

**Order of the President of the
Inter-American Court of Human Rights
of August 22, 2007
Request for the Broadening of Provisional Measures
in the Matter of the Mendoza Prisons**

HAVING SEEN:

1. The order of the Inter-American Court on Human Rights (hereinafter "the Court" or "The Inter-American Court") dated November 22, 2004, through which, pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 25 of the Rules of Procedure of the Inter-American Court (hereinafter "the Rules of Procedure",) it was resolved to request the Argentine Republic (hereinafter "the State" or "Argentina") to forthwith adopt any measures as may be necessary in order to protect the life and the right to humane treatment of all those persons that are deprived of their liberty in the *Penitenciaría Provincial de Mendoza* (Provincial Penitentiary of Mendoza) and in the *Unidad Gustavo André* (Prison Facility Gustavo André), in Lavalle, as well as to protect the life and the right to humane treatment of all those people that may be confined in such facilities.

2. The public hearing to deal with the facts and circumstances regarding the implementation of the provisional measures, which hearing was held in Asunción, Paraguay, on May 11, 2005.

3. The stipulation signed by the delegates of the Inter-American Commission, the representatives of beneficiaries and the State, submitted on May 11, 2005 for the consideration of the Court during such public hearing (*supra* note 2,) wherein they stated their consent to keep the provisional measures in force and further agreed "to submit to the consideration of the [...] Inter-American Court [...] a set of measures so that the Court may evaluate the possibility of specifying the contents of the Order of November 22, 2004, in order to protect the right to life and to humane treatment of the beneficiaries under such order."

4. The Order of the Court dated June 18, 2005.

5. The public hearing regarding the above stated provisional measures which was held in Brasilia, Brazil, on March 30, 2006

6. The Order of the Court of March 30, 2006, by means of which the following was decided:

1. To order the State to adopt—in an immediate and inexcusable manner—the effective and necessary provisional measures to efficiently protect the life and integrity of all the persons held in custody in the Mendoza Provincial Prison and those in the Gustavo André Unit of Lavalle, as well as every person found within those facilities, especially to eradicate the risk of violent death and the deficient conditions of security and internal control in confinement centers, pursuant to the provisions set out in Considering Clauses 11 and 12 of this Order.

2. To order the State to implement of the provisional measures ordered in

effective and transparent coordination with federal and provincial authorities, pursuant to the provisions of Considering Clauses No. 11 and 13 of this Order, in order to ensure the effectiveness of such measures.

3. To order the State to report to the Inter-American Court every two months next following its latest report concretely and specifically on the actions taken in compliance with the orders of this Court. Especially, it is essential that the adoption of the priority measures described in this Order get reflected in reports containing concrete results in terms of the specific needs of protection for the beneficiaries of such measures, pursuant to the provisions set out in Considering Clause No. 14 of this Order. In this regard, the oversight role of the Inter-American Commission is radical for an adequate and effective follow-up on the implementation of the measures so ordered.

4. To order the representatives of the beneficiaries and the Inter-American Commission to submit their observations to the State's reports within a term of four and six weeks, respectively, next following receipt of the referenced State's reports.

7. The reports 8-13 submitted by the State between April 2006 and April 2007, the briefs submitted by the State on July 14 and 28 and December 12, 2006, respectively; the objections thereto made by the Commission and the representatives and the briefs and communications submitted by the representatives between April 2006, and April 2007.

8. The brief of March 24, 2007, by means of which the representatives of the beneficiaries of the provisional measures filed before the Court - based on Article 63(2) of the Convention and Article 25 of the Rules of Procedure - a request to "broaden the provisional measures to extend their effects to [all persons deprived of their liberty in the ["Almafuerte"] ...] penitentiary facility, taking into account that the persons incarcerated in the *Penitenciaría Provincial de Mendoza* (Provincial Penitentiary of Mendoza) are being referred to this new detention center." They also filed a copy of the corrective writ of *habeas corpus* filed before a court regarding the inmate Carlos Molina-Ponce.

9. The brief of March 24, 2007, by means of which the representatives informed about the order of a criminal sentence execution judge of Mendoza, wherein the writ of *habeas corpus* is upheld for the benefit of [the inmate] Molina-Ponce, and the effects of such writ are extended for the benefit of other 40 inmates therein incarcerated."

10. The note of the President of the Court (hereinafter "the President") dated March 29, 2007 by means of which he requested the State and the Inter-American Commission to submit, no later than April 10, 2007, their objections to the request made by the representatives to broaden the provisional measures, as well as to file any other information that they might have regarding the extreme seriousness and urgency of the situation and the possibility that irreparable damage may be caused to the persons that are incarcerated in the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-) for the benefit of whom the request to broaden the provisional measures had been made. Finally, the President requested the State, in compliance with the obligations assumed by virtue of the American Convention, to adopt such measures as may be necessary to protect the life and the right to humane treatment of those persons stated above while the President, in consultation with the other Judges of the Court, adopted any pertinent decisions regarding the said request to broaden provisional measures.

11. The brief of March 31, by means of which the representatives of the beneficiaries informed that on that date they had visited the Cacheuta Penitentiary, also referred to as "Almafuerte", and that therein, they interviewed the inmates who, anonymously, reported alleged tortures. The said representatives further

ratified the contents of the information submitted in their request to broaden provisional measures (*supra Having Seen* Clauses N° 8 and 9.)

12. The briefs of April 1, 2, 3, 8 and 9, 2007 and their annexes, by means of which the representatives of the beneficiaries of the said measures submitted press articles regarding the alleged situation in the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-) and submitted a copy of a “court order issued by a criminal sentence execution judge allowing the writ of *habeas corpus* filed by the petitioners [...] so that such order may be taken into consideration at the moment of making a decision as regards the request to broaden provisional measures.”

13. The brief of April 10, 2007, by means of which the Commission submitted its objections to the abovementioned request, in which brief, it considered, *inter alia*, that “the request to broaden the provisional measures is appropriate” and requested the Court to order the State to adopt certain measures (*infra Considering* Clause N° 8.)

14. The brief of April 18, 2007, received with annexes on April 20, 2007, by means of which the State submitted a report “regarding the request to broaden provisional measures” (*infra Considering* Clauses N° 7 and 9.)

15. The brief of April 19, 2007, by means of which the representatives reiterated the request for the Court to “broaden the provisional measures so as to extend them to the Cacheuta Penitentiary.”

16. The brief of May 15, 2007, and the annexes thereto, by means of which, the State submitted a copy of two notes addressed to the President of the Court and the President of the Inter-American Commission, respectively. In such notes, the State, “taking into consideration that the Inter-American Commission on Human Rights has decided to endorse the request to broaden [provisional measures],” *inter alia*, reiterated the invitation made to the President [of the Commission....] so that he may personally visit [the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-)] to verify *in situ* the characteristics of such prison facility as well as the conditions in which the inmates lived; the State further requested the Court to “postpone any decisions regarding such measures until the Commission can make such a visit.”

17. The note of the Clerk dated April 30, 2007, by means of which, following the instructions of the President of the Court, he requested the State to submit -in order to evaluate the appropriateness of the request to broaden provisional measures- no later than May 4, 2007, updated information regarding the measures adopted for the benefit of the inmates residing in the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-), pursuant to the order issued by the Criminal Sentence Execution Judge on March 23, 2007 and the Memoranda 001/07, 002/07 and 003/07 prepared by the Director of the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-), to which the State makes reference in the brief dated April 13, 2007, as well as information regarding any other measures adopted with respect to the situation existing in this penitentiary center.

18. The brief of May 16, 2007, by means of which the State submitted the above requested report (*supra Having Seen* Clause N° 17.) In that respect, it expressed, *inter alia*, that “all the provisions mentioned in the report dated April 18, 2007” have been respected and in general, it reiterated the statements made in such report (*supra Having Seen* Clause N° 14 and *Considering* Clause N° 9.)

19. The note of the Clerk dated May 18, 2007 by means of which, following instructions of the Court *en banc*, he informed the State, the Commission and the representatives that, before adopting any decision regarding the broadening of provisional measures, the Court considered it proper to request the Inter-American Commission to inform -as soon as possible- about its decision in respect of the invitation that the State had made (*supra* Having Seen Clauses N° 16 and 17,) and further, that in case the Commission was contemplating the visit, then, to inform the Court about the approximate dates on which such visit would be completed.

20. The note of the Clerk dated June 7, 2007, by means of which, following instructions of the President of the Court, he requested the Inter-American Commission that through its President, who is also the Commission Rapporteur for Argentina and Rapporteur on Rights of Persons Deprived of their Liberty, the Commission informed the Court about any advances made regarding the requests made through a Clerk's note dated May 18, 2007 (*supra* Having Seen Clause N° 19,) and further, to inform about its updated opinion with regard to the need to broaden the abovementioned provisional measures, and particularly, to provide any information that the Commission may have as regards de "extreme seriousness and urgency" of the situation and the possibility that "irreparable harm" may be caused to the persons that may be incarcerated in the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-.) This note was reiterated on July 3, 2007.

21. The brief dated June 20, 2007 and communications dated June 6, 9, 23, 24, 25 and 26, 2007, by means of which the representatives, *inter alia*, sent a copy of a "complaint for an extended confinement of [an inmate that could be detained] in the Almafuerte Penitentiary" and attached thereto a "complaint" filed by the mother of an inmate due to the alleged aggressions suffered by her son in such penitentiary center.

22. The brief dated July 9, 2007, by means of which the State submitted its XIV report regarding the implementation of the above stated provisional measures, as well as information regarding the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-.)

23. The briefs submitted on July 18 and 27, 2007, by means of which the representatives informed that the inmate "Carlos Flores-Ramos [who was incarcerated in Almafuerte,] had died on [July 17, 2007] at the *Lagomaggiore* Hospital after being treated for a pneumonitis," as well as information regarding a recent visit they had made to such penitentiary.

24. The brief of July 19, 2007, by means of which the Commission informed its answer to the Clerk's notes dated May 18, June 7 and July 3, 2007 (*supra* Having Seen Clauses N° 19 and 20,) and expressed that it "shall use all means available to continue surveillance and follow-up of the situation of the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-,) and if it has the necessary resources, the Commission shall organize a visit for the end of the year, and in such case, it shall prepare an extraordinary Rapport for the Court to be informed."

CONSIDERING:

1. That Argentina has been a Member State of the American Convention since September 5, 1984, and that pursuant to Article 62 of the same, it acknowledged the contentious jurisdiction of the Court in the same act of ratification.

2. That Article 63(2) of the American Convention establishes that, "In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall 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."

3. That Article 25 of the Rules of Procedure, establishes the following as regards this matter:

1. At any stage of the proceedings 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 such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.
[...]

3. In contentious cases already submitted to the Court, the victims or alleged victims, their next of kin, or their duly accredited representatives, may present a request for provisional measures directly to the Court.
[...]

6. The beneficiaries of provisional measures or urgent measures ordered by the President may address their comments on the report made by the State directly to the Court. The Inter-American Commission of Human Rights shall present observations to the State's report and to the observations of the beneficiaries or their representatives.
[...]

4. That Article 74(1) of the Rules of Procedure of the Inter-American Commission on Human Rights establishes the following:

"The Commission may request that the Court adopt provisional measures in cases of extreme gravity and urgency, and when it becomes necessary to avoid irreparable damage to persons in a matter that has not yet been submitted to the Court for consideration."

5. That the provisional measures granted by Orders of the Court dated November 22, 2004, June 18, 2005 and March 30, 2006 (*supra* Having Seen Clauses 1, 4 and 6) are in force.

6. That on March 24, 2007, the representatives filed before the Court -pursuant to Article 63(2) of the Convention and Article 25 of the Rules of Procedure- a "request to broaden" the provisional measures granted, so as to extend the same to those persons who have been deprived of their liberty at the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-) located at Cacheuta, "taking into account that the persons that are deprived of their liberty at the Mendoza Penitentiary are being referred to this new detention center" (*supra* Having Seen clause 8.) The representatives expressed, *inter alia*, that in Sectors I and II the inmates are subject to 21-hour confinement in individual cellblocks. As regards health conditions, several inmates reported the lack of medical treatment and also requests for medical assistance that have not been addressed. There is almost no communication with the penitentiary agents, and such officers refuse to refer requests for hearings and *habeas corpus* petitions. There are several inmates fasting to protest because they denounce that cannot communicate with their families. They are not allowed to have radios, watches or television sets. Searches are carried out by "stripping visitors and inmates and they include rectal tact," as a condition to let the visitor in (*supra* Having Seen Clauses N° 8, 9 and 11.) Furthermore, they sent a copy of a "corrective writ of *habeas corpus*" filed with regard to the inmate Carlos Molina-Ponce, who might be incarcerated in the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-) "since his detention, conditions have seriously worsened and they requested such

conditions to be ceased." According to the statements made in such writ of *habeas corpus* filed "[Molina-Ponce] is subject to extended confinement periods, and sanctions or punishments are applied to him without serving notice to his defense attorney; he has to endure inhuman cruel and degrading treatment, he is not assisted with any labor therapy and needs urgent psychological treatment. He does not have any access to a free communication with the outside world and the authorities."

7. That in the objections to such petition to broaden the provisional measures, the State pointed out that "the said petition was filed by the representatives of the petitioners and not by the Commission", and it further pointed out that it considered that "any request to broaden the scope of the provisional measures, for facts other than those occurring in the penitentiaries stated in the Order of November 22, 2004, should be filed by the Commission" (*supra* Having Seen Clause N° 14.)

8. That the Inter-American Commission considered that, "in view of the information sent by the representatives of the beneficiaries; and considering the court order issued by the Criminal Sentence Execution Judge of the Province of Mendoza regarding the writ of *habeas corpus* filed with respect to the inmate Carlos Molina-Ponce, wherein certain facts affecting the personal integrity of the inmates at the "Almafuerte" penitentiary are proved; and further taking into account the information published by the newspapers in Mendoza, regarding the invasive physical searches which are conducted on the inmates referred to the "Almafuerte" penitentiary in a so called "rubber room" within the penitentiary center, there exists a serious risk of causing irreparable damage to the personal integrity; and therefore, the request for provisional measures is found to be appropriate." The Commission requested that the measures to be ordered include: "the protection to the right to life and humane treatment of the inmates incarcerated in the "Almafuerte" penitentiary; to protect inmates against cruel, inhuman and degrading treatment such as, *inter alia*, extended confinement periods and mistreatment; to suspend invasive physical searches on inmates and persons visiting the penitentiary; to investigate the facts (*supra* Having Seen Clause N° 13.) The President shall proceed to determine if the material facts concur in order to direct the broadening of the said provisional measures.

9. That in the objections to the request to broaden the provisional measures, the State reported, *inter alia*, that back then, in the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-,) only Module V was in use, such unit was designed with a maximum security level, and at that time there were 42 inmates, all of them convicted, 17 of whom were recidivists, all of them of Argentine nationality and of age, and each lodged in an individual cell. The State further reported that the construction of the Complex had not finished yet and that it was contemplated to operate at full capacity by July, 2007; that it would have five modules, one maximum security and four medium security modules respectively, totaling 938 lodging places; the State further pointed out that recreational activities were carried on in three wings of the operating module and also that inmates had one hour of recreational activities in the indoors yard of the penitentiary; and further stated that a system of rules for the registration of persons and property was being drafted to be approved and applied to the whole penitentiary system. Meanwhile, the Complex Director issued Memorandum 001/07 on March, 26, 2007, to fix standards to be applied to the registration of visitors. Among such standards, it was stated that "staff making the searches shall be of the same gender as the visitor. If the visitor does not consent to the search, the visitor shall be allowed to contact the inmate through a phone cabin. It is strictly forbidden to apply degrading treatment and to carry on rectal or vaginal tact; [...] and as regards inmates, [...] it is forbidden] to conduct searches by rectal tact, this

shall only be allowed in extreme circumstances and shall be completed by medical staff;" pursuant to Memorandum 003/07, any petitions made by inmates, whether orally or in writing, must be received by security personnel, and must be delivered to the Penitentiary Director by the Module Chief Officer. All inmates confined therein have been interviewed by the Director of by Officers, and there are 6 medical doctors on duty 24 hours a day, psychological and dental assistance is also provided. As regards the request to broaden the provisional measures, the State further declared that the inmates confined at the Almafuerde Complex are duly classified (only convicts are confined therein,) no events have occurred that may allow to believe that the physical integrity of the inmates is endangered, since they are properly watched over and medical checks are conducted. There is no overcrowding, no lack of hygiene, or improper feeding. The request of the petitioners is based on the writ of *habeas corpus* upheld by the Criminal Sentence Execution Judge, and the State has complied with all the measures ordered by the said judge. Therefore, there are no reasons that may justify the international jurisdiction, and thus, the intervention of the Court. Due to the aforesaid, the State considered that all the information available is not enough to conclude that there exists a situation of extreme seriousness and urgency and that irreparable harm can be caused, so as to justify a possible broadening of the provisional measures so as to extend their effects to all those inmates confined in the *Complejo Penitenciario III (Almafuerde)* (III Penitentiary Complex –Almafuerde-.)

10. That the request to broaden the provisional measures was brought before the Court during its previous Extraordinary Session, as well as the observations and notes directed to the Presidents of both the Court and the Commission in May 2007, by means of which the State invited "the President [of the Commission...] to pay a personal visit [to the *Complejo Penitenciario III (Almafuerde)* (III Penitentiary Complex –Almafuerde-).]" At that time, the Court considered proper that, before making any decision regarding the request to broaden the provisional measures, the Inter-American Convention informed its decision as to the invitation extended by the State, as well as its current opinion on the need to broaden the provisional measures at issue (*supra* Having Seen Clause No. 19). The Commission replied, after the last Regular Session of the Court, that "...should it gather the necessary resources it would prepare a visit for the end of the year..." (*supra* Having Seen Clauses No. 20 and 24).

11. That the representatives filed an *habeas corpus* remedy at domestic level based on the same grounds alleged for requesting the broadening of these measures (*supra* Having Seen Clauses No. 8 and 9 and Considering Clause No. 6). A provincial court of criminal enforcement accepted the *habeas corpus* remedy filed through a decision dated March 23, 2007, in which "apart from Medina Ponce, other 40 inmates institutionalized therein are also benefited after having been interviewed, after having requested reports and after having paid a visit to the Detention Center." As informed by the representatives, in the above mentioned Judgment, *inter alia*, it was decided,

TO SUMMON the Director of the *Complejo Penitenciario III (Almafuerde)* (III Penitentiary Complex –Almafuerde-) in Cacheuta, in order that he immediately starts the negotiations, gives orders and/or executes the necessary proceedings so that any cruel, inhuman and degrading treatment to which the inmates confined in SECTORS I and 2 of the said Complex are subjected to comes to an end [...; to] ensure their right to petition, thus instrumenting a fast and effective channel to forward the different writs and/or mail directed –without previous censorship- to the judicial and/or administrative authorities [...;] so that he effects the proceedings necessary to provide and/or allow the access of radio and/or television sets to grant the right to information that the inmates have [...;] so that within [five days] he effects all the negotiations necessary to provide any means of telephone communication to the inmates confined in Complex III in order to guarantee their right to communication [...] TO RECOMMEND the Director of the *Complejo Penitenciario III (Almafuerde)* (III Penitentiary Complex –

Almafuerte-) in Cacheuta to reorganize the activities of the inmates confined in SECTORS 1 and 2 of that Complex so that they are allowed to have more breaks and consequently reduce the number of hours they remain confined, provided the Institution security allows so.

12. That as informed by the State, after this decision of the Criminal Enforcement Court, the Director of the III Penitentiary Complex issued several memos ordering a series of measures and guidelines aimed to correct the situations of fact which gave rise to the request for broadening the provisional measures (*supra* Considering Clause No. 9).

13. That before the request to broaden the provisional measures ordered by this Court, according to information added to the case file, the domestic courts - including the Argentinean Supreme Court-, passed several judgments regarding the facts that originated them and which order the protection of the people deprived of liberty in the Province of Mendoza in general. This Presidency considers the attention of the domestic courts to the above described situation to be of utmost importance and in that sense and it enhances the following decisions:

a) in a judgment of February 13, 2007, the National Supreme Court considered, *inter alia*, that “[...] as custodian of the constitutional safeguards and due to the lack of results regarding the order issued by the Inter-American Court of Human Rights, it sees itself in the inevitable obligation to order the National State to adopt the measures to put an end to the situation of the penitentiary facilities of the Province of Mendoza within twenty days, and to take the measures that shall be stated in the operative part of this judgment [...]” and it decided:

“I.- To order the National State to adopt the necessary measures to put an end to the situation of the penitentiary facilities of the Province of Mendoza within twenty days; II.- To order the Supreme Court of Mendoza as well as the courts of all instances of that province, in their respective jurisdictions and by decision of this Supreme Court -considering the urgency of the case-, to cause any eventual aggravation of a detention situation which may imply cruel, inhuman or degrading treatment or any other kind of treatment susceptible of entailing the international liability of Federal State, to come to an end; III.- To order that every twenty days the National Executive Power informs the Court on the measures it adopts to improve the situation of the detainees. Serve notice upon [...] the National Executive Power – Ministry of Justice and Human Rights-; and the governor of the Province of Mendoza [...]”

b) in a Decision of February 14, 2007, the Supreme Court of Mendoza ruled:

1. To serve notice and inform on the content of the decision [of the National Supreme Court of February 13, 2007], to all the Courts of the Province of Mendoza for its fulfillment and to cause any eventual aggravation of the detention conditions which may imply a violation of Article 18 of the National Constitution to come to an end; 2. To order an extraordinary visit to female penitentiaries *Boulogne Sur Mer* and *Gustavo André*, which shall be conducted by the Justices of this Court to all the penitentiary facilities of the Province; 3. To order the immediate verification of the conditions in the penitentiary institutions through Criminal Enforcement Judges; 4. To set [a] hearing for February 19 [2007] so that the Governor of the Province of Mendoza appears before this Court to inform on the degree of fulfillment of the provisional measures [sic] set by the Inter-American Court of Human Rights; and to request the National Supreme Court to subpoena the National Executive Power so that it immediately proceeds to relocate the federal inmates institutionalized in the Provincial Penitentiary.

c) in an administrative order issued on March 1, 2007, the Supreme Court of Mendoza, “[a]nalyzing the content of the judgment passed by the National Supreme Court in the case of ‘Lavado Diego et al vs. the Province of Mendoza’, [...] as it is the duty of this Court to cause any situation implying any cruel, degrading treatment to come to an end, or the end of any other treatment contrary to the National Constitution”, *inter alia*, considered

“That from the visit paid on February 10 of this year it was possible to verify the state of precariousness and lack of hygiene of the facilities of “Bulogne Sur Mer” Penitentiary institution, ” [...]

The deplorable state of the restrooms and the spots aimed for personal hygiene purposes has also been verified, as well as that they are completely insufficient in number for their physiological needs, without any respect whatsoever for the basic right to privacy as they have no doors; in fact, bags and plastic bottles are actually used for that matter.

That the minimum dignity conditions suppose, at least, the existence of a bed to rest and a proper place for hygiene purposes, conditions absolutely non-existent within Bulogne Sur Mer facility, and impossible to correct with the necessary urgency they require.-

Notwithstanding that, and considering the above mentioned peremptoriness, it is not impossible to mitigate the extremely serious situation by means of some urgent and immediate measures, while expecting the activation of penitentiary institution “Almafuerte”.

[AND] DECID[ed]:

A.- To communicate the Provincial Executive Power that with the highest possible degree of urgency it shall;

1.- Proceed to disinfect Bulogne Sur Mer penitentiary in order to eradicate insects (cockroaches) taking the proper measures for the permanent cleansing of the cellblocks.

2.- Provide chemical toilets, substitute or other type of toilets in a sufficient number in the different cellblocks which allow the privacy and dignity for the physiological needs of the inmates.

3.- Cause the situation of excessive overcrowding to cease, relocating the inmates in dignified conditions.

4.- Adopt the measures to efficiently guarantee the inmates physical integrity so as to avoid situations which may risk their life.

5.- Provide permanent control, care and medical assistance for the inmates, especially those of cellblock No. 15.

[...]

d) in a decision of March 20, 2007, the National Supreme Court ruled on the merits of the lawsuit filed (*supra* Considering Clause No. 13(a)). Although it decided that the case “is not of the original jurisdiction of this National Supreme Court” and it ordered “to forward the case file to the *Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal* (National Appellate Court on Federal Administrative Matters) for the pertinent purposes [...] and] certified copies of the case file to the Supreme Court of Mendoza”, it considered, *inter alia*:

13) That, in effect, it is convenient to remember that the National Executive Power has the power to represent the State in the context

of matters which may involve the responsibility of the country within the international scope, as that branch has been constitutionally granted the exercise of the foreign affairs of the Nation.

14) That among those hypotheses we find this case, where the National Executive Power –as custodian of the interests of the National State- shall act for an interest of its own regarding the consequences that the fulfillment or the non-fulfillment of the recommendations and decisions adopted by the Commission and the Inter-American Court of Human Rights with respect to the facts denounced may entail. It is the National Executive Power the one with passive legal standing in the claim, and not the Province of Mendoza.

The matter has exceeded the domestic scope of the State, and that prevents the above mentioned provincial State from being one of the bearers of the legal relationship on which the above mentioned claims are based, regardless of their fundament [...] The provincial State can not be granted the capacity to contradict the specific matter the proceeding shall be about [...]

15) That even the tenor of the decisions and communications of the international bodies which take part in the claims that give rise to this proceedings -attached hereto- reveal that the legal relationship invoked, and on which basis it is sought to enforce the fulfillment of the recommendations and decisions adopted by the Commission and by the Inter-American Court of Human Rights, directly links the claimants to the National State and not to the Province Mendoza.

16) That for that matter it is proper to emphasize that the Inter-American Court of Human Rights itself stated -when analyzing the admissibility of the provisional measures requested, the purpose of which is to alter the denounced situation of fact - that "...it is aware that the relief and the improvement of the situation of the penitentiaries of Mendoza constitutes a short, medium and long-term process, which requires a set of actions of administrative, judicial and eventually legislative nature by the federal and provincial authorities so as to correct the imprisonment and detention conditions. However, before this Court's order to adopt provisional measures, the purpose of which is the protection of the life and the integrity of the inmates detained in those penitentiaries and of the people within the facilities, the State can not allege domestic law grounds to refrain from taking firm, concrete and effective courses of action so as to fulfill the ordered measures to prevent any additional deaths. Neither can the State allege the lack of coordination between the federal and the provincial authorities to avoid the deaths and acts of violence which have continued to exist during their enforcement. Regardless of the unitary of federal structure of a State Party to the Convention, before the international jurisdiction it is the State as such the one which appears before the bodies which supervise that treaty, and it is the State the only one obliged to adopt the measures. The lack of adoption of the provisional measures on the part of the State compromises its international liability" (judgment of March 30, 2006, Considering Clause No. 11, page 98).

It is not pointless to state that in that same sense was the judgment of the Inter-American Court in the case of "Garrido and Baigorria vs. Argentina", judgment of August 27, 1998; and in Advisory Opinion Number 16 of October 1, 1999, on "the Right to Information on Consular Assistance in the Context of the Guarantees of Due Process of Law."

17) That in that way, a decision contrary to the one sought, and as a consequence of which it would be possible to pursue the enforcement of the provisional measures adopted by the Inter-American Court –by means of the alleged accumulation- both against the National State and the Province of Mendoza, would imply as much as emptying the content of Article 99, subparagraph 1, of the National Constitution, and the international commitments undertaken by the Argentine Nation. [...]

20) That regardless of all the above, it is important to enhance that, as a consequence of the decision of this Court of February 13, 2007, the Supreme Court of Mendoza issued decision No. 20,037, dated February 14, 2007, by means of which –among other provisions- it requested this Court to “subpoena the National Executive Power so that it proceeds to the immediate and urgent relocation of the federal inmates incarcerated in the Provincial Penitentiary”; and this Court must adjudge on the matter as the request is directed to it.

21) That the request must not be received through the alleged way. According to the provisions stated in law 24,660, regarding the points of interest herein, the State and the provinces may enter into agreements aimed to receive or transfer convicts from their respective jurisdictions, and the said transfer shall be charged to the petitioning State (Articles 212 and subsequent of the above mentioned law). The Province of Mendoza adhered to that provision by passing law 6,513.

Consequently, the National Executive Power could barely be summoned to perform the above mentioned "immediate and urgent relocation" -by request of just one of the powers of the local State- when these institutionalizations exist on the basis of agreements entered into by the States, which legitimate representatives understood that the application of the system was convenient to guarantee a better individualization of the penalty and an effective integration of the Republic's penitentiary system (Article 212 quoted above).

14. That in view of the principle of subsidiarity informed by the Inter-American System of human rights, an order for the adoption (or the broadening) of provisional measures under Article 63(2) of the American Convention is justified in situations of extreme seriousness and urgency and before the possibility of irreparable damage to the people respect to whom the ordinary guarantees existing in the State where they are requested turn out to be insufficient or not effective, or where the domestic authorities can not or do not want to make them prevail.

15. That regarding the people deprived of liberty in the Provincial Penitentiary of Mendoza who were then transferred to the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-) in Cacheuta, a provincial Criminal Enforcement Judge ordered the adoption of measures and the Director of the Penitentiary Complex issued several provisions on the matter (*supra* Having Seen Clauses No. 8, 9, 12, 17 and 18 and Considering Clauses No. 6, 8, 9, 11 and 12). According to what has been informed, the construction of this Complex and the transfer of people thereto are solutions to which the State has turned to deal with the overcrowding problem in other penitentiaries, which is precisely one of the situations of fact which gave rise to the provisional measures at issue. In its last report, the State pointed out that at present there are 131 people deprived of liberty in the *Complejo Penitenciario III (Almafuerte)* (III Penitentiary Complex –Almafuerte-), who were transferred from the Provincial Penitentiary; the assisting professional staff that works there amounts to 23 people and the security guards

would totalize 108 officers (*supra* Having Seen Clause No. 22). The representatives informed that a person who was confined in Almafuerde might have died on July 17, 2007 in a hospital, "after being assisted due to a diagnosis of pneumonitis" (*supra* Having Seen Clause No. 23). Thus, the Court has not been informed on facts which reveal or imply a situation of extreme seriousness and urgency for the life and the integrity of the people deprived of liberty within that Penitentiary Complex.

16. That although it is not admissible to broaden the provisional measures herein referred to, it is convenient to remember that Article 1(1) of the Convention sets forth the general obligations that the States Party have to respect the rights and liberties consecrated therein, and to guarantee their free and total exercise to any person subjected to their jurisdiction, which are imposed not only with respect to the power of the State, but also with respect to the actions of third parties. This Court has considered that the State is in a special position of guarantor of the people deprived of their liberty in penitentiaries or detention centers, due to the fact that penitentiary authorities exercise total control over them.¹ Furthermore, "[o]ne of the obligations that the State must inevitably assume in its position as guarantor, and in order to protect and guarantee the right to life and physical integrity of those deprived of liberty, is that of [seeking] them the minimum conditions compatible with their dignity as they remain in detention centers".² Thus, regardless of the existence of specific provisional measures, the State is especially obliged to guarantee the rights of the people in circumstances of deprivation of liberty.

NOW THEREFORE:

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

Exercising the authority conferred upon him by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure, and in consultation with the other Magistrates of the Court,

DECIDES:

1. To overrule the request for broadening the provisional measures ordered in the case of the Penitentiaries of Mendoza filed by the beneficiaries representatives

¹ Cf., *inter alia*, *Matter of Urso Branco Prison. Provisional Measures*. Order of the Inter-American Court of Human Rights of June 18, 2002, Considering Clauses No. six and eight; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM. Provisional Measures*. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering Clause No. seven; *Matter of Yare I and Yare II Capital Region Penitentiary Center. Provisional Measures*. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering Clause No. nine; and *Matter of the Mendoza Prisons. Provisional Measures*. Order of the Inter-American Court of Human Rights of November 22, 2004, Considering Clause No. six.

² Cf. *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. C Series No. 112, par. 159; *Matter of the Mendoza Prisons*, *supra* note 1, Considering Clause No. ten. See also *Matter of Urso Branco Prison. Provisional Measures*. Order of the Inter-American Court of Human Rights of September 21, 2005, Considering Clause no. six; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM. Provisional Measures*. Order of the Inter-American Court of Human Rights of November 30, 2005, Considering Clause no. seven, and *Matter of Yare I and Yare II Capital Region Penitentiary Center*, *supra* note 1, Considering Clause no. nine.

and backed-up by the Inter-American Commission on Human Rights, in the terms of operative paragraphs 10 to 16 herein.

2. To request the State to maintain the provisional measures ordered by the Inter-American Court of Human Rights in its Orders of November 22, 2004, of June 18, 2005 and of March 30, 2006.

3. To serve notice of this Order to the Inter-American Commission, the representatives and the State.

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary