations of rights protected by the American Convention that, should they be proven, would constitute violations of Articles 1(1), 4, 5, 7, 8, 19, 25, and 26 of the Convention. Specifically, the petitioners allege that the conditions of detention to which the child Wilmer Antonio González Rojas was exposed and the lack of care and prevention on the part of prison officials led to his suicide, compromising the State's international responsibility.

36. The Commission is competent *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was already in effect for the State on the date when the events alleged in the petition took place.

37. The Commission is competent *ratione loci* because the alleged violations of rights occurred within the territory of a State Party to the American Convention.

## **B. Other admissibility requirements**

### **1. Preliminary considerations**

38. Preliminarily, the Commission must establish the framework of this petition in terms of the nature of the facts alleged by the petitioners and not disputed by the State, in order to establish some criteria on the basis of which it will proceed to examine the admissibility of the complaint, all without prejudging the merits of the case.

39. First, the Commission reiterates what was stated earlier (*supra*, para. 1) to the effect that the alleged victim in the petition under review was a child. According to the report from the Inspector General of the National Penitentiary System, Julio Orozco Rivas, the alleged victim was born on March 4, de 1983; therefore he had just reached the age of 15 at the time of his arrest on April 15, 1998.<sup>8</sup> At the age of 15, according to the information and documentation provided by the parties, the child Wilmer Antonio González Rojas was subjected to provisional detention at the La Modelo Penitentiary Center in Tipitapa, a prison for adults, having initially been detained in a special hall of that prison for children in conflict with the law. Also at the age of 15, the alleged victim was condemned on August 13, 1998 to three years in prison for stealing a watch under the criminal definition of "robbery with violence." With the entry into effect of the Code on Children and Adolescents on November 27, 1998,<sup>9</sup> his sentence was reviewed and his term reduced to 18 months in prison.

40. According to the same report from the Inspector General of the National Penitentiary System, as of August 24, 1998, when the child Wilmer was admonished for not having bathed and for wearing a dirty uniform, and particularly as of January 29, 1999, the alleged victim, who was still 15 years of age, began to have repeated disciplinary problems. On January 29, 1999, after a fight with another inmate, Asst. Commander Molina, at the suggestion of Lt. Venancio Alaniz and Sub-Lt. Roque Montoya (Contingent Chief), punished him with 15 days in lock-up.

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<sup>8</sup> See Ministry of the Interior, General Directorate of the National Penitentiary System. *Report of the Inspector General. Julio Orozco Rivas of August 27, 1999*, General Data on Inmate – Annex 2 to the State's Response dated June 11, 2003.

<sup>9</sup> According to Article 234 of the Code, "this Code shall enter into effect one hundred eighty days after its publication in the Official Journal, *La Gaceta*. It was published in *La Gaceta* on May 27, 1998.

41. After successive incidents of misbehavior by the alleged victim occurring on April 21, 1999, May 21, 1999, and May 28, 1999, Lt. Francisco López Paz and Sub-Lieut. Roque Montoya drew up an operations report suggesting punishment of six months “under security” (in confinement) for the child, then aged 16. On June 9, 1999, the child entered the security system pursuant to a decision made by Capt. Clara Marcia Páez and Lt. Evenor Centeno and was transferred from Hall No. 7 (for children in conflict with the law) to Hall No. 2, First Floor, Cell No. 3, under the security system.

42. According to the report from the Inspector General of the National Penitentiary System, that security system meant “lock-up” (confinement) for six months. After nearly two months and eight days “in lock-up,” the child chose to kill himself on the afternoon of August 17, 1999 due to the pressure caused by the prolonged confinement. This was his third suicide attempt, after two previous attempts, one earlier that same day during the morning of August 17, 1999, and another on August 7, 1999.

43. In addition, that report established that Mrs. Gerónima Marlene and Mrs. María Elena González Duarte, Wilmer’s mother and aunt, filed a complaint regarding the physical mistreatment given to her son (and nephew) on May 28, 1999 by Sub-Lt. Roque Montoya Jiménez. The report concluded that “in effect force was used on May 28, 1999, when [...] Sub-Lt. Roque Montoya along with officers José Mora Espinoza and José Gómez Guevara picked him up by his upper and lower limbs and put him in the Hall; on that occasion the inmate sustained an injury to the lower part of his mouth from a knife that he was carrying in his mouth [...]”

44. In addition, according to the inquiry detailed in that report, “in previous months the inmate Wilmer González was beaten by Sub-Lt. Roque Montoya at the curfew hour [...], when Sub-Lt. Roque Montoya managed to catch him he kicked him a few times and then locked him up in his cell. We were also able to confirm that the inmate was severely beaten on June 9, 1999 by lower ranking troops in the visiting room when he resisted being transferred [...]” Finally, the Report from the Inspector General of the Prison System also indicated that after “the suicide attempt he tried to carry out on [August 7, 1999], instead of being given medical and psychological treatment [the child Wilmer] was sent to sleep in Hall 10 [isolation cell] without clothes by Senior Guard Officer Lieut. Francisco López Paz [and returned to Hall No. 2 on August 9, 1999].”

45. In view of the preliminary considerations indicated above, the Commission proceeds to consider each of the admissibility requirements, also taking into account each of the objections filed by the State (*supra*, paras. 28-32) and the observations presented by the petitioners in this regard (*supra*, paras. 22-25).

## **2. Exhaustion of domestic resources**

46. Article 46(1)(a) of the American Convention stipulates that the admissibility of a case is subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” This requirement ensures that the State has the opportunity to resolve disputes within its own legal framework. The prior exhaustion requirement applies when there are remedies available in the domestic system that are adequate and effective for remedying the alleged violation; otherwise, Article 46(2) specifies the exceptions under which the requirement does not apply.<sup>10</sup>

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<sup>10</sup> See IACHR, Admissibility report No. 55/06, Case 12.380, *Members of José Alvéar Restrepo Lawyers’ Collective v. Colombia*, July 20, 2006, para. 35.

47. The Commission emphasizes that invoking the exceptions to the rule of exhausting domestic remedies as provided in Article 46(2) of the Convention – as occurs in the instant case – is closely linked to a determination of possible violations of certain rights enshrined in the Convention such as the right to a fair trial and the right to judicial protection. Nonetheless, Article 46(2), given its nature and purpose, is a rule with autonomous content vis-à-vis the substantive rules of the American Convention. Consequently, the determination as to whether the exceptions to the rule of exhausting domestic remedies are applicable to the case in question should be made prior to and separate from the analysis of the merits of the case, in that it depends on a standard of assessment different from that used to determine a possible violation of Articles 8 and 25 of the Convention.<sup>11</sup>

48. Therefore, in the instant case the Commission will analyze – bearing in mind the relevant standard of assessment with respect to the admissibility of the petition – the effectiveness of the remedies that exist and were used in order to determine *prima facie* whether any of the exceptions provided in Article 46(2) of the Convention apply. It will do so without prejudice to a more exhaustive examination of the same domestic remedies in the report to be adopted by the Commission regarding the merits of the dispute, for the purpose of establishing whether there are violations of the American Convention, as this current assessment does not indicate any opinion regarding the decision that may be issued in future.

49. In this regard, the Commission notes that there is no dispute between the parties to this petition that the child Wilmer died, having committed suicide while in the custody of the State. Regarding the death of the alleged victim by suicide, the IACHR first notes that the jurisprudence of the European Court of Human Rights has established that “if the infringement of the right to life or physical integrity is not caused intentionally, the positive obligation to set up an “effective judicial system” does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims [omitted quotes]. However, the minimum requirement for such a system is that the persons responsible for the investigation must be independent from those implicated in the events. This means hierarchical or institutional independence and also practical independence [omitted quotes].”<sup>12</sup>

50. The Commission also emphasizes that in similar cases involving investigations into the suicides of persons deprived of liberty in the custody of the State, the same European Court of Human Rights has also indicated that “it is incumbent on the State to account for any injuries suffered in custody, which obligation is particularly stringent when an individual dies.”<sup>13</sup> Along the same lines, the Inter-American Court has repeatedly stated that in cases of persons deprived of liberty the “duty [of the State to adopt security measures to protect persons subject to its jurisdiction] becomes more evident in the case of people confined in a detention center, in which case the State is the guarantor of the people under its custody.”<sup>14</sup>

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<sup>11</sup> See IACHR, Admissibility report No. 83/06, Petition 641-03, *Manoel Luiz da Silva v. Brazil*, October 21, 2006, para. 26.

<sup>12</sup> ECHR, *Sergey Shevchenko v. Ukraine* (No. 32478/02). Judgment of July 4, 2006, para. 64 (This case does not refer to someone deprived of freedom in the custody of the State).

<sup>13</sup> ECHR, *Trubnikov v. Russia* (No. 49790/99). Judgment of July 5, 2005, para. 68; and ECHR, *Keenan v. United Kingdom* (No. 27229/95). Judgment of April 3, 2001, para. 91.

<sup>14</sup> I/A Court HR. *Case of persons deprived of liberty at the “Dr. Sebastião Martins Silveira” Penitentiary in Araraquara, São Paulo*. Provisional Measures with Respect to Brazil. Order of September 30, 2006, Whereas Clause 11; I/A Court H.R.. *Case of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison)*. Provisional Measures with Respect to Venezuela, Order of May 30, 2006, Whereas Clause 9; I/A Court H.R. *Case of Monagas Judicial Confinement Center (“La Pica”)*. Provisional Measure with Respect to Venezuela, Order of February 9, 2006, Whereas Clause 11; I/A Court H.R. *Case of Children and Adolescents Deprived of Liberty at the FEBEM “Tatuapé Complex”*. Provisional Measures with Respect to Brazil. Order of July 4, 2006, Whereas Clause 8; I/A Court H.R. *Case of the Mendoza Prisons*. Provisional Measures with

51. The European Court has also found that a procedural obligation arises “to investigate the circumstances of [the death of a person deprived of liberty who] was a prisoner under the care and responsibility of the authorities when he died as a result of what appeared to be a suicide. The investigation [is] necessary to establish, firstly, the cause of death to the exclusion of an accident or manslaughter and, secondly, once suicide [is] established, to examine whether the authorities were in any way responsible for a failure to prevent it.”<sup>15</sup>

52. In effect, in cases of suicide while in custody, the European Court has indicated that the obligation to effectively investigate “is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased’s family or others have lodged a formal complaint about the killing with the competent investigation authority. The mere fact that the authorities were informed of the killing of an individual gives rise *ipso facto* to an obligation [...] to carry out an effective investigation into the circumstances surrounding the death.”<sup>16</sup> Finally, the European Court has added that “the nature and degree of scrutiny which satisfies the minimum threshold of an investigation’s effectiveness depends on the circumstances of each particular case.”<sup>17</sup>

53. Based on the above considerations and the particular circumstances of the petition under review, the Commission proceeds to analyze whether the petition satisfies the requirements of Article 46.1.a of the American Convention, or alternatively, if one of the exceptions under Article 46.2 of the Convention applies.

54. First, the Commission notes that the State informed the Commission that immediately after the suicide of Wilmer Antonio González Rojas, the Director of the Tipitapa Penitentiary Center conducted an investigation. The results of that investigation were sent to the Director General of the National Penitentiary System on the following day, August 18, 1999.<sup>18</sup>

55. In addition, on August 23, 1999, the Director General of the National Penitentiary System, Yudat William Frech Frech, instructed the Inspector General of the National Penitentiary System, Julio Orozco Rivas, to immediately conduct an investigation into the conduct of the officers responsible for the care and custody of the child Wilmer Antonio González Rojas. The report from the Inspector General was sent to the General Director of the National Penitentiary System on August 27, 1999. It concluded that the alleged victim “committed suicide as a result of the psychological effects on his personality of being locked up in prison. [...] that there was physical mistreatment by the officers at the Tipitapa Penitentiary Center in the months prior to his suicide, and he was not given the psychological and prison treatment needed to prevent this tragedy.”<sup>19</sup> The above-indicated disciplinary measures were imposed on the basis of these conclusions.<sup>20</sup>

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Respect to Argentina, Order of November 22, 2004, Whereas Clause 6; I/A Court H.R. *Case of Urso Branco Prison*, Provisional Measures with Respect to Brazil. Order of September 21, 2005, Whereas Clause 6.

<sup>15</sup> ECHR, *Trubnikov v. Russia* (No. 49790/99). Judgment of July 5, 2005, para. 89.

<sup>16</sup> ECHR, *Uçar v. Turkey* (No. 52392/99). Judgment of April 11, 2006, para. 90.

<sup>17</sup> ECHR, *Uçar v. Turkey* (No. 52392/99). Judgment of April 11, 2006, para. 90.

<sup>18</sup> See Ministry of the Interior, Tipitapa Penitentiary System. *Report from the Director of Tipitapa, Sub-Commandant Carlos Sobalvarro Ruiz, dated August 18, 1999* – Annex 2 to the State’s Response of June 11, 2003.

<sup>19</sup> Ministry of the Interior, General Directorate of the National Penitentiary System. *Report from the Inspector General, Julio Orozco Rivas, dated August 27, 1999*, Conclusions 1 and 2 – Annex 2 to the State’s Response of June 11, 2003.

<sup>20</sup> On September 2, 1999, Sub-Lieutenant (Psychologist) Luis Castillo López, Sub-Lieutenant Roque Montoya, and Lieutenant Francisco López Paz were permanently removed from their positions; strong administrative measures (restriction

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56. The Commission emphasizes that according to available documents those disciplinary administrative investigations were the only investigations officially carried out by State authorities. The IACHR notes the seriousness and diligence of the investigation conducted by the Inspector General of the National Penitentiary System in verifying conditions prior to the suicide of the child Wilmer Antonio González Rojas, including the conditions of his detention and treatment, making this, therefore, the only body that investigated the events and circumstances that surrounded the suicide of the alleged victim in the cells of the Tipitapa Detention Center.

57. Nevertheless, the procedure carried out administratively sought to determine the individual responsibility of the public officials in the performance of their duties. The sanctions were imposed due to “negligence in their duties through a failure to provide care” to the child Wilmer and other less serious conduct.<sup>21</sup> In this regard, the Commission reiterates that this petition involves a child deprived of liberty in a prison for adults, who had purportedly been submitted to six months of disciplinary punishment “under lock and key,” who was allegedly beaten and subjected to physical mistreatment by agents of the State, and who supposedly committed suicide due to a lack of prevention and adequate psychological treatment despite two previous suicide attempts, as concluded in the administrative investigation itself.

58. Consequently, faced with facts of the type described above, facts that were also known to State authorities, and given the limitations characteristic of a disciplinary administrative proceeding – based on the type of errors investigated and the purpose of the agency charged with the investigation – the Commission believes that the administrative procedure officially carried out by the State does not constitute an effective remedy sufficient to determine that this petition is inadmissible.

59. On the contrary, the IACHR notes that the State should have provided adequate and effective remedies to investigate and redress the alleged violations, taking their seriousness into account. The Commission believes that the State’s failure to conduct, on its own initiative, a judicial investigation of the facts, despite having available to it the information and evidence appearing in the report from the Office of the Inspector General of the National Penitentiary System, shows that the State did not provide an adequate and effective remedy for investigating, judging, and punishing alleged violations of rights enshrined in the American Convention.

60. Faced with that omission on the part of the State, on August 24, 2000 the petitioners submitted a criminal complaint for “unintentional or negligent homicide” (*homicidio preterintencional*) against the Director of the National Penitentiary System, the Director of the La Modelo Penitentiary Center at Tipitapa, and other officials that a judicial investigation would indicate as involved by action or omission in these events, requesting various types of evidence.<sup>22</sup> According to the petitioners, in subsequent months they submitted documents and sought the processing of evidence.<sup>23</sup> Nonetheless, the State still did not investigate the events surrounding the

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to the unit for 30 days) were imposed on Captain Clara Marcia Páez Sánchez, Lieutenant Evenor Centeno Aguilar, Sub-Lieutenant Ramón Ortiz Sánchez, First Lieutenant Santos Mercado Mendez, and Lieutenant Maximo Sánchez Rivera; and written admonishments were given to Sub-Commandant Carlos Solbavarro Ruiz and Captain Modesto Rodríguez Téllez (See Annexes 4 and 5 of the State’s Response of June 11, 2003).

<sup>21</sup> See Annex 4 of the State’s Response of June 11, 2003.

<sup>22</sup> Complaint of Casa Alianza (Evelyn Palma Arróliga, Esq., coordinator of the Office of Legal Assistance of Casa Alianza Nicaragua) dated August 24, 2000 – Annexes to the petition of December 10, 2002.

<sup>23</sup> On the following dates: September 26, 2000; October 25, 2000; November 24, 2000; November 30, 2000; February 8, 2001; April 24, 2001; August 29, 2001; and November 1, 2001.

death of the child Wilmer Antonio González Rojas and did not respond to requests from the representatives of the alleged victim.

61. Given this new failure to act on the part of the State, the Commission notes that, according to the available record, the petitioners filed an expanded complaint on March 6, 2002 for the crime of abuse of authority, in that arbitrary and illegal measures constituting cruel and inhuman treatment were imposed on the alleged victim.<sup>24</sup> On March 11, 2002, the Judge ordered a final dismissal of the case against the defendants without investigating the facts and circumstances surrounding the suicide of the alleged victim, including the conditions of his detention and the treatment given to him. In conclusion, during that criminal proceeding, despite the petitioners' attempts to remedy the lack of a judicial investigation by the State regarding the alleged victim's conditions of detention and the alleged beatings and cruel and inhuman treatment, the State proceeded without providing an adequate and effective remedy for investigating, judging, and punishing alleged violations of human rights enshrined in the American Convention.

62. Therefore, given the characteristics of the instant case, the Commission believes – for admissibility purposes – that the exception provided in Article 46(2)(a) of the American Convention is applicable, so that the requirement with respect to exhausting domestic remedies is not applicable.

### **3. Deadline for submission**

63. Under Article 32(2) of the IACHR Rules of Procedure, in cases where exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be submitted within a reasonable period of time in the judgment of the Commission. Pursuant to this article, in its analysis the Commission "shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

64. The Commission notes that the petition being analyzed was submitted on December 10, 2002. Based on the facts and circumstances of this case, including the detention of the child Wilmer Antonio González Rojas on April 15, 1998, his death on August 17, 1999, as well as the attempts made by the petitioners in terms of domestic jurisdiction, the Commission concludes that this petition was submitted within a reasonable period of time. In contrary sense, the Commission observes that the petitioners' allegations regarding possible violations related to the criminal procedures conducted against the child Wilmer for stealing a watch are inadmissible due to failure to comply with the provision in article 46(1)(b) of the American Convention, since his defense counsel was notified of the final judgment on June 7, 1999, that is to say, more than three years before presenting the petition.

### **4. Duplication of international proceedings and res judicata**

65. As alleged by the State, the case of the child Wilmer Antonio González Rojas was previously the subject of a hearing by the Working Group on Situations of the United Nations Commission on Human Rights in 2001, as part of the procedure provided under Resolution 1503 and in accordance with Resolution 2000/3 of the Economic and Social Council. The State alleged that, after examining the report submitted by the State of Nicaragua, the Working Group decided to conclude its review of the matter. The State indicated that the facts on the basis of which the petition was submitted to the Inter-American Commission are the same facts that gave rise to the communication that the World Organization against Torture submitted to the United Nations

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<sup>24</sup> Expanded complaint of Casa Alianza (Evelyn Palma Arróliga, Esq., coordinator of the Office of Legal Assistance of Casa Alianza Nicaragua) dated March 6, 2002 – Annexes to the petition of December 10, 2002.

Commission on Human Rights. As a result, in the judgment of the State, declaring the instant case to be admissible would violate the *non bis in idem* principle. The State alleged that, although the two international petitions were submitted by two different organizations, this is not an obstacle to declaring the case inadmissible, since States may not be subject to multiple procedures bearing on the same facts, even when the petitioners are different.

66. The petitioners noted that Article 33 of the Commission's Rules of Procedures provides two exceptions: the first, if the proceeding conducted before the other organization is limited to a general examination of the human rights situation in the State and does not produce a decision on the specific facts or an effective settlement; and the second, if the petitioner before the Commission is the victim or a relative and the petitioner before the other organization is a third party with no mandate from the former.

67. The Commission believes that the nature of the two international organizations is different and thus there is no duplication. The 1503 Procedure of the United Nations is an extra-conventional mechanism which does not have the power to adjudicate specific cases and the individual communications procedure is not designed for resolving disputes. This confidential procedure, which is not adversarial in nature, is limited to asking the government involved for clarifications regarding complaints. In contrast, the procedure before the inter-American system for the protection of human rights is a conventional mechanism which is adversarial in nature, and the Inter-American Commission does have an adjudicatory role within that procedure. The procedure before the Inter-American Commission may conclude with a series of recommendations that States must comply with in good faith.<sup>25</sup>

68. The Commission thus concludes that the United Nations 1503 Procedure does not belong to the category of international bodies whose mandate may produce the duplication referred to in Articles 46(1)(c) y 47(d) of the American Convention.

## **5. Colorable claim**

69. For purposes of admissibility, the Commission must determine whether the facts reported in the petition tend to establish a violation of the rights guaranteed by the American Convention, as required by Article 47(b) thereof, or whether the petition should be rejected as manifestly groundless or obviously out of order pursuant to Article 47(c) thereof. The applicable criteria for evaluating these points are different from those needed to determine the merits of a petition. The Commission must make a *prima facie* assessment not to establish the existence of a violation of rights but rather to examine whether the petition presents facts that tend to establish a potential or apparent violation of a right guaranteed by the Convention. That examination is a succinct analysis that does not imply any prejudgment or advance opinion regarding the merits of the petition.

70. The Commission points out once again that this petition refers to a child deprived of liberty in a prison for adults, who purportedly was submitted to 6 months of confinement due to a disciplinary sanction, who allegedly was beaten and suffered mistreatment at the hands of State agents, who allegedly committed suicide due to lack of prevention and adequate psychological treatment despite two prior suicide attempts, supposedly without an effective judicial investigation by State authorities regarding the aforementioned facts.

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<sup>25</sup> See, *mutatis mutandi*, I/A Court H.R., *Baena Ricardo et al. v. Panama Case*. Preliminary Objections. Judgment of November 18, 1999. Series C, No. 61, paras. 53-58; IACHR, Admissibility Report No. 22/05, Case 12.270, *Johan Alexis Ortiz Hernández v. Venezuela*, February 25, 2005, paras. 38-44; IACHR, Admissibility Report No. 30/99, Case 11.206, *César Chaparro Nivia and Vladimir Hincapié Galeano v. Colombia*, March 11, 1999, paras. 25 and 26.

71. In view of the foregoing, the Commission finds that the allegations submitted by the petitioners are not “manifestly groundless” or “obviously out of order” and should they be proven true, could constitute violations of articles 4, 5, 7, 8, 19 and 25 in relation to article 1(1) of the American Convention. Therefore, without prejudging the merits of the case, the Commission feels that the requirements under Articles 47(b) and 47(c) of the American Convention have been met.

72. On the other hand, the Commission considers that the facts alleged by the petitioners do not present sufficient elements that tend to establish a violation of article 26 of the American Convention.

## **V. CONCLUSION**

73. The Commission concludes that it is competent to analyze the claim submitted by the petitioners, and that the instant case satisfies the admissibility requirements indicated in Articles 46 and 47 of the Convention.

74. Based on the *de facto* and *de jure* considerations established above, and without prejudging the merits of the question

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To declare the instant case admissible with respect to the alleged violation of the rights enshrined in Articles 4, 5, 7, 8, 19 and 25 of the American Convention as they relate to the obligations under Article 1(1) of the Convention.

2. To inform the parties of this decision.

3. To initiate processing on the merits of the case.

4. To publish this decision and include it in its annual report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 24<sup>th</sup> day of the month of July, 2007.  
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.