

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF FEBRUARY 25, 2011**

**PROVISIONAL MEASURES REGARDING BRAZIL**

**MATTER OF THE SOCIO-EDUCATIONAL INTERNMENT FACILITY**

**HAVING SEEN:**

1. The brief of the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or "the Commission") of December 30, 2010 and the annexes thereto, by which it submitted to the Inter-American Court of Human Rights (hereinafter the "Inter-American Court," the "Court," or "the Tribunal") a request for provisional measures, according to Articles 63(2) of the American Convention on Human Rights (hereinafter the "American Convention" or "the Convention") and 27 of the Court's Rules of Procedure<sup>1</sup> (hereinafter "the Rules of Procedure"), in order for the Court to order the Federative Republic of Brazil (hereinafter "Brazil" or "the State") to adopt forthwith the measures necessary to protect the life and personal integrity of the children and adolescents deprived of liberty as well as other people in the *Unidade de Internação Socioeducativa* (hereinafter "UNIS" or "Socio-Educational Internment Facility"), located in the municipality of Cariacica, state of Espírito Santo, Brazil.

2. The note of January 3, 2011, wherein the Secretariat of the Court (hereinafter "the Secretariat"), following the instructions of the President of the Court (hereinafter "the President") requested the State to submit, by no later than January 14, 2011: i) the observations it deems pertinent regarding this request for provisional measures, and ii) any other documentation it deems pertinent in order for the Court to be able to consider the request made by the Inter-American Commission using all the necessary information.

3. The brief of January 4, 2011, wherein the Inter-American Commission forwarded the Portuguese version of the request for provisional measures and the note of January 6, 2011, by which the Secretariat transmitted this document to the State.

4. The brief of January 7, 2011, wherein Brazil confirmed receipt of the brief in Portuguese (*supra* Having Seen clause 4) and requested clarification about the period established for the submission of the its answer.

5. The note of January 11, 2011, wherein the Secretariat, following the instructions of the President of the Court, confirmed that, in view of the fact that the brief in Portuguese of the Commission was received by the State on January 6, 2011, as an exception, the period established for the State to submit its observations would expire on January 17, 2011.

6. The brief of January 17, 2011, wherein the State forwarded its observations, without annexes, at the request of the Inter-American Commission.

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<sup>1</sup> Rules of Procedure approved in its LXXXV Ordinary Period of Sessions, held from November 16 to 28, 2009.

7. The note of January 19, 2011, wherein the Secretariat, following the instructions of the President, requested that the State submit the annexes to its brief of January 17, 2011, and granted a term until February 1, 2011 for the Commission to forward the observations it considered relevant regarding the information presented by the State.

8. The brief and its annexes of January 24, 2011, wherein the Commission forwarded a copy of the complete case file of the processing of the precautionary measures.

9. The brief of February 1, 2011, wherein the Commission requested an extension of two days to present its observations.

10. The notes of February 2, 2011, wherein the Secretariat granted the extension requested by the Commission and reiterated to the State that it should submit the annexes to the brief of January 17, 2011.

11. The brief of February 3, 2011 and its annexes, by which the Commission submitted its observations to the information presented by Brazil, as well as additional information on the matter and the note of the Secretariat of February 7, 2011, wherein it transmitted this document to the State and requested the submission of the observations to be presented by no later than February 16, 2011.

12. The brief of February 16, 2011, wherein the State forwarded its observations to the additional information presented by the Commission.

13. The briefs of February 18 and 21, 2011 and the annexes thereto, wherein the State submitted the annexes to its briefs of January 17 and February 7, 2011, respectively, as well as additional documentation related to the Commission's request.

14. The alleged facts that form the basis of the request for provisional measures filed by the Inter-American Commission, namely:

a) the request for precautionary measures received by the Commission on July 15, 2009, which was registered as MC-224-09 and was presented by the *Centro de Defesa de Direitos Humanos da Serra do estado do Espírito Santo y Justicia Global* [Center for the Defense of Human Rights of Serra of the state of Espírito Santo and Global Justice], regarding the situation of grave and immediate risk to the life and integrity of the children and adolescents deprived of liberty of the Socio-Educational Internment Facility. On November 25, 2009, the Commission adopted certain precautionary measures, which did not produce the desired effect regarding protection, "given that after the adoption of said measures, several incidents of violence took place and complaints regarding inhumane conditions of confinement have been filed." Based on the foregoing and the request of the representatives of November 22, 2010, the Inter-American Commission decided to submit to the Court this request for provisional measures.

b) as background, the Commission presented information on events that took place in 2010, regarding precarious confinement conditions, riots, and rebellions; adolescent held in the court yard of the Facility in handcuffed and under supervision; lack of separation of inmates based on age, body build, and seriousness of the offence; complaints of assaults and torture to adolescents by the officers of UNIS and by other adolescents of the facility; plastic bullet shots, as well as verbal and physical assaults to adolescents during the searches, and accounts rendered as to the fact that units of the

*Grupo de Escolta Tática Prisional* [Tatica Prison Guard Group] would enter the UNIS at dawn, using pepper spray, and undressing the adolescents, pouring cold water on them, and beating them;

- c) that, in the last months of 2010, the following events took place:
- i) on November 12, 2010, a riot broke out in the "Despertar" units, and a homicide attempt took place during a fight between inmates of unit 2;
  - ii) on December 13, 2010, a riot broke out in which several inmates climbed to the roof of the Facility;
  - iii) On January 31, 2011, before an escape attempt, external security agents of UNIS entered the Facility and assaulted the adolescents; as a result, five of them were injured and were taken to the Department of Legal Medicine for a forensic examination. According to the explanation given by the responsible authorities of the Facility, there was an escape attempt and, therefore, external security agents had to enter Wing C, which provoked the confrontation with the adolescents. However, from the stories of the adolescents, it appears that the injuries they suffered were inflicted on their backs, thereby raising doubts as to the alleged confrontation.
  - iv) On February 1, 2011, an adolescent was injured by other inmates in Despertar Unit I; another riot broke out due to the lack of medical care to an adolescent to which a local representative of the "Pastoral del Menor" [Ministry of the Minor] was called to intervene.
  - v) During the visits made by the representatives in the months of November 2010 and February 2011, they verified the existence of "floating" adolescents. These are adolescents whose lives are threatened and therefore spend the whole day in the facility's court yard and are taken to their cell only at night, and
- d) that, despite the reforms made by the State at the Internment Facility, its infrastructure is still inadequate, in light of the existence of deteriorated structures, unhealthy, damp spaces, without natural air and light, with leaks and garbage accumulation. Moreover, some adolescents were subject to a harsh discipline regime, similar to the one of a maximum-security prison, with very little opportunity to be outdoors, with little to no activity.

15. The arguments of the Commission to base the request for provisional measures, in which it pointed out that:

- a) "there is sufficient evidence to consider that the State, through the authorities of the Socio-Educational Internment Facility, is not exercising an effective control over said premises," and therefore, "it is not capable of ensuring the life and physical integrity of the people confined there." To this end, "the management of the facility, on many occasions, has denied access to certain areas of the UNIS to petitioners and also to the Ministry of the Minor and also to a commission of judges of the National Council of Justice, under the argument that it could not guarantee the safety of the visitors";
- b) "the level of chaos and the frequency with which these type of violent events and escapes occurred in the UNIS are absolutely incompatible with

the minimum standards applicable at detention centers for children and adolescents”;

c) it should be assumed *prima facie* that children and adolescents deprived of liberty are at a high level of unprotection whenever the circumstances suggest that the State does not comply with the minimum standards of prevention and assurance according to the *corpus juris* in matters related to juvenile justice;

d) whenever the State faces children and adolescents deprived of liberty, the State must assume its special role as guarantor with the utmost care and responsibility, and it must take into account the best interest of the child;

e) in the context of these riots and rebellions, there are “specific conditions of imminent risk that cause irreparable damage to the life and physical integrity of the children and adolescents deprived of liberty” by other inmates “in view of the inability of the State to protect them.” Moreover, regarding the requirement of irreparable damage, the Commission considers that the Court should take into account the impact of the proceedings and the omissions of the State;

f) the existence of an imminent risk that may cause irreparable damage to children and adolescents at the hands of the security forces or the guards of the facility, who usually respond in a disproportionate and repressive manner when these disturbances occur. Thus, Brazil has not proven the effective adoption of the mechanisms necessary to prevent the occurrence of these violent acts at UNIS and, in view of the State’s inability to effectively prevent the occurrence of these violent acts, “its only response is the use of force,” which causes “a certain and serious risk, which could be avoided, of causing irreparable damage, to the [inmates] and to other people affected by these acts inside the facility”;

g) moreover, “these outbreaks of violence and chaos cause a situation of risk wherein grave situations of emergencies such as fires and other collective disasters might occur”;

h) the seriousness of the alleged facts, the imminent risk and the high probability that an irreparable damage might occur, confirm that the conditions of gravity and urgency required for the application of the standards of the Convention regarding provisional measures have been met. Furthermore, in light of “the confinement conditions at the UNIS, the lack of prevention, effective control, and classification of its population, the Commission considers that the conditions for the granting of the provisional measures have been fulfilled in this matter.” The foregoing is contrary to the international standards of juvenile justice according to the best interest of the child, and it is even more important when the violent facts at the facility are taken into account, and

i) much of the information provided by the State deals with the processing of the case before the Commission, that is to say, it has been already analyzed and considered to be insufficient to guarantee effective control at the UNIS and, hence, to guarantee to all inmates the right to life and personal integrity.

16. The request filed by the Inter-American Commission for the Court, based on the facts mentioned and according to Article 63(2) of the Convention and Article 27 of the Court's Rules of Procedure, to order Brazil to:

- a) implement security measures to protect the life and physical integrity of the people confined at the Internment Facility;
- b) provide the UNIS with sufficient and trained security personnel to prevent the occurrence of new violent acts;
- c) adopt adequate measures to separate children and adolescents according to their age, type of offense, personal background, and other standards focusing on the best interest of the child;
- d) present an updated list of the names, ages, legal situations, and units at which each one of the children and adolescents, inmates at UNIS, are located, and
- e) take the necessary actions to ensure that the confinement conditions are compatible with the minimum standards of hygiene and health.

17. The observations and information presented by the State regarding the measures adopted to protect the life and integrity of the adolescents, *inter alia*:

- a) regarding the lack of separation of adolescents according to their age, seriousness of the offense, body build, or level of risk, the State "acknowledged the difficulty in accommodating the adolescents according to strict standards and indicated that it is trying to accommodate the young people from 17 to 21 years old, in one part of the facility, and the inmates whose resocialization process is more complex, in another part of the center;
- b) regarding the alleged prolonged isolation of some inmates, "that model cannot and has not been applied. The adolescents placed in the Despertar Units I, II, and III, in no way remain isolated or deprived of contact with other inmates and family members or of their rights to participate in educational activities [or] other activities outside of their place of accommodation";
- c) "in a context in which several adolescents, many of whom have a background of violence and social vulnerability, are deprived of liberty, situations like fights, riots, and escape attempts are not only possible, but probable." Considering the abovementioned, the State intervenes by taking pedagogical preventive measures, and where necessary, restraint measures;
- d) regarding the use of weapons inside the facility, it informed that the officers of UNIS are not allowed to use lethal weapons and that their use is restricted to the police in the event of a grave disruption of the internal order. Moreover, it emphasized the existence of a specific group of officers who are trained to deal with situations of risk, in order to avoid the use of police force. Lastly, it informed on the preparation of a project addressed to regulate the control mechanism of situations of risk and serious crisis and the use of lethal and non-lethal weapons;
- e) regarding the investigation into the alleged acts of violence that took place inside the facility, Brazil informed that it is acting with due diligence, by establishing administrative procedures, initiated based on the complaint

filed by agents, former officers, adolescents and family members, as well as anonymous complaints. Moreover, it reported on the termination of the employment relationship of officers involved in violent incidents;

f) in 2010, the *Corregedoria do Instituto de Atendimento Socioeducativo do Espirito Santo* [Correction's Department of the Institute of Socio-educational Care of Espirito Santo] (hereinafter "the Correction's Department") investigated 46 cases, including two cases of assaults between adolescents, five cases of assault against inmates by agents, three incidents of fires, fights or sacking, 24 escapes, two escapes or escape attempts, two riots or rebellions. In 2010, 40 officers were separated from their positions at UNIS based on, *inter alia*, smuggling of illegal items, the provision of inside escape assistance, and assault of adolescents;

g) regarding the events of December 13, 2010, it sustained that three inmates came out from an air duct, broke the padlocks to free other adolescents, and threatened to initiate rebellion. The State acknowledged that, "due to the shortage of the officers on duty, it was not possible to design a safe restraint strategy." The situation was controlled by the intervention of the police, which resulted in a minor injury to one inmate. The corresponding administrative procedure to investigate the facts was initiated;

h) regarding the facts of January 31, 2011, the State clarified that the negotiation attempts of the State were unsuccessful and that the intervention [of the military police] to control the inmates was necessary; once the procedures were completed, the four injured minors were taken for a forensic examination. The corresponding administrative procedure to investigate the facts was initiated;

i) regarding the sick minor, regarding whom the inmates threatened to start a rebellion on February 1, 2011, if he did not receive medical care, the State informed that, after the intervention of the member of "Ministry of the Minor," medical care was provided to the inmate;

j) regarding the existence of "floating" adolescents, the State sustained that this situation has not been proven;

k) on February 9, 2011, once again, the Public Prosecutor's Office requested the inclusion of the UNIS in the Full Justice Project of the National Council of Justice, aimed at accompanying the cases in which there is a well-founded doubt about the reasonable duration of the proceeding and its effectiveness. The original "request" was proposed in 2001 and had not been decided until 2011;

l) in the months of December 2010 and February 2011, 19 inmates were transferred to the Unidad de Atención Socioeducativa [Socio-Educational Care Facility] of Linhares and six of them to the Vila Velha Facility;

m) regarding the access of the petitioners to the facility, it sustained that such access has never been denied, but that it has been granted upon a request and identification of the visitors prior to visitation, and

n) the Public Prosecutor's Office, the Judiciary, and the Secretary of Justice of the state of Espirito Santo have conducted meetings in order to deactivate wings A and B of the UNIS and reduce the number of inmates in

such facility. In August 2010, the State inaugurated other centers of socio-educational internment in the state of Espirito Santo, which would allow the deactivation of a part of UNIS and the assignment of another part for the protective measures. The State "expects" that such deactivation should occur before March 31, 2011.

**CONSIDERING THAT:**

1. Brazil has been a State Party to the American Convention on Human Rights since September 25, 1992, and pursuant to Article 62 thereof, it recognized the contentious jurisdiction of the Court on December 10, 1998.
2. Article 63(2) of the American Convention states that "in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court can adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission. Article 27 of the Court's Rules of Procedure regulates this provision.
3. This request for provisional measures does not stem from a case before the Court, but rather in the framework of the precautionary measures MC-224-09, pending before the Inter-American Commission since July 15, 2009.
4. In International Human Rights Law, provisional measures not only have a precautionary character, in the sense that they preserve a legally cognizable situation, but also a fundamentally protective one as they seek to safeguard human rights and avoid irreparable damage to persons. The measures are applied as long as the basic requirements of extreme gravity, urgency, and the need to prevent irreparable harm to persons are met. Thus, provisional measures are transformed in a true jurisdictional guarantee of a preventive nature.<sup>2</sup>
5. The *prima facie* standard for assessing a case and the application of presumptions in the face of needs for protection have led the President and the Court to order provisional measures on several occasions.<sup>3</sup> While in some instances of ordering provisional measures this Court has regarded it as essential to single out those persons who are in danger of suffering irreparable harm for the purposes of providing them with protection,<sup>4</sup> in other cases the Court has ordered protection for a plurality of persons that has not be previously named but which is in any case identifiable, discernible, and in a seriously dangerous situation by virtue of

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<sup>2</sup> Cf. *Case of the Newspaper "La Nación"*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering clause four; *Matter of Penitentiary Center of Aragua "Tocorón Prison"*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2010, Considering clause six, and *Matter of Alvarado Reyes et al.* Provisional Measures regarding México. Order of the Inter-American Court of Human Rights of November 26, 2010, Considering clause five.

<sup>3</sup> Cf. *inter alia*, *Matter of Monagas Judicial Confinement Center ("La Pica") regarding Venezuela*. Provisional Measures regarding Venezuela. Order of the President of the Inter-American Court of Human Rights of January 13, 2006, Considering clause sixteen; *Matter of Penitentiary Center of Aragua "Tocorón Prison," supra* note 2, Considering clause fourteen, and *Matter of Alvarado Reyes et al., supra* note 2, Considering clause twenty-seven.

<sup>4</sup> Cf. *Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic regarding Dominican Republic*. Order of the Inter-American Court of Human Rights of August 18, 2000, Considering clause eight; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison) regarding Venezuela*. Request for Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 2, 2007, Considering clause six, and *Matter of Penitentiary Center of Aragua "Tocorón Prison," supra* note 2, Considering clause thirteen.

belonging to a particular group or community,<sup>5</sup> such as inmates incarcerated in a correctional facility.<sup>6</sup> In the present matter, the Inter-American Commission requested that this Court order protection for all of the inmates and other persons present in the Socio-Educational Internment Facility of the municipality of Cariacica.

6. The Court finds it necessary to clarify that, in view of the precautionary character of provisional measures, it is possible to order them - even when a contentious case does not currently exist in the Inter-American system - in exceptional circumstances that, *prima facie*, may result in a serious and urgent harm to one's human rights. To that end, the Court shall undertake an assessment of the problem posed, the effectiveness of State actions in response to the situation described, and the degree of defenselessness in which the persons requesting such measures would find themselves were the measures not adopted. To achieve this objective, it is necessary that the Inter-American Commission present sufficient grounds addressing the aforementioned criteria and that the State not be able to clearly and effectively demonstrate the effectiveness of any measures it may have adopted domestically.<sup>7</sup>

7. Article 63(2) of the Convention requires the concurrence of three conditions in order for the Court to be able to order provisional measures: i) "extreme gravity"; ii) "urgency"; iii) and the need to "avoid irreparable harm to persons." These three conditions coexist and must be present in all instances in which the Court's intervention is sought.<sup>8</sup>

8. Regarding the issue of gravity, for the purposes of the adoption of provisional measures, the Convention requires that it be "extreme"; that is, that the seriousness must be at its most intense or highest level. The urgent nature implies that the risk or threat involved is imminent, which requires that the response to correct it be immediate. Finally, regarding damages, there must be a reasonable probability that such damages will materialize, and liability must not be limited to damage to repairable property or legal interests.<sup>9</sup>

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<sup>5</sup> Cf., *inter alia*, *Matter of the Peace Community of San José de Apartadó regarding Colombia*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of November 24, 2000, Considering clause seven; *Matter of The Communities of Jiguamiandó and Curbaradó regarding Colombia*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering clause six, and *Matter of Penitentiary Center of Aragua "Tocorón Prison," supra* note 2, Considering clause thirteen.

<sup>6</sup> Cf., *inter alia*, *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of June 18, 2002, Considering clause nine; *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center regarding Venezuela*, Request for Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering clause twenty-one, and *Matter of Penitentiary Center of Aragua "Tocorón Prison," supra* note 2, Considering clause thirteen.

<sup>7</sup> Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center regarding Venezuela*, *supra* note 6, Considering clause nine; *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering clause eight, and *Matter of Penitentiary Center of Aragua "Tocorón Prison," supra* note 2, Considering clause seven.

<sup>8</sup> Cf. *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering clause fourteen; *Matter of Penitentiary Center of Aragua "Tocorón Prison," supra* note 2, Considering clause eight, and *Matter of Alvarado Reyes et al, supra* note 2, Considering clause thirty-seven.

<sup>9</sup> Cf. *Matter of Monagas Judicial Confinement Center ("La Pica")*, *Matter of Yare I and Yare II Capital Region Penitentiary Center*, *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*, and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clause three; *Case of De La Cruz Flores V. Perú*. Monitoring of Compliance with Judgement and Request for Adoption of Provisional Measures. Order of the Inter-American Court of

9. Faced with this request for provisional measures, the Court must determine whether those requirements are met and consider only the procedural obligations of the State as part of the American Convention. To the contrary, as noted in the Court's jurisprudence, when dealing with a request for provisional measures, the Court cannot consider the merits or any argument that is not strictly related to the elements of extreme gravity, urgency, and need to avoid irreparable harm to persons. Such extraneous issues may only be brought before the Court in traditional contentious case proceedings.<sup>10</sup>

10. From the information furnished by the Commission, it is apparent that the events occurring in the Socio-Educational Internment Facility (*supra* Having Seen clause 14), demonstrate a *prima facie* situation of extreme gravity, urgency, and possibly irreparable harm to the rights to life and personal integrity of the inmates at this facility, as well as of the officials and others who may enter the facility. In particular, the extreme intensity of the situation of risk is derived from the information that has been provided that indicates several acts of violence, such as the riots and threats of riots, assaults against the interned adolescents, both prior to the precautionary measures determined by the Commission and during the months of February, April, May, August, October, November, December of 2010, and also during the months of January and February 2011 (*supra* Having Seen clause 14 and 17). Moreover, of the evidence provided to the Court by the parties, the Court notes reports drafted by State bodies during the 2010 year, specifically by the National Council of Justice, by the Public Prosecutor's Office of the state of Espirito Santo, and by the administration itself of the UNIS, those of which describe "the lack of administrative control in relation to the facility [as] fragrant [and that] the situation of a constant state of rebellion among the young people suggests inefficiency in the administration of the facility,"<sup>11</sup> and a large number of serious incidents that put at risk the lives and physical integrity of the prisoners.<sup>12</sup> Moreover, the mentioned reports also refer to the precarious conditions in which the children and adolescents are interned.<sup>13</sup>

11. In this regard, the Court notes the actions taken by the State to reform and build new establishments appropriate for the care of children and adolescents in conflict with the law and to initiate investigations on the reported incidents. However, the Commission noted that the efforts have not been sufficient because the problems have worsened and the reports of assaults have continued (*supra* Having Seen clause 14).

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Human Rights of September 1, 2010, Considering clause seventy-second, and *Matter of the Colombian Commission of jurists*. Request for Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of November 25, 2010, Considering clause six.

<sup>10</sup> Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, Considering clause six; *Matter of Gladys Lanza Ochoa*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of September 2, 2010, Considering clause seven, and *Matter of the Colombian Commission of jurists*, *supra* note 9, Considering clause seven.

<sup>11</sup> Report of the visit of the National Council of Justice to the Socio-Educational Internment Facility, May 25, 2010, page 14.

<sup>12</sup> Occurrences in the UNIS and forensic examination reports, Annex VI to the State's brief of February 7, 2011, filed on February 21, 2011

<sup>13</sup> Report of the visit of the Public Prosecutor's Office to the Socio-Educational Facilities of IASES, on August 9, 2010, annex IV to the brief of January 17, 2011, filed by the State on February 21, 2011, page 2, and Action OF investigation of irregularities in the Socio-Educational Internment Facility filed by the Public Prosecutor of the state of Espirito Santo on December 1, 2010, Annex VI of the brief of January 17, 2011, filed by the State on February 21, 2011, page 2.

12. Brazil affirmed that the problems related to the petitioners are and continue to be attended to by the State, and therefore, it requested that the present provisional measures be dismissed as unnecessary. Nevertheless, the Court notes that of the information provided both by the Commission and the State, the situation of extremely serious and urgent risk, and the irreparable nature of the possible damage related to the rights to life and personal integrity of the prisoners of the UNIS and of those present therein is evident.

13. Consequently, in light of the provisions of the American Convention, the Inter-American Court finds it necessary to protect these individuals by way of the State's immediate adoption of provisional measures, in order to prevent violence in the Socio-Educational Internment Facility, as well the harm to the physical, mental, and moral integrity of those children and adolescents deprived of liberty and all others who may be present inside the facility.

14. It is also appropriate to recall that Article 1(1) of the Convention establishes the general obligations of State Parties to respect the rights and freedoms enshrined in the Convention and to guarantee their free and full exercise to all persons subject to the State's jurisdiction. These obligations are imposed not only in relation to State power, but also with respect to third parties. This Court regards the State as occupying a special position as guarantor of the rights of the incarcerated due to its total control over them. Moreover, the Court has also indicated that, independent of the existence of provisional measures, the State is especially obligated to guarantee the rights of persons deprived of liberty.<sup>14</sup> This obligation takes on special circumstances in the case of minors of age, where the State's position as guarantor in respect of these rights, obligates it to prevent situations that might lead, by act or omission, to their harm.

15. Finally, the protection of the life of the child "requires the State to pay special attention to the conditions of a child's life while it is deprived of liberty, because this right has not extinguished or been restricted owing to detention or imprisonment."<sup>15</sup>

16. The State must take all relevant steps so that the provisional measures mandated in the present Order are planned and implemented together with the participation of the representatives of the beneficiaries, leading to their diligent and effective realization. The Court notes that the affirmative participation of the State and, particularly, the representatives is necessary.

17. Based on the foregoing, the Court considers it appropriate to accept the request for provisional measures until September 30, 2011, and to require the State to report to the Court on the implementation of these measures pursuant to operative paragraph three of this Order.

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<sup>14</sup> Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 6, Considering clause eleven; *Matter of Guerrero Larez*, *supra* note 7, Considering clause thirteen, and *Matter of Penitentiary Center of Aragua "Tocorón Prison"*, *supra* note 2, Considering clause twelve.

<sup>15</sup> Cf. *Case of Bulacio*. Judgment of September 18, 2003. Serie C No. 100, para. 126; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM. Provisional measures regarding Brazil*. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause ten, and *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of CASA. Provisional Measures regarding Brazil*. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering clause eight.

18. The adoption of these provisional measures does not prejudice the State's liability for the events reported.

**THEREFORE:**

**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in the exercise of the powers conferred by Article 63(2) of the American Convention on Human Rights and Articles 27 of the Court's Rules of Procedure,

**DECIDES TO:**

1. Require the State to adopt, immediately, all the necessary measures to effectively protect the life and personal integrity of the children and adolescents deprived of liberty in the Socio-Educational Internment Facility, as well as all other persons in the establishment. Specifically, the State must guarantee that the disciplinary regimen be established within the framework of international standards on the matter. These provisional measures will be in force until September 30, 2011.

2. Require that the State undertake all relevant steps to ensure that the measures of protection regarding the life and personal integrity mandated in the present Order are planned and implemented together with the participation of the representatives of the beneficiaries and, in general, that the State keep the parties informed as to the progress.

3. Require that the State report to the Inter-American Court of Human Rights on the provisional measures adopted in conformity with this decision every two months as of the provision of legal notice of this Order.

4. Request that the representatives of the beneficiaries of these provisional measures and the Inter-American Commission on Human Rights present their relevant observations within two and four weeks, respectively, as of the provision of legal notice of the State's briefs indicated in the prior operative paragraph.

5. Request that the Secretariat of the Court provide legal notice of this Order to the State, the Inter-American Commission, and the representatives of the beneficiaries.

Diego García-Sayán  
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary