

**Order of the
Inter-American Court of Human Rights
of May 02, 2008
Provisional Measures
with regard to Brazil
Matter of Urso Branco Prison**

HAVING SEEN:

1. The Orders issued by the Inter-American Court of Human Rights (hereinafter, "the Court", "the Inter-American Court" or "the Tribunal") on June 18, 2002; August 29, 2002; April 22, 2004; July 7, 2004 and September 21, 2005. In the latter, the Court held:

1. To require the State to:

(a) immediately adopt all such measures as are necessary to effectively protect the life and physical safety of all persons held in the Urso Branco Prison as well as of all persons entering it, including visitors and security personnel serving there;

(b) adjust the conditions in the prison to the applicable international human rights protection standards [...];

(c) submit to the Court an up-to-date list of all persons held under custody in the prison and to state precisely:

(1) the names of the persons released;

(2) the names of the persons entering the prison;

(3) the number and name of the inmates serving time;

(4) the number and names of the inmates detained without a conviction; and

(5) whether convicted inmates are kept apart from non-convicted ones in different sections;

(d) investigate the facts which gave rise to the adoption of these measures in order to identify those responsible and punish them as appropriate, including an investigation into the serious events which took place in the prison following the Court's Order of June 18, 2002; and

(e) submit to the Court, no later than on November 6, 2005, the 11th report on compliance with the measures mentioned in the above sections of this operative paragraph and in operative paragraphs N. 2 and 3, specifically regarding the measures adopted immediately to prevent deaths or acts which threaten the physical integrity of the persons held in the prison and of those who enter it for any reason.

2. Require the State to take any such steps as are appropriate so that the protection measures be planned and implemented with the participation of the beneficiaries thereof or their representatives so that such measures are carried out effectively and efficiently, and generally to keep them informed of the progress of their implementation.

2. The 11th to 18th reports and their appendixes, submitted between November 7, 2005 and January 7, 2008, and the other submissions made in response to the additional writings submitted by the representatives, through which the Federal

Republic of Brazil (hereinafter, "the State" or "Brazil") reported on the steps taken pursuant to the provisional measures ordered by the Court in this matter.

3. The submissions made between December 20, 2005 and April 15, 2008, through which the beneficiaries' representatives (hereinafter, "the Representatives") stated their comments on the State's reports and filed additional writings in which they addressed emergency situations in the prison, such as mutinies and dead inmates.

4. The submissions made between January 17, 2006 and November 12, 2007, through which the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") stated its comments on the information provided by the State and the representatives.

CONSIDERING:

1. That 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, under Article 62 thereof, it acknowledged the Court's contentious jurisdiction on December 10, 1998.

2. That 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 to it, adopt such provisional measures as it deems pertinent at the Commission's request.

3. In this regard, Article 25 of the Rules provides that:

1. At any stage of the proceeding involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order any provisional measures it considers appropriate, pursuant to Article 63(2) of the Convention.

2. With regard to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. That under the American Convention the Court may order a State to adopt provisional measures in the event of an extremely serious and urgent situation, which poses a risk of irreparable harm to persons. The Court's scope of jurisdiction in connection with provisional measures is not necessarily limited by the existence of a case being heard by the Inter-American Commission involving measures, inasmuch as, under certain circumstances, the Tribunal has recognized not only the preventive but also the protective nature of such measures,¹ nor is it limited by the type of rights

¹ Cf. *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 February 08, 2008, Considering clauses N. 7–9.

being threatened.² The Court's jurisdiction is however conditioned upon the existence of a serious and urgent situation posing a risk of irreparable harm to the rights of persons.

5. That, pursuant to its jurisdiction, within the framework of provisional measures the Court must only consider arguments dealing exclusively and directly with the extreme seriousness, urgency and need for preventing irreparable harm to persons.³ Thus, in order to decide whether or not to maintain the provisional measures in force, the Tribunal must analyze if the extremely serious and urgent situation giving rise to the measures adopted persists, or if new, equally serious and urgent circumstances warrant maintaining the measures. Any other issue may only be brought to the Court's attention under the procedure for contentious cases.

6. That in its Order of June 18, 2002, the Court held that "the facts stated by the Commission in its request for provisional measures, [...] evidence *prima facie*, an extremely serious and urgent situation affecting the inmates' rights to life and humane treatment", and thus ordered the immediate protection of the life and physical safety of the prisoners. The events which have taken place at the Urso Branco Prison since the last Order issued in this matter on September 21, 2005 warrant the examination of the current situation in the prison and the issuance of this Order.

7. That, with regard to the measures adopted to protect the life and physical safety of the beneficiaries, the State has reported a number of actions taken with a view towards increased security at the prison, such as hiring prison guards and reducing the number of inmates. The state also pointed out that those cells which had formerly been inter-connected have been repaired, which ended the serious problem of aggressions among prisoners. As regards the reports of torture and mistreatment allegedly committed by the prison guards, the State pointed out that the management of the Urso Branco Prison has a policy to suppress all violence in the prison, consisting of providing continuous training to prison guards and limiting sanctions to the inmates, when necessary, only to the prohibition to receive visits.

8. That the representatives stated that, until 2006, the Urso Branco Prison had been beyond the control of the State authorities. At the time, prisoners were under no surveillance; prison guards would not enter a number of cellblocks; there were tunnels and connections linking the cells, allowing the leaders of groups of inmates to circulate freely around the prison. These leaders, who were in control of various cellblocks, would order the execution of other prisoners considered to be rivals and jeopardized the physical integrity and the life of other inmates. According to the representatives, in late 2006 the State would have switched from its policy of neglecting the prisoners to a new repressive stance using torture to gain control of the prison. In approximately six months, four managers were removed from office amidst accusations of committing or

² Cf. *Matter of Luisiana Rios et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of September 12, 2005, operative paragraphs N. 1 and 2.

³ 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 N. 6; *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 1, Considering clause N. 10; and *Matter of "Globovisión" Television Station*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 21, 2007, Considering clause N. 14.

tolerating acts of torture upon prisoners. Additionally, a number of mutinies led to the death of several inmates, although the exact number of casualties is unknown because the State has not furnished official information in that regard. In view of the threat to the life of the beneficiaries, the representatives informed that they requested the Federal Government to take action on the prison system of the state of Rondônia.

9. That the Commission valued the measures adopted by the State, but it pointed out that the action taken so far has not been enough to guarantee the life and physical safety of the inmates.

10. That since the issuance of the last Order of the Court in this matter on September 21, 2005, seven mutinies have taken place at the Urso Branco Prison and, according to the information on the case file, between eight and twenty people would have been murdered. According to the information submitted by the representatives, in as little as six months two major mutinies took place, one in July and the other in December 2007, in which three prisoners were murdered and an uncertain number of inmates, possibly more than fifty, could have been injured. Notwithstanding the fact that there is no conclusive official information about the total number of persons murdered and injured at the prison since the adoption of these measures, the Court deems such events are inconceivable within the framework of the protection owed by the State to the persons under its jurisdiction, and run counter to the provisional measures ordered issued by this Tribunal. In addition to such extremely serious events, which unfortunately have been commonplace in the prison, the representatives in their most recent writings have reported events of torture, which they would have been able to verify by seeing the marks in the prisoners' bodies while interviewing them. The Tribunal deems that the mutinies and deaths under custody evidence the persistence of the extremely serious and urgent situation, and that the recent reports of torture against state agents worsen the imminent risk posed to the life and physical safety of the persons held in custody at Urso Branco.

11. The representatives' particularly serious report that in such mutinies state agents would allegedly have been involved in the aggressions against the prisoners, owing to which, following such mutinies the then managers of the Urso Branco Prison were removed from office and "prevented from entering the prison" as requested by the General Attorney's Office and ordered by the Judiciary. According to the information provided by the representatives, the Criminal Sentence Execution judge with jurisdiction over the Urso Branco Prison pointed out in its Order of July 25, 2007 that the mutiny of July 9, 2007 would have allegedly been controlled without any death; however, the following events would have taken place when the prisoners were taken to the yard for a cell inspection:

the General Manager and the Security Manager [of the] "Urso Branco" [prison] [...] were around the yard [...]. [W]hen the inmates were already completely under control [...], in the yard, naked, lying down or looking for a place [on the floor] to lie down, they were shot several times, with both anti-mutiny ammunition and lethal ammunition. [...] This fatal and brutal act of violence led to the death of an inmate who was lying on the yard floor and was shot, probably by the Security Manager [...]. The shots in the back and on the soles of the prisoners' feet [allegedly received by some prisoners on the same occasion] can only lead one to believe in and verify the hypothesis discussed above.

12. That it is worrisome that the imminent risk to the life and physical safety of the persons kept in custody could be posed by the state agents. In contrast with this, the State has failed to point out concrete measures in its writings which it would have adopted to put an end to the deaths and reported acts of torture, but it has confined itself to providing information on how it hired new prison guards and improved detention conditions.

13. That Brazil is the guarantor of, and is responsible for, the life and the physical safety of the inmates at the Urso Branco Prison, and is thus responsible for adopting all such measures as are necessary to protect them and it must refrain, under any circumstances, from acting in such a way that the life and physical safety of said persons is threatened in an unjustified manner.

14. That the Court observes that Brazil is a Federal State, and that the Urso Branco Prison is located in one of its federal units; this, however, does not excuse the State from fulfilling its protection obligations. The Tribunal deems that no substantial improvement has been evidenced regarding this issue in the six years during which these measures have been in force. The State must organize itself internally and adopt all such measures as are necessary, according to its political-administrative organization, to act upon these provisional measures. In that regard, the Court takes note of the request made by the representatives at the domestic level with regard to an intervention of the Federal Government into the prison system of the state of Rondônia.

15. That under the circumstances of this case, the measures adopted must include those aimed directly at protecting the rights to life and humane treatment of the beneficiaries, both among one another and with the state agents. Specifically, it is essential for the State to immediately take such action as is necessary to effectively suppress the risk of violent death and serious threat to physical integrity, preventing its agents to commit unjustified acts which threaten life and physical safety and forbidding torture at the prison under any circumstance. The following are essential measures to be implemented:

- a) to increase safety for prisoners;
- b) to confiscate the weapons kept by the inmates;
- c) to maintain State control of the prison with full regard for the human rights of the persons kept under custody.

16. That, for the foregoing reasons, this Tribunal considers that an extremely serious and urgent situation posing a risk of irreparable harm persists in the Urso Branco Prison, so it is appropriate to maintain in force the provisional measures under which the State is under a duty to protect the life and physical safety of all persons deprived of liberty at such prison and of all other persons in the prison.

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17. That in its last Orders the Court ordered the State to adopt the following measures in addition to protecting the prisoners' lives and physical safety: (a) adjust the conditions at the prison to the applicable international human rights protection standards; and (b) investigate the events which led to the adoption of provisional measures in order to identify those responsible and, if appropriate, impose the applicable sanctions (*supra* Having Seen clause N. 1).

18. That, with regard to the detention conditions prevailing at the Urso Branco Prison, the State has informed the Court on the separation between convicted and untried prisoners; the transfer of detainees to other detention centers and the reduction in overcrowding allegedly caused by the transfers, cutting the number of inmates down to 900; the improvement in such aspects as the supervision of the catering supplier, regular medical assistance, hygiene products received by the prisoners, the regularity of visits from relatives, the acquisition of better security equipment and fans, and free legal assistance. The representatives have pointed out that detention conditions continue to be inhumane; that prisoners sleep together on the cell floors and that the cells have no ventilation, which is particularly serious considering that the prison is located in an extremely warm and humid area; that the prison houses more than twice as many inmates as it was built to accommodate; that prisoners have no activities and are completely idle, and they are only allowed to go out in the sun once a week; that water supply is poor, so many suffer from dehydration, and it is of extremely bad quality, just as the food; that there is no permanent medical service, and that the overcrowding and the poor hygiene conditions favor the spread of infectious diseases. Finally, the Commission stated that the inmates continue to be subjected to inhumane and degrading detention conditions.

19. That the State has, with regard to all persons under its jurisdiction, the general duties to respect and guarantee the full enjoyment and exercise of rights, not only in connection with the power of the State but also in relation to acts of individual third parties. Special duties derive from these general obligations which are ascertainable on the basis of the particular protection needs of the subject of rights, whether on account of his personal situation or the specific circumstances pertinent to him,⁴ such as detention. The Court has pointed out that the State has a special position as guarantor of the persons kept under custody, on account of the particular control relationship between an inmate and the State. Under such circumstances, the State's general duty to respect and safeguard rights becomes particularly important as it binds the State,

⁴ Cf. I/A Court H.R. *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C N. 140, para. 111; I/A Court H.R. *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs Judgment of May 11, 2007. Series C N. 163, para. 67; and I/A Court H.R. *Case of Albán Cornejo et al. v. Ecuador* Merits, Reparations and Costs. Judgment of November 22, 2007. Series C N. 171, para. 120.

"in order to protect and ensure the right to life and the right to humane treatment [of persons deprived of their liberty], to provide those persons with the minimum conditions befitting their dignity as human beings, for as long as they are interned in a detention facility".⁵

20. That this Court observes that improving and correcting the situation of the Urso Branco Prison is a process which will require the State to adopt short, mid- and long-term measures to address the structural deficiencies affecting the persons kept under custody. The duty to adopt such measures derives from the general obligations to respect and guarantee rights, acquired by the State when it ratified the American Convention on Human Rights. The compatibility of the measures adopted with the protection standards fixed by the Inter-American system must be assessed at the proper time, that is, the merits stage. As long as the State adjusts the detention conditions affecting the inmates, the Court must demand, for the purposes of these provisional measures, that the State effectively suppress the risk of violent death and threat to physical safety (*supra* Considering clause N. 15).

21. That the Court considers that the detailed analysis of the compliance of the imprisonment conditions with the American Convention must be carried out together with that of the merits of the case. In this connection, the Court observes that case N. 12,568 has been heard by the Inter-American Commission on Human Rights since June 5, 2002, when the Commission received a complaint on the situation of persons deprived of liberty at the Urso Branco Prison. As reported to the Court on August 28, 2007 by the Commission, "case N. 12,568, Persons Deprived of Liberty at the Urso Branco Prison, Rondônia, is pending on the merits stage." The Inter-American Court would consider the compliance of detention conditions at Urso Branco with the American Convention and the applicable international standards at the proper stage in the proceedings, should the case be brought before the Court.

22. That for as long as this case is pending before the Commission, it is within the Commission's province to consider the alleged inhumane conditions and take such measures as it deems appropriate, pursuant to its powers.

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23. That with regard to the investigation of the events that led to the adoption of the measures, the State has reported joint efforts of competent authorities to speed up

⁵ Cf. I/A Court H.R. *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C N. 112, para. 159; *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 November 30, 2005, Considering clause N. 7; 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 February 9, 2008, *supra* note 1, Considering clause N. 11.

investigations and pointed out the difficulties involved in investigating events which took place in a jail where the witnesses are the very persons kept under custody, who are afraid to give testimony. Additionally, the representatives restated the need for the State to effectively investigate the deaths and reported acts of torture, and highlighted the lack of specific information in that regard in the State's reports. The Commission pointed out that the State may not transfer the responsibility for the lack of clarification of the events to the inmates.

24. That the Court has stated that the duty to investigate derives from the States' general duty to guarantee the human rights enshrined in the Convention, that is, the obligation under Article 1(1) of such treaty together with the substantive law which should have been protected or guaranteed.⁶ The violation of human rights gives rise to the State's duty to investigate.

25. That, additionally, investigating the events and eventually punishing those responsible is key to avoid the repetition of human rights violations, for which the Court has restated in its Orders the State's obligation to investigate the events which took place at the Urso Branco Prison and gave rise to these measures.

26. That, notwithstanding the State's duty to investigate such events to guarantee the essential rights to life and to humane treatment, the Court, within the framework of these provisional measures, and as it has decided in other matters,⁷ it will not consider the effectiveness of the investigations carried out or the alleged negligence of the State in such investigations, inasmuch as it has not declared human rights violations.

27. That such analysis should be carried out when examining the merits of case N. 12,568, currently being heard by the Inter-American Commission on Human Rights (*supra* Considering clause N. 21).

NOW THEREFORE,

⁶ Cf. I/A Court H.R. *Case of Velásquez-Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C N. 4, para. 177; I/A Court H.R. *Case of Albán Cornejo et al.*, *supra* note 4, para. 62; and I/A Court H.R. *Case of García Prieto et al. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2007. Series C N. 168, para. 100.

⁷ Cf. *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 3, 2007, Considering clause N. 16.

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred upon it under Article 63(2) of the American Convention on Human Rights and Article 25 of the Court's Rules of Procedure,

DECIDES:

1. To order the State once again to immediately adopt all such measures as are necessary to effectively protect the life and personal safety of all persons held in the Urso Branco Prison as well as of all persons entering it including visitors and security force personnel serving there, pursuant to Considering clauses N. 15 and 16 of this Order.

2. To order the State once again to carry out all such steps as are necessary in order that the measures aimed at protecting the life and physical safety be planned and implemented with the participation of the beneficiaries or their representatives, and in general to keep them informed on the progress of their execution.

3. To require the State to submit to the Court no later than on July 15, 2008 the next report on compliance with the measures stated in operative paragraph N. 1, particularly on the measures it adopts immediately to prevent deaths or acts which threaten the physical safety of the persons kept under custody in the prison and of those who enter it for any reason. The State shall submit, as an appendix to the report, an up-to-date list of all the persons who have suffered violent death since the first Order of the Inter-American Court of Human Rights in this matter.

4. To require the State to continue informing the Inter-American Court of Human Rights, every two months, on the compliance with and implementation of the measures stated in operative paragraph N. 1 of this Order.

5. To require the representatives of the beneficiaries of the measures and the Inter-American Commission on Human Rights to submit their comments to the State's bimonthly reports within four and six weeks, respectively, as from their reception.

6. To request the Court's Secretariat to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the beneficiaries of these measures.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary