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REPORT No. 148/20
PETITION 1017-08
REPORT ON ADMISSIBILITY

PERSONS DEPRIVED OF LIBERTY AT THE POLINTER-NEVES
INCARCERATION FACILITY
BRAZIL

Approved electronically by the Commission on June 9, 2020.

Cite as: IACHR, Report No. 148/20, Petition 1017-08. Admissibility. Persons deprived of liberty at the Polinter-Neves incarceration facility. Brazil. June 9, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Núcleo de Defesa dos Direitos Humanos (NUDEH) [Human Rights Defense Center] from Defensoria Pública do Estado do Rio de Janeiro [State of Rio de Janeiro's Public Defender]
Alleged victim:	Persons deprived of liberty at the Polinter-Neves ¹ incarceration facility
Respondent State:	Brazil ²
Rights invoked:	Articles 4 (life), 5 (personal integrity), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ³ in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	August 29, 2008
Notification of the petition to the State:	March 11, 2014
State's first response:	June 11, 2014
Additional observations from the petitioner:	August 27, 2017
Notification of the possible archiving of the petition:	April 18, 2018
Petitioner's response to the notification regarding the possible archiving of the petition:	January 24, 2019
Precautionary measure granted:	July 31, 2013

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument adopted on September 25, 1992); Inter American Convention to Prevent and Sanction Torture (instrument adopted on July 20, 1989);

¹ Article 44 of the American Convention has no competence limitations in terms of the "total and full" identification of the people affected by the violation, but it also allows to examine such human rights violations that –due to their nature– may affect a person or a determined group of people who are not necessarily fully identified. At the present matter, although the petitioner party has individualized 593 alleged victims along the process, the Commission takes note of the difficulties arisen regarding the identification of all the alleged victims. In cases such as the current one, in which the alleged facts are linked to affecting a community who was under the State's watch, the criteria to identify the victims must be flexible.

² As set forth on article 17.2.a of the Rules of procedure of the Commission, IACHR member, Flavia Piovesan, a Brazilian national, did not participate on the discussions or decision on the present matter.

³ Hereinafter the "American Convention" or "the Convention".

⁴ The observations submitted by each party were duly transmitted to the opposing party.

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 4 (life), 5 (personal integrity), 8 (fair trial) and 25 (judicial protection) and 26 (Social, Economic and Cultural Rights) of the American Convention in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) and in relation to article 6 of the Inter American Convention to Prevent and Sanction Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, as set forth in section VI
Timeliness of the petition:	Yes, as set forth in section VI

V. ALLEGED FACTS

1. The Human Rights Defense Center of the Public Defense of the State of Rio de Janeiro (hereinafter “petitioner party”) affirms that the State of Brazil is liable for the human rights violation of the persons deprived from liberty at the Polinter-Neves Incarceration Facility since July 2008 until its closing in 2012 (hereinafter “the alleged victims”) for not having guaranteed acceptable conditions of detainment, which includes lack of proper feeding and drinking water. It claims that due to complaints filed and the verification on the existing condition of detention within the incarceration facility it got closed down in 2012 which is why an indemnity is requested for the people deprived of liberty who were at Polinter-Neves⁵ until the moment of its closing.

2. The petitioner affirms that the Prosecutor Center for Collective Protection of São Gonçalo started a civil investigation in 2001 to assess another incarceration facility, the 73rd Police Delegation (hereinafter “the 73rd PD”), occasion when it was confirmed that the unit had a 130-inmate capacity, yet held 346. As a result, in September 2001 the State of Rio de Janeiro and the Prosecutor Office celebrated a Conduct Adjustment Agreement to solve the overcrowding situation in the jails of such state. However, the Public Ministry further acknowledged that the 73rd PD held 450 inmates, which is why on October 28, 2003, the Judge of the Fourth Criminal Court of the São Gonçalo forbid admitting more inmates in such delegation. In November 2003, the Public Ministry filed a public civil action, for all convict at the 73^a PD be transferred to other facilities; the petitioner informs that most of such people were relocated at Polinter-Neves, which worsened the overcrowding at such prison.

3. According to the petitioner, on May 2, 2007 the Public Defender of the State of Rio de Janeiro visited the de Polinter-Neves grounds to assess the detainment conditions of the prisoners. It affirms such location presented overcrowding, since although it had a 250-inmate capacity, it had 564 inmates. The persons deprived of liberty for civil illegal acts dwelled in the aisles of the premises, and some cells were shared by both sentenced and merely prosecuted people.

4. The petitioner affirms that the detainment conditions at Polinter-Neves were precarious and lacking hygiene. Claims that all persons deprived of liberty had to satisfy their physiological needs in one single place in the center of the cells; that there were no beds for everyone, which is why some slept on the floor; that the inside of the building was too hot with no natural ventilation; that visits had no intimacy; that there were no medical, dental, psychiatric, psychological and/or social assistance services; that inmates with tuberculosis cohabited with the rest of the penal population, with no measure aiming to avoid infections; and that also, there was no drinking water. It informs that on a new inspection on Polinter-Neves on July 31, 2008 observations concluded that the imprisonment conditions remained the same, but that the number of inmates had increased to 588 and that they had reported being forced to pay in order to obtain drinking water.

⁵ The penitentiary system of Município de São Gonçalo, Rio de Janeiro, was comprised of different prisons, (among which was the 73rd PD prison) and the Polinter-Neves incarceration facility.

5. The petitioner adds that in 2007 and 2008 several inspection visits and some reforms on the building took place, but they produced no major change on the imprisonment conditions of people deprived of liberty at such facility. It claims that, in 2011, the United Nations Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or penalties, visited the Brazilian incarceration premises and that on their report Polinter-Neves was referred to as a location with high levels of overpopulation, lack of sanitizing, cleanliness, accommodation, food and drinking water. In light of the above, Polinter-Neves closed in 2012. However, the petitioner indicates that the closure changed neither the conditions nor the violations the inmates were subjected to in other detainment centers, which is why they request the IACHR that the people deprived of liberty be repaired for the constraints described in the petition until the closure and relocation to other establishments, as well as for other infringements to their rights.

6. In return, the State affirms that the public civil action filed in 2003 regarding 73rd PD adhered to the due legal process and reasonable timeframe, since a satisfactory liminal decision was dictated four days after the beginning of the action, which determined the closure of the 73rd PD, and that this decision was maintained by the First Instance Judge and by the Justice Court of the State of Rio de Janeiro. In such sense, the State affirms that after the decision the establishment proceeded to close, which proves that Brazil fulfilled its duty to adopt domestic law dispositions; pointing out also that those detained were represented by the Public Defender's office of the State of Rio de Janeiro. It adds that the Polinter-Neves Incarceration Facility was closed in 2012, and that the responsibility over the prisoners was transferred over to the Penitentiary Administration and secretary of the state, based on the guidelines of the National Justice Council. According to the State, these facts prove its capability to solve inhouse the reported facts concerning detainment conditions at Polinter-Neves, and that only the allegation seeking reparation measures was pending. It even refers that the IACHR lifted the MC 236-08 precautionary measure related to this petition after concluding that the State adopted all dictated measures.⁶

7. The State affirms that while the matter of the public civil action of 2003 was to relocate all the inmates from the 73^a PD establishment, the present petition pertains the facts occurred later at Polinter-Neves. Regarding these facts, the State claims that domestic remedies were not exhausted. It also indicates that the proper and effective action to claim an indemnity for damages caused is the public civil action, and that it was not filed with indemnity purposes.

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

8. The petitioner affirms that has used all appropriate remedies to guarantee the right to life, integrity and health of the alleged victims, but that they were not effective; and that there is an unjustified tardiness in the decision on the claims for overcrowding in prisons. It claims to have turned to every administrative means (memorandums and disciplinary administrative processes) to safeguard the rights of the alleged victims but had no timely answers from the State. It affirms that the public civil action filed in 2003 refers to the 73rd PD, and that the people deprived of liberty from that facility were relocated in Polinter-Neves, which is why it would have the same matter as the one filed to the IACHR. It also states that the subject of the matter was not revised until November 2006, after the IACHR granted the MC 236-08 precautionary measure. It affirms that the intended indemnity is set forth on article 63 of the American Convention, and not a civil indemnity.

9. In return, the State affirms there was no exhaustion of all domestic remedies concerning conditions of imprisonment, particularly related to restrooms, temperature, ventilation, bedding, food and water supply at Polinter-Neves; and indicates that the public civil action could have been used as in the case of

⁶ In 2008, the petitioner party requested a precautionary measure (MC-236-08) in favor of the persons detained at the Polinter-Neves Incarceration Facility. According to such request, the life and integrity of the beneficiaries was at risk due to the lack of proper medical care, inmates with tuberculosis and other contagious diseases shared their cells with those who had no disease, there was overpopulation and imprisoned people had no access to sunlight. On June 1st 2009, the IACHR dictated the measure requesting the State to adopt all necessary measures to protect the life, health and integrity of the beneficiaries; ensure proper medical attention to beneficiaries to avoid transmission of contagious diseases; will foster the decrease of overcrowding; and to inform the IACHR on the actions adopted to implement such measures. On April 23, 2012, the Polinter-Neves Incarceration Facility was closed, resulting in the issuance of MC-236-08 on July 31, 2013.

the 73rd PD. Likewise, the State claims there was no unjustified delay, because between the acknowledgement of the facts by the petitioner and the claim to the IACHR there were 1 year and 3 months.

10. As for the public civil action filed in 2003, the State affirms it is not related to the facts claimed before the IACHR, because it is centered in the transfer of the prisoners held in 73^a DP, whereas the present petition pleads responsibility of the State over the facts occurred later on at Polinter-Neves, a different incarceration facility. It argues that, should the Commission consider that such was the proper action, it should take into account that there was no unjustified delay, since a liminal decision was dictated four days after it was filed, which determined the transfer of the inmates; and that such decision was confirmed in both first and second instance. It also affirms that, although there was a pending interlocutory appeal filed in before the 2013 Higher Court of Justice, the case is complex, since it includes the Public Ministry and the State of Rio de Janeiro, and it is a very thick file. For this reason, it argues that the complexity criteria of the case, the conduct of petitioners and of judicial authorities must be considered. It lastly states that no remedy whatsoever was filed with indemnity purposes.

11. The IACHR considers that in relation to detainment conditions, the petitioner indicates that state authorities were informed via several communications to Brazilian judicial and government authorities through which they were reported and requested of information and actions regarding the lack of medical treatment, health, food, drinking water, and alleged violations to personal integrity of the inmates at Polinter-Neves. Likewise, notes that on May 2nd 2007 the Public Defender of the State of Rio de Janeiro visited the premises and issued a report detailing the detainment conditions and that in 2011, the United Nations Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or penalties, visited Polinter-Neves facilities and their report also referred to the conditions of the prison. The State has not challenged these affirmations. However, authorities neither addressed nor solved the situation, but until 2012, date of closure of the location precisely due to its conditions. Under these circumstances, the IACHR insists on its jurisprudence in the sense that regarding claims for detainment conditions of people deprived of liberty, alerting authorities of these conditions qualifies as invoking remedies available as a practical matter, therefore, considers requirements set forth in article 46 of the American Convention as fulfilled, and that remedies have been exhausted.⁷

12. In regard to the claim that the alleged victims should have filed a remedy for a pecuniary indemnity, the IACHR has established that the requisite of having exhausted domestic remedies does not mean that the alleged victims have necessarily the obligation to exhaust all domestic remedies. Consequentially, if the alleged victim approached the matter through any of the appropriate alternatives, as in the case of this petition, and the State had the chance to solve the situation, the purpose of the norm is fulfilled. Additionally, in situations that include human rights violations, whether the alleged victims turned to civil jurisdiction or not in pursuit of a pecuniary indemnity is not determinant when analyzing the exhaustion of domestic remedies.⁸

13. As for the deadline for filing, the petition was filed on August 29, 2008, after having filed the claims before the State, and by the time it filed for precautionary measures before the IACHR, such measures were granted. Therefore, the IACHR concludes that this requisite is fulfilled.

VII. ANALYSIS OF COLORABLE CLAIM

14. The Commission considers that the present petition has assertions in regards to violation of the rights of people who were held prisoners at the Polinter-Neves Incarceration Facility between 2008 and 2013 due to the conditions of such jail, which had infringed their rights to personal integrity and life, since there was, among others, no access to available medical treatment, basic food and drinking water, and that they had been subjected to cruel, inhuman and degrading treatment. Likewise, it has claims for lack of investigation of the facts and reparation to the victims.

⁷ IACHR, Report No. 89/17, Petition 788-08. Admissibility. Curtis Armstrong A.K.A. Tyrone Traill. Jamaica. July 7, 2017, par. 10.

⁸ IACHR, Report No. 105/17, Petition 798-07. Admissibility. David Valderrama Opazo y otros. Chile. September 7, 2017, par. 11.

15. Regarding the closure of the facilities, and the State's request to declare the petition inadmissible on that account, the IACHR confirms that to this date has no information related to any reparation to the victims for the alleged violations. In any case, the Commission shall take that fact into consideration when deciding on the merits of this petition.⁹

16. As a result, considering all the elements of fact and law exposed by the parties, the Commission considers that the facts alleged by the petitioner are not baseless and require a thorough study on its matter, since the alleged facts, if proven true, may constitute violations of rights safeguarded on articles 4 (life), 5 (personal integrity), 8 (fair trial) and 25 (judicial protection), in relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the Convention. Likewise, the Commission shall analyze the bottom of the lack of food and drinking water. In such sense, it is also suitable to declare admissibility regarding alleged violation to article 26 (Social, Economic and Cultural Rights) of the American Convention and article 6 of the Inter American Convention to Prevent and Sanction Torture.

VIII. DECISION

1. To declare this petition admissible with respect to Articles 4 (life), 5 (personal integrity), 8 (fair trial) and 25 (judicial protection) and 26 (Social, Economic and Cultural Rights) of the American Convention on Human Rights in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) and in relation to article 6 of the Inter American Convention to Prevent and Sanction Torture.

2. To notify the parties of this decision; to continue to examine the on the merits of the matters; and 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 9th day of the month of June, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

⁹ IACHR, Report No. 48/05, Petition 12.194. Admissibility. Euclides Rafael Moreno Morean. Venezuela. October 12, 2005, par. 27.