

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS¹**

OF NOVEMBER 26, 2010.

**PROVISIONAL MEASURES
REGARDING THE REPUBLIC OF ARGENTINA**

MATTER OF THE MENDOZA PENITENTIARIES

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of November 22, 2004, in which it ordered, under the terms of articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 25 of the Rules of Procedure of the Court in force at the time,² to require the Republic of Argentina (hereinafter "the State" or "Argentina") to immediately adopt the measures necessary to protect the lives and personal integrity of all individuals deprived of liberty in the Mendoza provincial penitentiary and the Gustavo André unit, in Lavalle, as well as of all other individuals found within those facilities.

2. The public hearing on the implementation of the provisional measures, held in Asuncion, Paraguay, on May 11, 2005.³

3. The document signed by the representatives of the Inter-American Commission, the beneficiaries of the provisional measures, and the State, submitted on May 11, 2005, before the Court during that public hearing (*supra* Having Seen 2) - known as the "Asuncion Accords" - in which they expressed their agreement to maintain the provisional measures in force and agreed to "bring before the consideration of the [...] Inter-American Court [...] a] collection of measures [so that] the Tribunal can evaluate the possibility of clarifying the details of the content of the Order of November 22, 2004, in order to guarantee the lives and physical integrity of the beneficiaries of that order."

4. The Order of the Court of July 18, 2005, reiterating the provisional measures ordered by the Tribunal.⁴

¹ Judge Leonardo A. Franco did not participate in the deliberation or signing of this Order due to his Argentine nationality, pursuant to articles 19 of the Statute and 19 of the Rules of Procedure of the Court.

² Rules of Procedure passed by the Court in its XLIX Regular Period of Sessions, held on November 16 to 25, 2000, and partially reformed by the Court during its LXI Regular Period of Sessions held from November 20 to December 4, 2003.

³ *Matter of the Mendoza Penitentiaries*. Provisional Measures regarding Argentina. Order of the President of the Inter-American Court of Human Rights of March 18, 2005.

⁴ *Matter of the Mendoza Penitentiaries*. Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of June 18, 2005. Available at:

5. The public hearing on the provisional measures in question held in Brasilia, Brazil, on March 30, 2006.
6. The Order of the Court of March 30, 2006, ruling to maintain these provisional measures in force.⁵
7. The Order issued by the sitting president of the Court on August 22, 2007, ruling, upon consultation with the other Judges of the Court, to dismiss a request to broaden the aforementioned provisional measures presented by the representatives of the beneficiaries and backed by the Inter-American Commission, and to require the State to maintain the measures ordered by the Court in its Orders of November 22, 2004; June 18, 2005; and March 30, 2006.⁶
8. The communication dated August 28, 2007, through which, in response to a request from the Secretariat dated July 20, 2007, the Commission reported that "case No. 12.532, Inmates of the Mendoza Penitentiary, is being processed and is in the merits stage before [the Commission]."
9. The Order of the Court of November 27, 2007, in which it ruled:
 1. To fully ratify the Order of the President of the Court of August 22, 2007.
 2. To order the State to continue adopting 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 the Order of the Court of March 30, 2006.
 3. To order the State to report to the Inter-American Court every two months next following its latest report, specifically on the actions taken in compliance with the orders of this Court. In particular, it is paramount that the adoption of the priority measures established in the this Order gets reflected in the State's reports describing the specific results obtained in agreement with the specific needs of protection of the beneficiaries thereof. In this sense, the role of the Inter-American Commission is particularly important so as to adequately and effectively follow up the implementation of the measures so ordered.
 4. To request 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 referred State's reports.

http://www.corteidh.or.cr/docs/medidas/penitenciariamendoza_se_02.pdf

⁵ Matter of the Mendoza Penitentiaries. Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of March 30, 2006. Available at: http://www.corteidh.or.cr/docs/medidas/penitenciariamendoza_se_03.pdf

⁶ Matter of the Mendoza Penitentiaries. Provisional Measures regarding Argentina. Judgment of the Inter-American Court of Human Rights of August 22, 2007. Available at: http://www.corteidh.or.cr/docs/medidas/penitenciariamendoza_se_04.pdf

10. The public hearing on these provisional measures held on December 4, 2008,⁷ in Mexico City, the United Mexican States.
11. The briefs submitted between January 14, 2008, and May 14, 2010, in which the State reported on the implementation of the provisional measures.
12. The briefs submitted between February 2, 2008, and April 22, 2010, through which the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") submitted their comments on the State reports and information related to the provisional measures.
13. The briefs submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") between January 25, 2008, and May 7, 2010, through which they submitted their comments on the State reports, as well as the report dated November 16, 2009, submitted by the Inter-American Commission regarding the *in situ* visit carried out between April 22 and 25, 2009, by the rapporteur for the rights of individuals deprived of liberty of the Inter-American Commission to the Mendoza Provincial Penitentiary and to the Gustavo André Penitentiary Unit in Lavalle.
14. The report dated May 18, 2010, through which the State requested that the provisional measures be lifted, as well as the briefs dated July 18 and 28, 2010, through which the representatives and the Commission submitted their comments on this request.
15. The Order issued by the President of the Tribunal on September 10, 2010,⁸ calling the State of Argentina, the representatives of the beneficiaries, and the Inter-American Commission to a public hearing to be held during the XLII Special Period of Sessions in Quito, Ecuador.
16. The public hearing held on November 17, 2010, in Quito, Ecuador.⁹
17. The briefs presented on November 24, 2010, by the State, the representatives, and the Inter-American Commission, reiterating what was expressed during the hearing and making reference to the provisional measures and the request that they be lifted. They were submitted by the deadline granted by the President for doing so during the hearing.

⁷ The following people attended the hearing: a) for the Inter-American Commission: Florentín Melendez; Commissioner; Juan Pablo Albán Alencastro, advisor, and Lilly Ching Soto, advisor; b) for the Republic of Argentina: Jorge Nelson Cardozo, Adviser to Foreign Secretary Alberto Javier Salgado, of the Human Rights Directorate, Office of Foreign Secretary, Argentina; Sebastián Godoy Lemos, Adjunct Secretary for Justice and Human Rights of Mendoza Province; María Jose Ubaldini, Human Rights Director for the Mendoza Province; and Pilar Mayoral, with the Human Rights Secretariat of the Justice Ministry; and, c) for the representatives of the beneficiaries: Carlos Eduardo Varela Álvarez and Alfredo Guevara Escayola.

⁸ Order of the President of the Inter-American Court of Human Rights of September 10, 2010.

⁹ The following individuals attended this hearing: a) for the Inter-American Commission, Silvia Serrano Guzmán, advisor; b) for the Republic of Argentina: Mr. Javier Salgado, Human Rights Director of the Office of the Foreign Ministry, Agent; and María Florencia Segura, Alternate Agent; Pilar Mayoral, of the Human Rights Secretariat of the Ministry of Justice, Security, and Human Rights; María Jose Ubaldini, Human Rights Director for the Mendoza Province; and María Julia Loreto, attorney with the General Directorate of Human Rights of the Office of the Foreign Ministry; and c) for the beneficiaries, Mr. Carlos Varela Álvarez.

CONSIDERING THAT:

1. Argentina has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 5, 1984, and in accordance with Article 62 of the Convention, recognized the contentious jurisdiction of the Court in the same ratification act.
2. Article 63(2) of the American Convention holds that, "In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court shall be able to order the provisional measures it considers pertinent in matters that have not yet been submitted to it and at the request of the Commission. This provision is regulated by Article 27 of the Rules of Procedure of the Court.¹⁰
3. These provisional measures were initially ordered through an Order dated November 22, 2004, in which the Court found that "from the background presented by the Commission on this matter, as well as from the State's statements, it can be deduced *prima facie* that [...] a situation of extreme gravity and urgency prevail[ed] in [the Mendoza provincial penitentiary and Gustavo André Unit in Lavalle] such that the lives and integrity of the individuals deprived of liberty in [those facilities] and of the individuals found within them were at grave risk and vulnerable." Later, that judgment was reiterated by the Court in rulings dated June 18, 2005, March 30, 2006, and November 27, 2007, which maintain the order for provisional measures upon considering that the situation of extreme gravity and urgency persisted. In addition, a request by the representatives for the provisional measures to be broadened to the benefit of individuals imprisoned in another penitentiary (Penitentiary Complex III "Almafuerte" in Cacheuta) was dismissed (*supra* Having Seen 7). Also, case No. 12.532, "Inmates of the Mendoza Penitentiary," is being processed in the merits stage before the Inter-American Commission. In the context of that case, the petitioners and the State have reached a friendly settlement agreement that is pending approval of the corresponding proceeding on the part of the Commission (*infra* Considering 10). In its latest reports submitted during the year 2010, the State has asked that the provisional measures be lifted.
4. Given the period during which these provisional measures are in force, the results of the *in situ* visit to the penitentiaries carried out by a delegation of the Commission in April of 2009 and its corresponding report (*supra* Having Seen 13), and the aforementioned request for the measures to be lifted, it is necessary to carry out an examination of the progress made in the implementation of the provisional measures before weighing the need to maintain them, as follows: i) information beyond the purpose of the provisional measures; ii) analysis on the implementation of the provisional measures; and iii) the request that the measures be lifted.

i) Information submitted that is beyond the purpose of the provisional measures

¹⁰ Rules of Procedure passed in the LXXXV Regular Period of Sessions held from November 16 to 28, 2009.

5. The Tribunal has already established on prior occasions that in the context of provisional measures, it does not fall to the Court to consider the merits of any argument that is not strictly related to extreme gravity, urgency and the need to avoid irreparable damages to the beneficiaries. Any other matter can be brought before the Court in an adversarial case or in requests for advisory opinions.¹¹

6. The representatives have submitted a variety of information on the legislative measures adopted with regard generally to individuals deprived of liberty in the Province of Mendoza. Regarding this, they expressed their concern over legislation that they consider to be "repressive or in violation of human rights," indicating that Law No. 7.929 on prisoner releases restricts the right to freedom during criminal proceeding, which according to them brings with it a "considerable increase in the prison population." They also indicated that the program of the Ministry of the Government for the chemical castration of sex offenders established both medical and therapeutic treatment through Decree No. 308 of March 3, 2010, a decree intended to prevent parliamentary debate on it. Also, even when the Tribunal decided not to broaden the provisional measures to cover Penitentiary Complex III "Almafuerte" in Cacheuta (*supra* Having Seen 7), the representatives continued to submit information on it.

7. For its part, the State made detailed reference to the manner in which the legal defense of the inmates was carried out in administrative disciplinary proceedings in the penitentiaries via a team of public defenders staffed by officials operatively and functionally answering to the Human Rights Directorate, under the Subsecretariat of Justice and Human Rights. Those defenders took charge of reporting to the Human Rights Directorate of the Province on any problems taking place in any penitentiary unit, along with attending to the complaints brought by the inmates before that directorate via petitions prepared in writing or through their relatives. It also indicated that recently, an Office of the Attorney General Law was passed providing for the creation of ombudsman's offices for sentence execution. Regarding this, the Commission held, *inter alia*, that "justice is being neglected" as the judicial administrative penitentiary sentence execution proceedings are slow; it indicated that there are only two sentence execution judges and that the slowness of the proceedings prevent the application of the differentiated regimen while the inmates of the Gustavo André prison facility, in Lavalle, did not receive prompt attention to their requests for temporary leave and other benefits.

8. Elsewhere, the State indicated that in the San Felipe prison, 325 inmates are "being educated" and 350 work; and in the Boulogne Sur Mer prison, 325 inmates are studying and 351 participate in labor activities. In the André complex, in Lavalle, they have satellite classrooms with 75 lecture hours to implement various courses. Although the representatives did not make specific reference to this point, the Commission indicated that "one of the frequent causes of violence among the prisoners continues to be the lack of activities to occupy them during recreational hours." The Commission also observed during its *in loco* visit carried out in 2009 that there is "a high percentage of inmates who do not have access to any kind of labor, educational, or recreational activity, nor access to telephones to communicate with the outside world" and, with regard to the inmates in the

¹¹ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of August 29, 1998, Considering six; *Matter of Eloisa Barrios et al.* Provisional Measures regarding Venezuela. Order of the Court of February 4, 2010, Considering 3, and *Matter of Belfort Istúriz et al.* Request for Provisional Measures presented by the Inter-American Commission on Human Rights with regard to Venezuela. Order of the Court of April 15, 2010, Considering 9.

Prison Farm, observed "with satisfaction that all of them benefit from technical training programs in agricultural work, programs that are run by professionals."

9. With regard to sanitary and health conditions, the State indicated that it had taken several measures to improve the situation of those deprived of liberty in the penitentiaries.¹² The representatives observed that "it is true that a health program has been implemented that has improved coverage with regard to the physical health of the inmates. However, the greater concern is the mental health of the penitentiary population" due to the high number of suicides. For its part, although the Commission viewed positively information provided by the State, it highlighted that suicides continue to take place and observed that the State failed to present "precise information with regard to the conditions of the sanitary facilities, access to portable water, and hygiene measures."

10. These provisional measures arose out of the situation of extreme urgency and gravity characterized by intra-prison violence that put the lives and integrity of the inmates in grave risk due to the grave overcrowding situation, security and guard deficiencies, and the existence of weapons held by the inmates, among other factors. Specifically, in its order handed down on March 30, 2006, the Court found that the goal of these measures is focused on effectively protecting 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."¹³ At that time it was found that, among other measures necessary to overcome that situation, the State must prioritize the following: An increase in the number of penitentiary personnel intended to guarantee security in the facilities; the elimination of weapons within the facility; a change in guard patterns in such a way as to ensure adequate oversight, and the effective presence of penitentiary personnel in the blocks; and to apply these measures immediately in order to "progressively improve the conditions of detention." Subsequent to that Order, the Court has viewed positively the agreements reached between the State, the Commission, and the representatives, expressed in the so-called "Asunción Accords," establishing a series of measures to be applied immediately, along with other measures to be applied more gradually and progressively, without this implying that the Court must supervise those agreements given the purpose of the measures and the fact that an open petition exists before the Inter-American System.¹⁴

11. Taking this into account, the Court views positively the information submitted by the State on the different measures taken to improve detention conditions through programs

¹² The State made reference, *inter alia*, to the carrying out of "projects to disinfect the accommodations;" to provide the inmates on a monthly basis with basic products for personal cleaning and the cleaning of the facilities; in the Boulogne Sur Mer complex, medical care for the population is provided under a model that allows for efficient and organized medical, dental, and psychiatric supervision of the inmates; "permanent control of the population [has been established] for the control of the HIV virus;" "the opening of a 'Health Statistics and Planning' office [has been formalized] whose primary function focuses on all the possible information concerning the medical and sanitary system."

¹³ *Matter of the Mendoza Penitentiaries*. Order of the Court of June 18, 2005, *supra* footnote 4, operative paragraphs.

¹⁴ *Matter of the Mendoza Penitentiaries*. Order of the Court of June 18, 2005, *supra* footnote 4, Considering 12.

to educate individuals deprived of liberty in the penitentiaries,¹⁵ along with the efforts to improve the educational and recreational activities, as well as measures related to sanitary and health conditions and other additional measures to improve the security situation inside the prisons (*supra* Considering 8 and 9). However, a significant part of the information presented by the representatives, the Commission, and the State is outside the purpose of these provisional measures, such as the information referencing aspects of due process in administrative proceedings launched in connection with incidents taking place inside the penitentiaries; incidents allegedly having taken place in a different penitentiary named Almafuerite; the issuing of rules authorizing methods of chemical castration for individuals convicted of sex crimes; and a law that allegedly restricts personal liberty during criminal proceedings, among others. Therefore, the Court will not rule on this and will hereinafter rule only on aspects pertaining to the central protective purpose of these measures (*supra* Considering 10).

ii) Analysis of the implementation of the provisional measures

1. Measures to correct overcrowding

12. The State reported that in order to confront the situation of overcrowding through the restructuring of the penitentiary system, the Province of Mendoza built a totally new prison facility called the Almafuerite complex with holding capacity for 940 inmates; it inaugurated the Borbollón prison unit intended exclusively for the imprisonment of women; and it built the San Felipe II prison complex, which currently has capacity for 960 inmates and as of the issuing of this order contained 551 inmates. Likewise, the State reported that it inaugurated two new modules in the Gustavo André prison complex in Lavelle where "inmates are housed who have reached the final stage in the progressive imprisonment regimen." That prison has the capacity to hold 130 inmates. In addition, Blocks 4 and 12 of the Boulogne Sur Mer complex were demolished in order to be reconstructed. This complex is part of the Mendoza Provincial Penitentiary. Regarding this penitentiary, the State reported that the inmate population of the Boulogne Sur Mer complex has been reduced from 1650 inmates in 2004, when the measures were ordered, to 872 inmates, with its holding capacity at 890 slots. This capacity will be increased to 960 slots when the "locative arrangements" reach their conclusion.

13. The State indicated that it continues to implement short, medium, and long term measures toward achieving the total restructuring of its penitentiary system. In this way, it indicated that, in order to improve the overcrowding situation, the Province of Mendoza and the Nation of Argentina have agreed on the construction of a federal prison with a capacity to receive 520 federal inmates, thus lessening the crowding in the provincial

¹⁵ Thus the State indicated that in the Boulogne Sur Mer and San Felipe complexes, general basic adult education and higher education are offered for free through the execution of the program "Education in the context of imprisonment" in partnership with the Universidad Nacional de Cuyo. It specified that "total school enrollment at all levels of formal education is 325 students;" 18 inmates are seeking university degrees; a "'Movie Debate' program [was implemented], carried out jointly by the Education and Psychological Areas [where] 163 inmates currently participate," as was a "radio workshop" involving 18 inmates who do weekly broadcasts at the radio station of the Universidad Tecnológica Nacional; and in the "San Felipe" complex, there are different work training courses that benefit 44 inmates. In addition, the library was inaugurated. Also, general repair, carpentry, plumbing, and electrical work are done constantly in the blocks.

prisons. The Province of Mendoza has already ceded land that will be used for this facility and a public tender is being opened. The project is expected to begin in March of 2011. Likewise, building renovations are pending in order to totally restructure the Boulogne Sur Mer complex over a period of three years. The State also reported that it completed the construction of the kitchen, bakery, and occupational therapy and maintenance workshops in the San Felipe complex. In addition, it has built a new micro hospital within the San Felipe complex. This will allow for full first aid care and postsurgical internment for all the inmates of units one and two of Boulogne Sur Mer and San Felipe.

14. With regard to that issue, the representatives of the beneficiaries indicated that the capacity of the penitentiary facilities of Mendoza "is being exceeded [...] by a total of 615 inmates," with a constant increase in the capacity deficit in the majority of the penitentiary units between 2008 at 2009. The representatives argued that it is crucial for the Mendoza government to effectively carry out the total reconstruction of the Boulogne Sur Mer facilities, as any kind of partial renovations do nothing but prolong the agony of that building. They say that it should be totally demolished, as ordered by the Supreme Court of Mendoza toward the end of 2009.

15. The Commission viewed positively the fact that block seven of the provincial beneficiary was demolished, as this had been the most problematic in terms of violence, and that block four is partially demolished. It noted that block two has been shut down, that currently its future functions are being weighed, and that a block for homosexual inmates has been set up and is in excellent condition. The Commission indicated that at the time of its *in loco* visit, the population of the Provincial Penitentiary equaled more than 1500 inmates, 883 of them being held in the "interior" area, and the remaining in the "San Felipe complex," known previously as the "exterior area." The Commission expressed its concern over what the representative had expressed with regard to the overpopulation of the Boulogne Sur Mer Penitentiary by more than 200%. In contrast, it stated that the situation had been overcome in the Gustavo André facility, in Lavalle, following the remodeling of the block affected by the fire in May of 2004.

16. The Court notes that the State has reported on several structural modifications to the facilities of the provincial penitentiaries and that the Supreme Court of Justice of Mendoza had ordered the remodeling of the Boulogne Sur Mer complex (*supra* Considering 14). The Tribunal highlights that the State has provided information on measures adopted to remedy the overcrowding in the penitentiaries that have been the object of the provisional measures ordered by the Tribunal. Consequently, although the overcrowding situation has not been completely remedied, as problems remain in various areas of the penitentiary complexes, the situation has substantially improved and is different from the prevailing situation when the measures were ordered in the year 2004. This allows the Tribunal to consider that one of the purposes of the provisional measures has been complied with, although the elimination of all overcrowding in the penitentiaries has not taken place. This is of course necessary but it exceeds the central protective purpose of the measures.

2. Separation of individuals deprived of liberty

17. The State reported that in order to comply with international standards, it has separated the inmates according to categories as follows:

- Complex number one, Boulogne Sur Mer, is reserved only for inmates who are on trial, with specific exceptions in cases in which the life or integrity of an individual faces risk in facilities for inmates who have been sentenced.
- Complexes numbers two and three, San Felipe and Almafuerde, are reserved for inmates whose final sentences have been issued and are at the disposal of the Sentence Execution judges of the Province or the Federal courts.
- Unit number three, El Borbollón, is reserved exclusively for women.
- For their part, young adults between the ages of 18 and 21 are held in the San Felipe complex in an area totally separated from the rest of the prison population. In the same way, the inmates undergoing a test period for execution of sentences of deprivation of liberty under the regimen provided for in Law No. 24.660 are housed in the San Felipe complex.
- Finally, the ones serving the final stages of their sentences are housed in unit number four, Gustavo André. Likewise, the State reported that the Gustavo André unit, in Lavalle, is housing 54 convicted inmates who enjoy "test period privileges" where they do occupational therapy tasks - principally of a rural kind - farm work, and maintenance.

18. Regarding this, both the representatives and the Commission recognized the progress with regard to the separation of the inmates into categories. However, the Commission highlighted that completion of this task is still pending, considering that as of the end of 2009 more than 80 individuals on trial were still located in the internal section and the inmates who had been convicted did not receive differentiated treatment according to their ages, status of completion of the sentence, or the nature of the crime for which they were convicted. It also highlighted that a small percentage of the detainees in that penitentiary system are elderly individuals who could benefit from measures that are alternatives to deprivation of liberty and commented that a small percentage of the penitentiary population of a homosexual orientation is being housed in a special block with detention conditions that are "very different" from the others.

19. The Court highlights the progress made by the State with regard to separating the inmates into different categories, noting that this progress has had positive effects with regard to the security situation of the inmates and denotes the State's willingness to comply with international standards on the treatment of individuals deprived of liberty.

3. Internment measures with security and guard personnel

20. The State expressed that in order to achieve the peaceful coexistence of the inmates, it has distributed the penitentiary population among different blocks that themselves have several levels of security. In the Boulogne Sur Mer complex there are 471 security personnel officers and 196 individuals assigned to the administrative personal. Likewise, the complex has 287 inmates who are isolated because of problems with communal living, of which 192 have done so voluntarily and 95 under court order. In this context, the prison facility has 14 blocks, the majority of which allow free movement from 0700 hrs. to 1900 hrs. and three of which have night lockdown. Only two blocks allow free movement 24 hours, one reserved for inmates without behavioral problems and the other for those "with a different sexual condition." Likewise, the State indicated that it has set up a unit there with capacity to hold 60 convicted inmates facing exceptional circumstances. The rest of

the blocks are intended to hold isolated inmates for reasons of security and based on the nature of the crime committed. For its part, the San Felipe Penitentiary Complex II has eight modules, each module with capacity for 60 inmates divided into two floors, each one with 40 cells. Both cells have a common patio that is partially open featuring natural and artificial light. As regarding young adults, in order to facilitate communal living, a maximum of 30 inmates is permitted per unit. The hours of free movement and lockdown within the complex varies between 0700 hrs. and 2200 hrs., taking into account "that [L]aw [No.] 24.660 requires that inmates in the advanced stage of the progressive sentence regimen have access to open detention spaces to educate the inmates on self-discipline, for which reason the San Felipe complex is intended specifically for that purpose. This means that the adults housed in that unit have flexible rules and few hours of cell lockdown."

21. Additionally, the State indicated that in order to improve the security situation in the penitentiary complexes, currently a total of 2,020 individuals are guarding them as penitentiary personnel, compared to 2,719 inmates currently. In this process, the State expressed that in 2008 a total of 338 penitentiary personnel were hired. Of them, 260 hold positions of security personnel and carry out guard duties. The remaining 78 agents work as administrative and professional personnel. In 2009, a total of 318 penitentiary personnel were hired. Of them, 271 hold positions of security personnel and carry out guard duties. The remaining 47 agents work as administrative and professional personnel. In 2010, the State has hired 70 members of the administrative personnel, and in the the month of December 2010, 220 agents were hired as security personnel, representing a total of approximately 200 hirings in the year 2010. In particular, the State reported that the Boulogne Sur Mer complex has 667 officers, of which 471 correspond to the security corps and 196 to the administrative corps. Likewise, that includes 96 individuals providing in-wall guard services divided into three companies with rotating shifts of 24 hours of work and 48 hours of rest. Additionally, in the San Felipe II penitentiary complex, 282 personnel currently provide services, of which 221 work in the security corps. The internal security division includes 120 guards distributed in 32 officials per guard shift, working 24 hours on and 48 hours off.

22. Likewise, the State indicated that it has created a specific department for training penitentiary personnel where the different courses that have been provided in human rights, narco criminality, crisis management, criminal intelligence, transportation of inmates, guarding of high-risk inmates, and inspection training have been planned and coordinated. The State also expressed that it has trained the penitentiary security officers on specific methods of treatment and respect of human rights and that a budget for the penitentiary school has been established within the action plan budget, a school that currently does not exist in the Province.

23. In addition, in order to prevent the presence of weapons in the facilities, the State indicated that it has set up inspection divisions, implementing them in the places where the inmates are housed. The Boulogne Sur Mer Penitentiary has a division composed of 52 officers, while the San Felipe facility has an inspection division with nine officers who carry out inspections. The inspections are carried out on a daily basis and follow a protocol with a "detailed methodological, juridical, and technical process intended to preserve respect for the inmates and prevent any kind of excesses." In addition, the inspections and Boulogne Sur Mer are recorded on video and remain at the disposal of the authorities for a period of three months. The entrance of visitors is also regulated by personnel trained to do so. The State indicated that "inspections are carried out on a daily basis and general inspections

are carried out occasionally," all with the presence of General Security Inspection authorities "in order to provide all guarantees, both for the prison population and for the penitentiary personnel." Likewise, it indicated that in advisory support of the Province, the federal penitentiary system has outlined a work methodology with the purpose of improving security patterns through greater presence in the cellblocks and increased patrols. Also, the State indicated specifically that the Boulogne Sur Mer complex has an inspection section made up of an official and 52 officers, allowing the inspections to be carried out on a daily basis. Likewise, the San Felipe II Penitentiary Complex has an inspection division made up of eight officers. They inspect the cells one at a time without using any violent methods.

24. The representatives of the beneficiaries indicated regarding this that the State has carried out "a clear policy of increasing the number of penitentiary personnel in order to be able to provide services in the various facilities," thus allowing for an increase in the number of inmates transferred from the Boulogne Sur Mer penitentiary to the Almafuerde facility." Nevertheless, they specified that the penitentiary personnel are still not adequately trained and therefore not suitable, in addition to being subjected to exhausting work hours, and therefore the inspections they carry out are inadequate. Likewise, they reiterated that overcrowding still exists in some blocks and that penitentiary policies do not attend to the individuals in isolation. Finally, with regard to the young adults, they highlighted that the daily lockdown is more than 18 to 20 hours, as this population is the one with the most problems with violence, and violent incidents persist. According to the representatives and in accordance with the information provided by the sentence execution judge to the Mendoza Supreme Court, as regards the Gustavo André prison in Lavalle, it still does not meet security standards on its emergency sprinkler system for fires and it lacks communication equipment like telephones.

25. Also, with regard to separation according to block, the representatives hold that information provided by the State "contradicts reality," as it cannot state that the situation has improved "in such a short time" after the Commission's visit, especially when intra-prison violence continues to be reported.

26. In its report dated November 16, 2009, after its *in situ* visit, the Commission indicated that conditions in the Mendoza Provincial Penitentiary were deficient in terms of security and fostered violence among the inmates. This was recognized by the prison guards themselves; they confirmed that the penitentiary personnel was insufficient and that due to fear, the guards did not regularly visit the blocks, for which reason they cannot monitor what happens in places away from the yard. Also, it confirmed that the work shifts were excessive, and the guard personnel expressed that the greater need at the moment, in terms of security, was for an increase in the number of personnel. In the same way, it reported that the training provided was not sufficient and indicated that said training should "include preparation for responding to emergency situations and for the treatment of the penitentiary population in accordance with international standards." In the same way, and although it viewed positively the increase in the number of penitentiary personnel reported by the State, the Commission requested that the State be required to provide "the details of the number of guard officials specifically assigned to the departments at issue in these provisional measures."

27. The Court observes that while these measures have been in effect, there has been a steady increase in the number of security personnel designated for guarding inmates deprived of liberty in the penitentiaries, although it could very well be insufficient. Additionally, certain mechanisms have been implemented to improve the security

conditions inside the jails, including an increase in the frequency of the inspections of the detained individuals. In turn, the concern over the correct and regular carrying out of inspections and their effectiveness in the prevention of violence and adequate and effective control of the interior of the blocks on the part of the penitentiary guards is manifest, in addition to the lack of information on the results of these inspections.

4. *Incidents of prison violence and suicide*

28. In response to the suicides that have taken place in the prisons, the State indicated that it has increased care and assistance for the inmates in all the penitentiary complexes in the areas of psychological and social services, providing intensive care for the inmates at risk of committing suicide. Likewise, in the San Felipe complex it has created the Psychosocial Division, a treatment program that has made progress in the communal living of inmates, preventing disciplinary problems inside the complex. The State added that incidents of violence that put at risk the life or physical integrity of the inmates housed in the penitentiaries - like the ones that took place near the middle of 2004 - have not been repeated; and that in 2010 no deaths due to fights or violent incidents have taken place, while with regard to suicides, there were two cases that took place in the months of March and May of 2010, respectively. The State also reported that the deaths and suicides the took place in previous years were attended to immediately by personnel of the general security inspectorate and by officials with the public prosecutor's offices in charge of the judicial investigations, with all cases being investigated. The State also reported that in 2009, there were four violent deaths in the Boulogne Sur Mer and San Felipe prisons, as well as four incidents of suicide.

29. For their part, the representatives submitted specific information on grave incidents in Mendoza prisons and observed that according to news items from the year 2009, at least 15 inmates died violently in different detention places in the province, of which nine were reported as suicides and six as homicides, adding to those the six suicides and five homicides that took place during the year 2008. This brings the total to 26 deaths in the penitentiary complexes (15 suicide 11 homicides) during those years. They also made reference to two alleged suicides reported during the first months of 2010, attributing them to "the terrible and deplorable conditions of detention of individuals deprived of liberty" where poor guard and detention conditions persist. The representatives also indicated that, in accordance with indications from the place's chaplain, "it is alarming that an inmate spends 20 out of 24 hours of the day locked up and alone in a cell, without any activity to do," which "tempts them to suicide, undoubtedly." Likewise, the representatives reported on the recent incidents of violence in 2010 between the months of August and November, when at least 11 inmates were injured due to fights with knives and at least one was injured with a firearm by penitentiary guard officials during an inspection. The representatives highlighted that in addition, in accordance with the Center for the Study of Crime Policies and Human Rights in Buenos Aires, the province of Mendoza is in second place according to the metric of "number of deaths per location" in penitentiary centers in Argentina, with 15.

30. In this sense, the Commission indicated that the urgency and gravity of the provisional measures persist, as the urgency is demonstrated "in kind by the continuation of the situation of violence and insecurity that has been partially but not completely overcome." In addition, it indicated that there has been an increase in the number of cases of homicides and suicides since 2008, many of which have not been solved. Following its

visit, the Commission concluded that the nonexistence of a contingency plan for violent or unforeseen situations, the lack of control of the entry and possession of knives, the insufficient and poorly trained penitentiary personnel, the failure to separate prisoners by categories, and the deficient sanitary and physical conditions, are, among other things, factors that increase the risk for individuals imprisoned or working in the detention centers.

31. The Court observes that, according to the information provided, two kinds of factual situations can be distinguished in which the lives or integrity of the inmates have been at risk or have been affected, namely, and according to seriousness: on one hand, incidents of violence, and on the other, suicides. It should be recalled that since 2005 and through the present day, serious incidents of violence have taken place and numerous individuals have died in the provincial penitentiary under circumstances that are not fully clear; that several inmates have been wounded and/or have suffered various kinds of humiliations in situations of violence that could have been prevented; that deficient detention conditions are still in place; that the investigations carried out have not produced solid results and that deficiencies in the security conditions and internal controls persist, including with regard to the entry and possession of weapons in the penitentiary facilities. During 2010, incidents of suicide and other incidents of violence have taken place in which several individuals have been injured due to fights with knives. Is reprehensible that while these provisional measures have been in effect, incidents have taken place in which the lives and integrity of individuals deprived of liberty have been irreparably affected. That is to say, it should be clarified that despite the fact that the efforts of several State authorities to improve the situation have had positive results, the provisional measures have not been completely effective. Although the incidents that supposedly took place in the Almafuerite penitentiary - highlighted by the representatives - are not the subject of these measures (*supra* Considering 6), the Court observes that violent deaths have taken place in that facility even though it was built by the State precisely in order to alleviate the situation of overcrowding in the other penitentiaries. This could reveal a situation in which the violence is being transferred and the situation in question is not being truly addressed. However, the Tribunal notes that currently, a significant reduction has taken place in the incidents of violent deaths in comparison with previous years. In sum, the Court notes that although incidents of violence continue to take place, the situation of prison violence has generally improved, as it has notably diminished in the last year.

iii) On the request to lift the measures submitted by the State

32. The State has requested on several occasions since December of 2008 (*supra* Having Seen 11) that these provisional measures be lifted on considering that the situation originating the measures has disappeared. The State indicated that "the specific actions taken by the Provincial State toward addressing the overcrowding, the separation of inmates into categories, and the training and noteworthy increase in the number of penitentiary personnel and education, among other things, [have] been demonstrated. [These elements] have tended to diminish intra-prison violence and ensure the physical integrity of inmates, preventing incidents of violence thereby also protecting the physical integrity of penitentiary personnel." It highlighted that since the six deaths that took place during the fire in 2004 in the Gustavo André Prison Colony, incidents of violence have not been repeated in that facility, and a sprinkler system has been installed there as well. The State also highlighted the increase in the number of penitentiary officers since 2004 to

2020 officers as of November 2010, of which 1411 are guards, for a total population of 2719 individuals deprived of liberty. The State indicated that "it has adopted and continues to implement short-, medium-, and long-term measures to deal with the structural problems and in order to improve and correct the situation of the Mendoza penitentiaries in the understanding that the duty to adopt those measures derives from its general obligations to respect and guarantee rights, acquired by Argentina upon ratification of the American Convention." Also, the State indicated that these provisional measures "run the risk of becoming permanent."

33. The State also highlighted that the Supreme Court of Justice of the Province is monitoring the prison situation. It specified that "the Constitution of the province of Mendoza specifically establishes [that] the Supreme Court of Justice of Mendoza has the obligation to supervise the conditions faced by individuals deprived of liberty, both those on trial and those convicted." In this way, "in compliance with this function and through the intermediary of its office on prison matters, which is under the Administrative Chamber of the [Supreme Court of Justice], permanent monitoring is carried out on the progress of the refurbishing and improvements [to the buildings] and sanitary [improvements] of the blocks via periodic visits to the prison and the submission of reports that the administrative authority [...] brings before the [Supreme Court of Justice]."

34. The representatives indicated that "the lifting of the measures would be legitimate only as long as the situation of violence and insecurity that [led] to their adoption has been remedied." However, they noted that "during the time the measures have been in force, the deaths of various inmates have taken place and many others have been seriously injured," for which reason they alleged that "the situation of risk to life and physical integrity of the inmates continues to exist." The representatives "recognize that certain progress has been made on the situations of violence and lack of security that originated the adoption of the provisional measures, to the point that the number of violent deaths seen during 2004 has been reduced." However, they indicated that "the conditions for those deaths to occur, whether homicide or suicide, continue to be in place" and that "it is therefore necessary to maintain the protective measures." They also indicated that "despite viewing positively the progress made in implementing specific actions with regard to the inmates in the Gustavo André prison farm in Lavalle toward improving the general conditions of the penitentiary population in the province, such as the construction of new facilities, [they highlight] that the situation of risk has not been overcome."

35. Likewise, the representatives indicated that the internment conditions seen at the time of the Inter-American Commission's *in loco* visit in 2009 are the same. However, they recognize that due to the provisional measures ordered by the Court, the situation of individuals deprived of liberty has improved. Finally, they asked the Court to maintain the provisional measures "for a time longer" and that they be lifted only when the State has complied with certain requirements - such as, for example, compliance with the "Asuncion Accords" - and indicated that the best result of the measures has been the strengthening of democratic institutions, a project contained in the friendly settlement in order to resolve the situation domestically (*supra* Having Seen 3).

36. For its part, the Commission considered that "the risk faced by the beneficiaries remains" and that the "measures taken by the State have not been sufficient to eradicate the risk faced by the beneficiaries." It added that it has been demonstrated that "the continuation of the situation of insecurity and the deficient health, physical, and sanitary

conditions, while they have improved, have not done so sufficiently to eradicate the risk." The Commission also indicated following its visit in April 2009 that "although progress has been made, the alleged lack of security and violence that led to the request for provisional measures persist[ed]." The Commission indicated that "with regard to the Lavalle farm prison, [...] [there was] a radical change in the situation of the beneficiaries held there, for which reason [...] it recognize[d] the significant efforts of the State [...] to adequately implement the provisional measures." However, it indicated that the State has not fully implemented the measures ordered by the Tribunal and that it did not have "sufficient evidence - for example the implementation of the orders of the national and provincial Supreme Courts - to reach the conclusion that the State has taken sufficient measures."

37. The Commission viewed positively the increase in security personnel, the separation of inmates, the improvements to the facilities, the progress in medical care, and the resocialization programs, and the continuation of the short, medium, and long term measures taken are a sign of the State's willingness to comply with provisional measures. However, it specified that the request to lift the measures should evaluate the direct relationship between the measures and improvements made in the elimination of the situation of risk that led to the adoption of the measures. It specified that it is crucial for the evaluation to focus on the risk factors that introduced the violent incidents and the loss of human lives. The Commission emphasized that among the risk factors to be highlighted are the penitentiary security and guard conditions - particularly the lack of effective control in the blocks - in the Gustavo André prison in Lavalle; the risk factors related to the lack of security and emergency situations; the presence of weapons in the provincial penitentiary; and overcrowding. It observes that there is not a close relationship between the measures taken and the elimination of the risk factors indicated. Therefore, the Commission highlighted that despite the increase in the number of penitentiary personnel, it cannot be established whether this has resulted in an improvement in the security situation inside the prison and that there is not detailed information on new guard patterns. With regard to the presence of weapons in the prison, the Commission indicated that it does not have specific information on the results of the inspections implemented nor on the more general measures that have been adopted to diagnose and eliminate the causes leading to the rearming of the penitentiary population. It also observed that the State has not submitted information on the complaints of mistreatment during inspections. With regard to the overcrowding, the Commission indicated that the State must make reference to what the representatives have reported as far as the high level of overcrowding in some of the blocks. Likewise, the Commission indicated that with regard to the incidents of suicide that have taken place in the prison, they "have taken place in a context of violence in which the inmates have a limited opportunity to avoid the violence to which they see themselves exposed, for which reason they decided to isolate themselves," with the State failing to provide detailed information on the measures taken to prevent or avoid those incidents.

38. Based on this, the Commission noted that there is no information allowing for a reasonable degree of certainty on the elimination of risk; it recognized that there has been a reduction in the incidents of violence, however acts of violence and fights among the inmates still take place, causing an increase in the number of inmates in isolation. It therefore indicated that the nonexistence of violent incidents is not the only factor that should govern the lifting of the measures and underscored that the situation of improvements in the conditions is due precisely to the measures adopted. It thus highlighted that another criteria for lifting measures is the existence of internal oversight measures on the situation inside the penitentiary. The Commission found that the

conditions for lifting the measures are still not right and asked that the measures be maintained "for a reasonable period" until the Court has better informational elements toward lifting them.

39. The Court recalls that when handing down protective measures, the standard of the Tribunal or its head for evaluating these requirements is *prima facie*, as on occasion the application of assumptions is necessary given the need for protection.¹⁶ Without prejudice to this, maintaining protective measures requires the Court to perform a more rigorous evaluation of the persistence of the situation that led to the measures.¹⁷ Should the State request the lifting or modification of the provisional measures ordered, it must present sufficient evidence and argumentation allowing for the Tribunal to see that the risk or the threat no longer meets the standards of extreme gravity and urgency of avoiding irreparable damage. At the same time, the burden of the beneficiaries and the Commission to present evidence and pleadings increases with the passage of time and the lack of new threats. Certainly the fact that new threats do not arise can be due precisely to the effectiveness of the protection provided or the deterrence of the threats with the Tribunal's order. Nevertheless, the Tribunal has considered that the passage of a reasonable period of time without threats or intimidation, added to a lack of risk, can lead to the lifting of the provisional measures.¹⁸

40. At the same time, the Court must take into account that, in keeping with the preamble of the American Convention, international protection under the Convention "reinforc[es] or complement[s] the protection provided by the domestic law of the American States." Thus, on confirming that the State in question has established effective protective mechanisms or taken effective protective actions for the beneficiaries of the provisional measures, the Tribunal can decide to lift the provisional measures and place the obligation to protect on the party principally responsible, that being the State.¹⁹ Upon the Court lifting the provisional measures for this reason, it is up to the State, in keeping with its duty to guarantee human rights, to maintain the protective measures that it has adopted and that the Tribunal found effective during a period of time warranted by the circumstances.

¹⁶ Cf. *Case of Raxcacó Reyes et al.* Provisional Measures regarding Guatemala. Order of the Court of August 30, 2004, Considering 10; *Matter of Fernández Ortega et al.* Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, Considering 14, and *Matter of Centro Penitenciario de Aragua "Cárcel de Tocarón."* Provisional Measures regarding Venezuela. Order of the Court of November 11, 2010, Considering 14.

¹⁷ Cf. *Matter of the Indígena Kankuamo Indigenous People.* Provisional Measures regarding Colombia. Order of the Court of April 3, 2009, Considering 7; *Matter of A.J. et al.* Provisional Measures regarding Haiti. Order of the Court of September 21, 2009, Considering 18, and *Case of the Mapiripán Massacre.* Provisional Measures regarding Colombia. Order of the Court of September 2, 2010, Considering 26.

¹⁸ Cf. *Matter of Gallardo Rodríguez.* Provisional Measures regarding Mexico. Order of the Court of July 11, 2007, Considering 11; *Matter of Pilar Noriega García et al.* Provisional Measures regarding Mexico. Order of the Court of February 6, 2008, Considering 14; *Matter of Lilliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Court of July 9, 2009, Considering 40, and *Case of the Mapiripán Massacre, supra* footnote 18, Considering 28.

¹⁹ Cf. *Matter of Luis Uzcátegui.* Provisional Measures regarding Venezuela. Order of the Court of February 20, 2003, Considering 13; *Case of Raxcacó Reyes et al.* Provisional Measures regarding Guatemala. Order of the Court of February 2, 2007, Considering 12, and *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, Considering 21.

41. In this matter, the Tribunal highlights that almost six years have passed since the provisional measures have been adopted. These measures have undoubtedly had a positive effect toward overcoming the grave situation that has principally characterized the Mendoza Provincial Penitentiary since the year 2004, taken into account the grave incidents of violence inside the prisons and the loss of control and security by the authorities in charge of guarding the inmates at certain times or periods. These effects have been recognized by both the Commission and the representatives. The progress on issues of security and detention conditions has already been indicated, as have the improvements in the infrastructure of the complexes and the construction of another maximum-security penitentiary (Almafuerte in Cacheuta) to allow for greater control the overcrowding situation, in addition to other projects that are in progress. Although the violent deaths continued during the years 2008 and 2009 (*supra* Considering 29), the rate of violent incidents has steadily and significantly decreased, although it has also been confirmed that suicides continue to take place in the penitentiary. Actions have been taken to prevent overcrowding, such as the one tending toward the separation of inmates in the various complexes according to category; the number of penitentiary personnel have been increased; and the inspection system has been implemented for controlling weapons and other objects prohibited within the prison.

42. The Court highlights the different commitments and agreements reached between the State and the representatives of the beneficiaries, such as the document signed on May 11, 2005, in Asuncion,²⁰ (*supra* Having Seen 3), as well as the recognition by the representatives and the Commission of the actions carried out by the State (*supra* Considering 18, 24, and 26).

43. It is important to note that the State has complied with its duty to report to the Tribunal periodically on the steps taken to implement these measures.

44. Additionally, it is particularly relevant in this matter to highlight the impact that the measures ordered have had on the actions of domestic legal authorities such as the Supreme Court of Justice of the Nation and the Supreme Court of Justice of Mendoza, as well as the attention of international oversight mechanisms like the United Nations Committee against Torture and the United Nations Working Group on Arbitrary Detention. Thus, for example, the Court recalls the adoption of several rulings on the domestic level ordering the correction of the situation in the Mendoza Penitentiaries:

a), through writs of *habeas corpus*, the first one granted on March 23, 2007²¹ and the other granted on June 18, 2008, by the Second Oversight Court of the Judicial Branch of Mendoza, ordering to immediately provide all "corrective measures to safeguard at all times the physical and psychic integrity of the inmates housed in Block 3 of the Provincial Penitentiary of the Province of Mendoza."²² It also ordered "to attend immediately to the needs of the inmates and resolve the conditions of

²⁰ *Matter of the Mendoza Penitentiaries regarding Argentina*. Order of the Court of June 18, 2005. Considering 31.

²¹ *Cf. Matter of the Mendoza Penitentiaries*. Provisional Measures regarding Argentina. Order of the Court of August 22, 2007, Considering 14.

²² *Cf. Second Oversight Court*. Judicial Branch of Mendoza, *habeas corpus* dated June 18, 2008 (case file of the provisional measures, Volume XIX, pages 6362 to 6372).

overcrowding and treatment, education, work, and psychiatric, medical, social and spiritual care." The first of these rulings established, *inter alia*,

TO CALL UPON the director of Penitentiary Complex No. III (Almafuerte) in Cacheuta to immediately take the steps, issue the orders, and/or execute the proceedings necessary for the cruel, inhuman, and degrading treatment suffered by the inmates housed in SECTORS 1 and 2 of the Complex to cease [...; to] ensure the inmates their right to petition, having the duty to establish an effective and rapid means of attending to the different briefs and/or correspondence sent, without prior restraint, to judicial and/or administrative authorities [...;] to take the steps toward providing and/or allowing the entry of radio and/or television devices that ensure the right to information enjoyed by the inmates [...;] within the period of [5 days], to take steps toward providing some means of telephonic communication to the inmates housed in Complex III in order to ensure the inmates their right to communicate [...]. TO RECOMMEND that the director of Penitentiary Complex No. III (Almafuerte) of Cacheuta reorganize the activities of the inmates housed in SECTORS I and II of the complex in such a way as to permit them to enjoy more recreation and thereby decrease the number of hours under lockdown to the extent permitted by the safety conditions of the facility.

b) In a ruling dated February 13, 2007, the Supreme Court of Justice of the Nation found, *inter alia*, that "[...] as custodian of constitutional guarantees and attending to the lack of results obtained by the order issued by the Inter-American Court of Human Rights, it finds itself with the unavoidable obligation to call upon the National State to, within 20 days, take those measures necessary to put an end to the situation being faced in the prison units of the province of Mendoza and to take the measures hereinafter indicated in the operative part of this judgment [...]" and ruled:

II.-To instruct the Supreme Court of Justice of the Province of Mendoza and provincial tribunals of all levels, within their corresponding jurisdictions and by order of the Supreme Court and considering the urgency of the case, to put an end to all eventual situations of aggravation of detention that amount to cruel, inhuman, or degrading treatment or any other situation possibly leading to international responsibility of the Federal State; III.-To order the National Executive Branch to report to the Tribunal every 20 days on the measures adopted to improve the situation of those detained. Notify [...] the National Executive Branch- the Ministry of Justice and Human Rights-; and the Governor of the Province of Mendoza of this order [...]

c) in an Order dated February 14, 2007, the Supreme Court of Mendoza ruled:

1. To notify and report on the contents of the resolution [of the CSJN dated February 13, 2007], to all the Tribunals of the Province of Mendoza for their compliance and in order to cease any eventual situation of aggravation of detention that would violate Article 18 of the National Constitution; 2. To order an extraordinary visit to the women's prison facilities, Boulogne Sur Mer, and Gustavo André to be led by the magistrates of this Tribunal to all the penitentiary units in the Province; 3. To order the immediate confirmation of the conditions of the prison facilities via the Sentence Execution Judges; 4. To call [a] hearing for February 19, [2007,] in order to call the governor of the province of Mendoza before this Tribunal to report on the degree of compliance with the precautionary measures [sic] ordered by the Inter-American Court of Human Rights; and 5. To ask the Supreme Court of Justice of the Nation to call on the National Executive Branch to immediately and urgently relocate the federal inmates housed in the Provincial Penitentiary.

d) in an administrative order issued on March 1, 2007, the Supreme Court of Justice of the Province of Mendoza, "examining the contents of the ruling handed down by

the Supreme Court of Justice of the Nation in the orders entitled 'Lavado Diego et al. v. the Province of Mendoza,' [...] instructing this Tribunal to make cease all situations implying cruel, degrading, or other treatment capable of violating the national Constitution," *inter alia*, ruled

A.- To inform the executive branch of the province that it must, with all possible urgency;

1.- Move to disinfect the Boulogne Sur Mer penitentiary facility to eradicate the insects (cockroaches), taking measures leading to the permanent cleanliness of the blocks.-

2.- Provide chemical, substitute, or other bathrooms in sufficient quantities in the different blocks to allow for the inmates' privacy and dignity while attending to their physiological needs.-

3.- To eliminate the situation of excessive overcrowding, relocating the inmates in dignified conditions.-

4.-To adopt measures to effectively guarantee the physical integrity of the inmates, tending to prevent situations that put their lives at risk.-

5.- To provide permanent medical control, care, and assistance for the inmates, especially in block 15.-

[...]

d) an order of the Supreme Court of Justice of the Nation dated March 20, 2007, ruled on the merits of the action brought (*supra* Considering 41(a)). Although it ruled that the case does not fall under its "native jurisdiction" and ordered "to move the proceedings to the National Appeals Chamber in the Adversarial Administrative Federal Court for all pertinent purposes [...] and] to the Supreme Court of the Province of Mendoza," it found, *inter alia*, the following:

14) That this situation is among those possible, and that given it, the National Executive Branch, in supervision of the interests of the National State, shall act in its own interest with regard to the consequences entailed in the compliance or noncompliance with the recommendations and rulings made by the Commission and the Inter-American Court of Human Rights on the facts denounced. That it is the legitimate bearer of the obligation related with the claim and not the Province of Mendoza.

The issue has left the domestic scope of the Republic of Argentina, meaning that the aforementioned provincial state is one of the bearers of the juridical relationship on which the above-referenced claims are based, disregarding its grounds [...] The provincial state cannot be recognized as suitable for contesting the specific subject this proceeding is dealing with [...]

15) That the tone itself of the orders and communication of the international bodies intervening in the complaints leading to this proceeding - attached to this ruling - reveal that the juridical relationship invoked based on which it is sought to order compliance with recommendations and rulings made by the Commission and the Inter-American Court of Human Rights links the actors directly with the National State and not the Province of Mendoza.

17) That in this way, a ruling contrary to the one brought about and as a consequence of which the execution of the provisional measures adopted by the Inter-American

Court could be pursued - via the sought-after joinder - both against the National State and against the Province of Mendoza would mean emptying Art. 99, subparagraph 1st of the National Constitution as well as the international commitments assumed by the Nation of Argentina of their content. [...]

20) That without prejudice to all this, it should be highlighted that as a consequence of the ruling of this Court dated February 13, 2007, the Supreme Court of Justice of the Province of Mendoza has handed down order 20.037, of February 14, 2007, through which - among the other provisions with which it concerns itself - it has requested that this Tribunal "call upon the National Executive Branch to move immediately and urgently to relocate the federal inmates housed in the Provincial Penitentiary;" and this Court must rule on this given that it was presented with the request.

21) That the request shall not be received via the intended route. Pursuant to the provisions contained in Law 24.660 applicable herein, the Nation and the provinces shall reach agreements on the receipt or transfer of convicts from their corresponding jurisdictions, and the transfer in question must be paid for by the State requesting it (arts. 212 and following, cited law). The Province of Mendoza joined that provision through the passage of law 6513.

In this way, the National Executive Branch cannot be called upon to carry out the aforementioned "immediate and urgent relocation" - at the request of only one of the branches of authority of the local state - when the housing of the inmates takes place based on agreements signed by the States, with the legitimate representatives of that system of application understanding it to be advisable in order to ensure better individualization of sentences and the effective integration of the Republic's penitentiary system (art. 212 cited).

e) On October 21, 2009, the Supreme Court of Justice of Mendoza issued a ruling ordering the provincial government to prepare an annual and comprehensive working plan in no more than 60 days that would include the renovation or replacement of all the Boulogne Sur Mer prison facilities.

45. Attending to the principle of complementary and subsidiary nature that guides the Inter-American Human Rights System, an order to adopt or maintain original measures is justified in situations contemplated under Article 63(2) of the American Convention, with regard to which the ordinary guarantees existing in the State are insufficient or ineffective when the domestic authorities cannot or do not wish to make them prevail.²³ Although there is no information on the record indicating the way in which the rulings of the domestic judicial authorities have been complied with or implemented, the truth is that the domestic authorities have been attentive to the situation of the Mendoza Penitentiaries since the Tribunal ordered the provisional measures. This allows for the reasonable assumption that they will continue adequately exercising all due Convention related oversight,²⁴ likewise with regard to the protective measures to be required going forward.

²³ Cf. *Matter of the Mendoza Penitentiaries*. Provisional Measures regarding Argentina. Order of the Court of August 22, 2007, Considering 14, and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, Considering 15.

²⁴ Cf. with regard to "Convention related oversight" see, among others: *Case of Almonacid Arellano et al. v. Chile, Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, paras. 124 and 125; *Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru, Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2006. Series C No. 158, para. 128, and *Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of May 26, 2010. Series C No. 213, paras. 206 to 208.

46. For all these reasons, the Court views positively the efforts made by the State and the active participation of the representatives of the beneficiaries and finds that the factual situation that led to the adoption and maintenance of these measures to the benefit of individuals deprived of liberty in the Mendoza Provincial Penitentiary and the Gustavo André unit, in Lavalle, does not persist. The situation of risk facing these individuals has evidently not been eliminated, but the situation of vulnerability faced by individuals deprived of liberty is a characteristic of any detention center. The information presented by the State, the Commission, and the representatives does not allow for the conclusion that the situation currently facing the inmates in the Mendoza Provincial Penitentiaries or the specific factors of risk that they could be facing meet the standard of gravity verified previously. In any case, the urgency and imminence of the situation no longer coincide.

47. This Tribunal is aware that the alleviation and correction of the situation present in the Mendoza penitentiaries is a short, medium, and long term process requiring a collection of actions directed toward rectifying prison and detention conditions on the part of federal and provincial authorities in the administrative, judicial, and legislative areas. Many of these issues do not fall under the supervision of the implementation of provisional measures. Because of this and for the aforementioned reasons, the Court finds it appropriate to lift the provisional measures.

48. Finally, the Court has been informed that in the petition submitted to the Inter-American Commission known as "Case of the Inmates of the Mendoza Penitentiary," the State and the representatives reached a friendly settlement agreement on August 28, 2007.²⁵ According to information provided by the State, that agreement was approved domestically through "Decree No. 2740 ratified through [L]aw [No.] 7.930 of September 16, 2008." The State reported on the measures taken toward complying with that agreement, in particular measures of pecuniary and legal reparations and measures of satisfaction;²⁶ it expressed that the Commission has not issued the corresponding report

²⁵ Cf. The referenced "friendly settlement agreement" in the proceeding before the Commission contains the following sections: I) recognition of the Argentine State's responsibility for the facts; II) pecuniary measures of redress; III) nonpecuniary measures of reparation, including legal measures and other measures of satisfaction; IV) action plan and budget; and V) ratification and circulation. Friendly settlement agreement (case file provisional measures, Volume XIV, pages 4172 to 4176)

²⁶ With regard to the pecuniary measures, the State reported that in Article 2 of Decree 2.740/07, ratified by Provincial Law No. 7.930, it recognized the responsibility of the Government of the Province of Mendoza in "the cases of violent deaths and serious attacks on personal integrity for having failed to guarantee the minimal conditions of security, protection, and physical integrity for the inmates," submitting the case to an *ad hoc* arbitration tribunal to determine the corresponding indemnities. This arbitration tribunal was to meet and rule in June of 2010 in Mendoza. The State also indicated that the friendly settlement included several nonpecuniary reparatory measures, among them legal measures in which the Province of Mendoza committed to submitting four bills to the legislature, namely: i) a bill that would create an ombudsman's office for individuals deprived of liberty, while another would create a local mechanism for prevention in the framework of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; these were combined into a single bill creating "an external body to oversee the detention conditions of those deprived of liberty," ii) a bill creating the Ombudsman's Office of the People of Mendoza, and iii) a bill creating an official provincial public defenders office for proceedings on sentence execution. All these projects were to be submitted before the provincial legislature. However, the State indicated that they have not been addressed yet by the plenary of that body. With regard to other measures of satisfaction, the State indicated that there is a commemorative plaque in Penitentiary Complex 1, Boulogne Sur Mer, making reference to the precautionary and provisional measures before the Inter-American System. Likewise, there is a measure to guarantee participation of the petitioners in the preparation of an "action plan on penitentiary policy to allow for the establishment of short, medium, and long term public policies." Toward doing so, the State had scheduled a meeting for this past

under Article 49 of the Convention. According to the Commission, the petitioners recently requested "that the agreement not be approved." Regarding this, the State highlighted that it has been requesting approval of the agreement for two years and has gotten no response.

49. Representatives indicated that, in their judgment, the "Friendly Settlement Agreement on the issue of the Mendoza Penitentiary does not cover the Provisional Measures, and the petitioners will not block their removal if the Nation and the Province fully comply with the agreement." They indicated that "in this case, the petitioners and the State want the [Commission] to evaluate and supervise the agreement, not put an end to the matter with its signature," for which reason "if the National State has sent its request for [the application of Article] 49 of the Convention, it does so within the framework of the commitments made," but they indicated that "it is the [Commission] that must decide if the agreement meets inter-American standards and if it has been complied with." During the public hearing in November of 2010, they indicated that although the friendly settlement does not form part of the provisional measures, Law No. 17.930 establishing compliance with it came out of these provisional measures, for which reason it is closely linked, and the measures on which they have reached an agreement would help to improve democratic institutions in order to rectify the situation of individuals deprived of liberty.

50. For its part, the Commission highlighted that the provisional measures were requested independently and "apart from the existence of the case," with their purpose being to protect rights rather than to prevent the result of the petitions brought before the Commission. It indicated that it is true that there is a friendly settlement agreement presented by "one of the petitioning groups" and the Commission "is evaluating it in order to issue a report pursuant to Article 49 of the Convention." In particular, it found that the State request for the Court to rule on the urgency of the approval of the friendly settlement agreement is inadmissible given that the preceding is independent of the provisional measures and it falls solely and exclusively to the Commission under its independence and autonomy to rule on cases being processed before it.

51. The Court views positively the conciliatory attitude of the petitioners and the State, manifested in this matter through the agreements reached in the so-called "Asuncion Accords," (*supra* Having Seen 3) as it reflects a commitment to comply with obligations under the Convention. The Court observes that the Commission indicated that it has not yet approved the agreement but that it is studying the possibility of doing so pursuant to Article 49 of the Convention. It is possible for some of the measures agreed upon between the State and the petitioners in the "friendly settlement" intended to remedy situations apparently not compatible with the American Convention taking place in the Mendoza penitentiaries to include elements also pertaining to the purpose of these provisional measures. Although the provisional measures proceeding should not imply a forum for debate on questions of the merits that could imply a pre-judgment in a case, it is clear that the jurisdiction to weigh and supervise that friendly settlement agreement falls exclusively to the Inter-American Commission. Consequently, upon lifting these provisional measures, the Tribunal limits itself to ruling on whether the situation of risk that led to this proceeding persists in the terms indicated (Considering 39), for which reason it does not fall to the Tribunal to rule on what the State has indicated as far as the need to approve the aforementioned agreement. It is enough to find that the Inter-American Human Rights

System remains attentive to the situation of the Mendoza Penitentiaries through the action of one of its bodies, to which corresponds the duty to determine the future course of the proceeding.

52. Without prejudice to what this Tribunal rules, it should be reiterated that Article 1(1) of the American Convention sets forth the general obligations of States Parties to respect the rights and liberties enshrined in the Convention and to guarantee the free and full exercise of these rights for all individuals subject to their jurisdiction. The Court especially highlights the State's position to guarantee with regard to individuals deprived of liberty,²⁷ by virtue of which penitentiary authorities exercise total control over them, making the general obligations take on a particular shade of meaning that obliges the State to provide inmates with the minimum conditions compatible with their dignity during the time they remain in the detention centers, with the purpose of protecting and guaranteeing their rights to life and personal integrity.²⁸ Because of this, and independent of the existence of specific provisional measures,²⁹ the State is especially obligated to guarantee the rights of individuals under circumstances of deprivation of liberty.³⁰ Likewise, in this particular matter, the Court recalls that in keeping with international law, the State must ensure that the security measures taken in prison facilities include adequate training of the penitentiary personnel who provide security in the prison and the effectiveness of those mechanisms for preventing prison violence, such as the ability to react to incidents of violence or emergencies inside the blocks. The State must ensure that the inspections are done properly and carried out periodically, intended to prevent violence and eliminate risk through adequate and effective control of the interior of the blocks on the part of the penitentiary guards, and that the results of these inspections be duly and quickly communicated to the competent authorities.

53. As far as the minimum conditions of detention, it is important to recall that the State must in principle maintain adequate installations, the separation of inmates into categories, and access to adequate health, hygiene, and education services, as well as offer measures for recreation and mental and physical health to the individuals deprived of liberty.³¹ Likewise, the State must ensure that the personnel in charge of security have the training and tools necessary to do their jobs with respect for the rights of those detained, in

²⁷ Cf. *Case of García Asto and Ramírez Rojas v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2005. Series C No. 137, para. 221; *Case of Raxcacó Reyes v. Guatemala. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, para. 95, and *Case of Durand and Ugarte v. Peru. Merits*. Judgment of August 16, 2000. Series C No. 68, para. 78.

²⁸ Cf. *Case of Neira Alegría et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60, and *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Court of May 2, 2008, Considering 19, and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, Considering 11.

²⁹ Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, Considering 3; *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Court of May 2, 2008, Considering 19, and *Matter of Carlos Nieto et al.* Provisional Measures regarding Colombia. Order of the Court of August 5, 2008, Considering 3.

³⁰ Cf. *Matter of Natera Balboa* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of December 1, 2009, Considering 14, and *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Court of November 17, 2009, Considering 13.

³¹ Cf. *Case of Montero Arangueren et al. (Catia Prison) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 85 to 99.

particular that they use force in an exceptional, planned, and limited manner in order to prevent prison violence. For this reason, the measures to be taken by the State must prioritize a system of preventive action - intended *inter alia* to prevent arms trafficking and an increase in violence - over a system of repressive action.³²

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by way of the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 27 of the Rules of Procedure,

DECIDES TO:

1. Lift the provisional measures ordered by the Inter-American Court of Human Rights on November 22, 2004, and later ratified, to protect the life and integrity of all the persons held in custody in the Mendoza Provincial Prison and those in the Gustavo André Unit, in Lavalle, as well as every person found within those facilities.
2. Clarify that under the terms of Article 1(1) of the American Convention, the lifting of provisional measures does not imply that the State is relieved of its obligations under the Convention to protect.
3. Request that the Secretariat of the Court notify the State, the Inter-American Commission on Human Rights, the representatives of the beneficiaries, and the State of Argentina of this Order.
4. Close the case file on this matter.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

³² Cf. *Case of Montero Arangueren et al. (Catia Prison) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, para. 67, 71, 77, and 78; *Case of Penal Miguel Castro Castro v. Peru. Merits, Reparations and Costs*. Judgment of November 25, 2006. Series C No. 160, paras. 239 and 240; *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures regarding Venezuela. Order of the Court of March 30, 2006, Considering 15, and *Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Order of the Court of February 9, 2006, Considering 17.

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra-Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary