

**ORDER OF THE PRESIDENT
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JULY 26, 2011**

**PROVISIONAL MEASURES REGARDING
THE FEDERATIVE REPUBLIC OF BRAZIL**

MATTER OF THE SOCIO-EDUCATIONAL INPATIENT UNIT

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") of February 25, 2011 in which it required that the Federative Republic of Brazil (hereinafter "the State" or "Brazil") immediately adopt such measures as were necessary to effectively protect the lives and right to humane treatment of all the children and adolescents serving a commitment in the *Unidade de Internação Socioeducativa*, as well as all others who may be present therein. In that Order, the Tribunal mandated that the State submit periodic reports on the implementation of provisional measures, and ordered that these measures remain in effect until September 30, 2011.
2. The briefs of May 13 & 31; June 8; and July 14 & 19, 2011, and attachments, whereby the State submitted two briefs on compliance with the present provisional measures along with other documents.
3. The brief of June 29, 2011 whereby the representatives of the beneficiaries (hereinafter "the representatives") submitted observations on the State's first brief, opined on Brazil's implementation of these measures, reported on the occurrence of new facts occurring to the detriment of the beneficiaries, and requested that the Tribunal maintain the present provisional measures in place.
4. The brief of July 22, 2011 whereby the Inter-American Commission on Human Rights submitted its observations on the State's first brief as well as on the representatives' comments on the same.

CONSIDERING:

1. Brazil has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 25, 1992, and in accordance with Article 62 of the Convention, it recognized the contentious jurisdiction of the Court on December 10, 1998.

2. Article 63(2) of the American Convention provides that "in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may, in matters not yet submitted before it, adopt such provisional measures as it deems pertinent upon the request of the Commission. This provision is itself governed by Article 27 of the Rules of Procedure of the Court.¹

3. Article 27 of the Rules of Procedure provides in relevant part that:

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention.

[...]

9. The Court, or its Presidency if the Court is not sitting, may convene the Commission, the beneficiaries of the measures or their representatives, and the State to a public or private hearing on provisional measures.

4. Owing to information on various acts of violence, such as riots (and threats of the same) and assaults on juveniles in that Unit, as well as the information contained in State reports composed during 2010 which described "the lack of administrative control in relation to the complex [as] flagrant [and] a constant state of rebellion amongst the young population,"² on February 25, 2011, the Court decided to adopt the present provisional measures "in order to avoid acts of violence in the Socio-Educational Inpatient Unit, as well as harm to the physical, mental, and moral integrity of the committed children as well as all others who may find themselves inside that establishment."³

a) Implementation of Provisional Measures

5. Regarding the implementation of provisional measures, the State reported that:

a) the federal and state authorities signed a "Pact for the Improvement of Socio-Educational Assistance in the State of Espírito Santo and Compliance with the Provisional Measures Issued by the Inter-American Court until September 30,

¹ Rules of Procedure approved by the Court during its LXXXV Regular Session held on November 16-28, 2009.

² *Matter of the Socio-Educational Inpatient Unit*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 25, 2011, Considering clause ten.

³ *Matter of the Socio-Educational Inpatient Unit*, *supra* note 2, Considering clause thirteen.

- 2011.” This agreement consists in “short, medium, and long-term actions [...] coordinated and implemented by various signatory entities in order to comply with the Order of the Court”;
- b) the Institute of Socio-Educational Assistance for the State of Espírito Santo (hereinafter also “the Institute of Socio-Educational Assistance,” “the Institute,” or “UNIS”) formulated a Plan of Action to implement the measures set forth in the aforementioned Pact. The Institute’s presidency also adopted a set of disciplinary rules and created a Disciplinary Assessment Commission for all its inpatient units;
 - c) the Institute of Socio-Educational Assistance began a process of “regionalization and reorganization [...] of socio-educational measures for its inmate population [...]; the broadening of city programs [to facilitate] conditional release and the provision of services to the community [...]; [and] the creation of management protocols”;
 - d) an Inpatient Unit was built in the Vitória metropolitan region, capital of the State of Espírito Santo, which is wholly operating and assisting juveniles from the UNIS;
 - e) on March 21 and 25, 2011, the National Justice Council inspected all of the Institute’s socio-educational inpatient units. The report on that inspection has not yet been released, but the Council in its preliminary conclusions recommended the immediate implementation of a system of information sharing between the Institute and the justice system. Consequently, the Institute made such a proposal and began to submit monthly reports to judicial organs regarding the assessment of the committed population and compliance with the inpatient measures;
 - f) the Attorney General was to begin a project on May 11, 2011 for conducting individual meetings with all UNIS inmates in order to create an individual record, provide information on their procedural situation, and adopt the relevant measures in cases of human rights violations;
 - g) the State conducted a selection process for hiring 441 employees who were to begin their work in June 2011. Also, between January and March 2011, 235 teachers and 24 managers were trained;
 - h) UNIS modules A and B were brought to a close on March 18, 2011 while modules Awaken I, II, and III “were restructured”;
 - i) “[p]resently UNIS has 84 juveniles who are completing a socio-educational inpatient commitment [as part of their] punishment[.] [Also,] State entities have agreed to reduce this number to 60 juveniles,” and
 - j) the Institute of Socio-Educational Assistance implemented a “Video and Monitoring Center to supervise day and night what occurs inside the [inpatient] units.” This system enables “calling management, technical, and security teams for effective control and prompt actions in extreme situations” within the UNIS.

6. Regarding the implementation of measures reported on by the state, the representatives of the beneficiaries observed, among other matters, that:

- a) "the juveniles continue to be subjected to torture and other forms of cruel, inhuman, and degrading treatment, [placing their] lives at risk and subjecting them to constant violations of their physical, mental, and moral integrity";
- b) on April 5, 2011, the UNIS contained 108 juveniles when its capacity was only 62; the cells have poor ventilation and are very dark; and "recent bloodstains" were observed on the walls being painted in Block C;
- c) in module Awaken I, the inmates reported that the "'restraint' agents threaten them, saying that they will beat them in the streets [and] that they would strike them with sticks and tubes" on one occasion;
- d) in module Awaken II, an inmate showed "marks from rubber bullets on his body and fragments from ordnance as a result of a riot occurring in November 2010. [A] juvenile reported that the restraint agents frequently offend [the inmates], [...] and discredit [...] their family members";
- e) in module Awaken III, an inmate showed " a deep laceration in his head and said that an agent from [the Espírito Santo Ministry of Justice] had struck him." Also, the juveniles denounced the common practices of "assaults, destruction of their belongings, and verbal threats" on the part of 'restraint' agents";
- f) regarding the implementation of actions referenced by the State in its brief, these actions have not been effective, "the climate of insecurity still reigns in the establishment[,] [and] the [inmates'] accounts of torture carried about by restraint agents continue";
- g) the proposal for the regionalization of socio-educational assistance does not constitute "an effective measure as the State argues" as "accounts of torture and assaults against juveniles are already documented" in other units, and
- h) hygienic conditions in the UNIS are "subhuman [...] and, from what was told, medical attention does not exist." Furthermore, the quality of alimentation is "dismal" with it being common to find insects or hair in their food. Also, the quality of the "'hygiene kit' [...] was a general complaint of all the inmates."

7. Regarding the implementation of provisional measures, the Commission, among other considerations, "[positively] assess[ed] the measures adopted by the State to try and reduce evident overcrowding in UNIS [but] opine[d] that the problem of an apparent lack of control and generalized violence [...] must be solved from a comprehensive perspective." Also, the Commission affirmed that the State has not submitted information regarding the recently-approved disciplinary regimen and that, on the contrary, "from the State's brief it is evident that any misconduct on the part of the inmates is punished by way of excessive use of force." Finally, it expressed its concern regarding persistent "complaints as to the lack of due medical attention."

b) *Situation of Risk in the Socio-Educational Inpatient Unit*

8. The State made reference to facts occurring prior to the adoption of provisional measures, such as the riot of February 4, 2011 as well as assaults on February 15 and 19, 2011. In that regard, the State, among other things, began investigatory procedures, undertook corresponding forensic examinations on those inmates involved, and sacked the officials responsible for the assaults. Additionally, Brazil reported on six acts of violence which occurred between March 10 and April 25, 2011, which has begun to investigate:

- a) On March 10, 2011, following a search of the module *Ressignificar*, the inmates began a riot which was later brought under control by the Unit's Intervention Group. The inmates involved were subjected to a forensic examination;
- b) On April 17, 2011, the inmates in the *Ressignificar* module rioted again, but it was again pacified after a conversation with the authorities of the Intervention Unit. The inmates handed over their homemade weapons and freed the hostages;
- c) On April 19, 2011, three inmates from module C assaulted another inmate with a broom; that inmate was examined forensically and was transferred to another inpatient unit;
- d) On April 22, 2011, the inmates in module Awaken II took an official hostage when they attempted to flee the Unit. The restraint team freed the official and recovered homemade weapons from the inmates. That same day, the inmates from module C fought amongst themselves and one juvenile was injured. In both cases, the inmates were subjected to a forensic examination;
- e) On April 23, 2011, five inmates ascended to the Unit's roof and threw rocks at the staff. Upon the arrival of the restraint team, three juveniles came down without any resistance but two others did not. They were later brought down by force. Once down from the roof, the officials attacked the juveniles, who were later subjected to a forensic examination. An internal investigation concluded with the firing of nine employees and the suspension of seven others; and
- f) On April 25, 2011, the inmates of modules C and *Ressignificar* rioted, damaging the structures and attacking officials of the Unit who attempted to restrain them.

9. Regarding the acts of violence which occurred in the UNIS after the adoption of provisional measures, the representatives reported the following, *inter alia*:

- a) On April 17, 2011, the juveniles in the *Ressignificar* module rebelled and destroyed the Unit;
- b) On April 21, 2011, around twenty juveniles rioted in the UNIS. The inmates ascended the roof of the Unit with sticks and concrete blocks. The riot was brought under control by the intervention team;

- c) On April 23, 2011, some juveniles threw stones at some officials, one of whom received a head wound. These officials reacted violently and assaulted the inmates. The agents also threatened to harm their families, and during the forensic examination, the inmates were forced to say that they had fallen from the roof of the Unit or that they had been beaten by other inmates; and
- d) On April 25, 2011, a riot occurred in the *Ressignificar* module during which two officials were wounded and two adolescents claimed to have been attacked by officials.

10. In relation to the situation of risk in the Socio-Educational Assistance Unit, the Commission indicated that:

- a) "the situation of gravity and urgency that gave rise to the adoption of provisional measures in this case has not been overcome. Although it is certain that the existence of provisional measures in this case has shown itself to be an effective mechanism in that the State has put forth certain measures tending to guarantee the security and rights of the juveniles in its custody, [...] the information submitted reveals that acts of violence continue to occur among the inmates, as well as between the inmates and security agents, including complaints of torture, poor treatment, and other deficiencies in juvenile inmates' conditions of detention";
- b) Brazil "has not presented information showing that [the officials' dismissal] is a constant practice in relation each of the attacks denounced by the juveniles. In particular, the Commission observe[d] with concern that [on one occasion] security agents had forced some juveniles to declare that they were struck by other juveniles, so as to limit the agents' liability," and
- c) Regarding the crimes allegedly committed by inmates, the State "provide[d] no information showing mechanisms or criteria for classification by age or seriousness, among others, in order to control and moderate such situations of violence."

11. The Commission also affirmed that "[t]aking into account the intense seriousness of the facts and the imminent risk that an irreparable harm to persons materialize, as well as deficiencies in the conditions of detention in the UNIS, the lack of prevention, effective control, and classification of its population, and the lack of judicial control, [...] the Court [should require] that the State immediately implement the measures necessary to comply with the terms [of its Order] and present updated information in that regard."

12. From the information provided by the parties, the Tribunal notes that ever since the adoption of the Order of February 25, 2011, instances of violence, harassment, and threats against the beneficiaries have been alleged. The State has

also reported that it has adopted various measures in compliance with the orders of the Tribunal. However, there is a discrepancy among the parties regarding the implementation and efficacy of the protective measures. For that reason, this Presidency deems it opportune to receive updated and detailed information, during a public hearing, on the status of implementation of provisional measures, as well as arguments from the State, the representatives, and the Inter-American Commission on the persistence of a situation of extreme gravity and urgency that prompted the adoption of these measures in favor of the beneficiaries, in order to assess the need for maintaining them in place.

13. This Presidency notes that the parties in their briefs have referred to the conditions of detention in the Unit of Socio-Educational Assistance, as well as those of other Units in the State of Espírito Santo. They also referred to the investigations conducted into acts of violence occurring in the UNIS (*supra* Considering 5-10). In that regard, this Presidency notes that the detailed analysis of the compatibility of these detention conditions with the American Convention, as well as the State's duty to investigate such facts, are not the focus of the present provisional measures, which were granted specifically in order "to avoid acts of violence in the Socio-Educational Inpatient Unit, as well as harm to the physical, mental, and moral integrity of the committed children and all others who may find themselves inside that establishment." (*supra* Considering 4). Finally, this Presidency recalls that the present measures were dictated in relation to events occurring inside the UNIS and not in other juvenile detention facilities, such that the information and the arguments of the parties shall be limited to that context.

THEREFORE:

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

In utilizing the powers conferred by Articles 63(2) of the American Convention on Human Rights, Articles 24(1) and 25(2) of the Statute of the Court, and Articles 4, 27, and 31(2) of the Rules of Procedure of the Tribunal,

DECIDES:

1. To convene the Federative Republic of Brazil, the representatives of the beneficiaries, and the Inter-American Commission on Human Rights to a public hearing to be held in the city of Bogota, Colombia on August 25, 2011 from 5:15 pm to 9:00 pm so that the Tribunal may receive arguments from the parties on the provisional measures ordered in this case.

2. To request the cooperation of the Republic of Colombia, pursuant to the provisions of Articles 26(1) and 26(3) of the Rules of Procedure, to hold this public hearing on provisional measures in that country, convened by way of the present Order, as well as to facilitate the entrance and exit from its territory of those persons who shall represent the Inter-American Commission, the State, and the beneficiaries during the hearing. For that purpose, the Secretariat is hereby ordered to serve notice of the present Order on the Republic of Colombia.

3. To order that the Secretariat serve notice of the present Order on the Federative Republic of Brazil, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries of the present measures.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary