

**Order of the
Inter-American Court of Human Rights
of November 30, 2007
Provisional Measures regarding Venezuela
Matter of Yare I and Yare Capital Region Penitentiary Center**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", the "Court" or the "Tribunal") of March 30, 2006, whereby it was decided, *inter alia*:

1. [t]o order the State to immediately adopt such measures as may be required to efficiently and conclusively prevent violence at the Yare Prison, so that no inmate or any other person at said facility is killed or their personal integrity impaired[;]

2. [T]o order the State, notwithstanding the measures ordered in the preceding operative paragraph for immediate implementation, to adopt such measures as may be necessary to: a) confiscate weapons in the possession of inmates, b) separate indicted inmates from convicted inmates and c) conform the existing detention conditions to the applicable international standards. In this regard, the State is required to periodically monitor the conditions of confinement and the physical and emotional state of the inmates, with the participation of the representatives of the beneficiaries of these [...] provisional measures[;]

3. [t]o call upon the State to take all steps as may be necessary in order for the measures of protection ordered on behalf of the Yare Prison inmates to be devised and implemented with the participation of the representatives of the measures' beneficiaries and, in general, to keep them current on the progress made in their enforcement[;]:

4. [t]o call upon the State to provide the Court with an up-to-date list of all inmates confined at the prison, and to specify the characteristics of confinement for each person [and],

5. [t]o call upon the State to investigate the facts that led to the adoption of the provisional measures and, as the case may be to identify the perpetrators and punish them as applicable, including administrative and disciplinary penalties.

[...]

2. The notes submitted by the Bolivarian Republic of Venezuela (hereinafter the "State" or "Venezuela") on June 9, 2006, August 1, 2006, September 29, 2006, January 3, 2007, February 27, 2007, May 2, 2007, July 16, 2007, and September 5, 2007, whereby it informed, *inter alia*:

a) In relation to the obligation to adopt such measures as may be required to efficiently and conclusively prevent violence at the Yare Prison, that:

i. as from February, 2006, new prison guards have been incorporated; by September 2007, the safety conditions of the facility were temporarily provided by 21 internal male correction officers and 12 female officers;

ii. prison guards were trained in the school for the formation of correction officers "Don Cristóbal Hurtaro", in a four-month intensive course, with emphasis on Human Rights among other aspects, and

iii. in relation to the violent incidents, there have been, between April, 2006 and July, 2007, apparently 40 deaths as well as no less than 60 persons injured. Specifically, in relation to the violent incidents, in April, 2006, 6 persons were injured and 4 deaths; in May, 2006, there were 3 persons injured; in June, 2006, there were 7 persons injured and 6 deaths; in July 2006, 1 person was injured and 1 died; in August 2006, there was, apparently, 1 person injured; in September, 2006, there were 7 injured persons and one death; in October, 2006, there were 4 injured persons; There is no register regarding the incidents of November and December, 2006; in January, 2007, there were 5 persons injured and 1 death; in February, 2007, there were between 2 and 4 persons injured; in March, 2007, there have been 7 persons injured and 3 to 6 deaths; in April 2007, there have been 6 persons injured and 5 deaths; in May, 2007, there have been 1 person injured and 3 deaths; in June, 2007 there have been 5 persons injured and 5 deaths; and in July, 2007 there have been 11 persons injured and 6 deaths.

b) In relation to the obligation to adopt such measures as may be necessary to:
 a) confiscate weapons in the possession of inmates, b) separate indicted inmates from convicted inmates and c) bring the conditions of confinement at the prison in line with the international standards on the matter, supervising the conditions of confinement and the physical condition and emotional state of the inmates, with the participation of the representatives, that:

i. regular and extraordinary searches were conducted inside the prison whereby the authorities have confiscated firearms, ammunitions, prison-made weapons, prohibited objects, explosives, volatile and psychotropic substances and narcotics;

ii. by June and July, 2006, there was an "effective separation" between convicted inmates and indicted inmates, since Yare I only housed convicted inmates and Yare II housed indicted inmates Regarding the indicted inmates who are confined to Yare I, they are subjected to the review of their convictions or their sentence calculation is still pending, and they are under the custody of the courts on Execution of Judgments' issues. With respect to the convicted inmates who are confined to Yare II, they are still waiting for their Writs of Execution to be final in order to be transferred to Yare I;

iii. Yare I has the capacity to house 680 inmates, while Yare II was built to house 750 inmates. In August, 2006, the total population of the Yare prison was of 560 inmates, 132 of them were indicted inmates and 428 convicted inmates; in September 2007, there were 423 inmates in Yare I, 26 of them were indicted inmates, 355 convicted inmates, 12 foreign and 30 of the working prison population. In Yare II, there were 283 inmates, 279 of them were indicted inmates and 4 were foreign;

iv. in the area of legal advice, there is a psychosocial permanent team, composed of two social workers and one psychologist in charge of evaluating the psychosocial aspects of the inmates with the purpose of expediting the proceedings that, if it is approved, will allow the inmates the opportunity to choose an alternative way of complying with the sentence as soon as they have served a certain period of time. From June 4 to 22, 2007, an Intensive Workshop on Assistance to Inmates was carried out in the premises of the prison, with the purpose of conducting a comprehensive review of the inmates' proceedings and increasing the procedural promptness. Alternative possibilities for the compliance with the sentence and alternative measures have been considered, such as the prison work, open regime, parole, confinement and precautionary measures;

v. in relation to the recreation area, the inmates are allowed to carry out different sports activities, such as indoor football, basketball, volleyball, softball, boxing, chess, domino, weight lifting, ping pong and *bolas criollas*;

vi. several religious missions have stimulated educational activities for the inmates in areas of formal and informal education, personal development, computing, hairdressing training, first aids, farming, electricity and construction, among other activities, that have produced positive results for the sake of the social re-insertion of the inmates;

vii. in relation to the area of culture, permanent workshops have been conducted for the making of masks and manufacturing of pottery, oil paintings, theatre and also, a musical band and a craftsmanship group were formed. Furthermore, inmates of the Yare Prison participated in a Folklore Dancing Festival.

viii. in the relation to the area of health, several activities for medical care were provided, including ophthalmologic services, viral vaccinations, oral hygiene care, Seminars on HIV/AIDS and VDRL (syphilis), delivery of corrective lens, immunization against HBV and meningitis, rural and urban fumigation, implementation of lectures on the reasonable use of medicines and a Nourishing Control Program for those inmates with disease patterns, such as diabetes mellitus, tuberculosis (TB) or HIV/AIDS, and,

ix. the progress in the facilities is framed within the "Humanization Plan", through which the State has started to build 15 penitentiary facilities, between 2006 and 2012. The plan is based on the following three points: "New institutions", "full care" and "infrastructure". The Fondo Nacional para las Edificaciones Penitenciarias (Venezuelan Fund for the Construction of Prisons FONEP) participates in the building of the facilities. On September 6, 2006, some repairs to the facility and security gate were made in the area called "La Torre". By December 21, 2006, a company was hired in order to build the "Terrace A" of Yare I; Over 65% of the construction of "Terrace A" was completed by February 2007. During September and October, 2006, a cleaning and restyling of the kitchen and the wiring for the conditioning of the perimeter lighting were performed. By September 27, 2006, there was a call for tender of the "Security Project of the Center, which includes: Perimeter lighting, reinforcement of the fence and construction of walls, electronic

surveillance, frequency inhibitors, electrical wiring, physical protection against tunnels, safety power generators, anti-vandal protection systems and preventive and corrective maintenance". With respect to Yare II, on April 3, 2006, it was decided to do a "remodeling of six confinement facilities (which includes the recovery of the sanitary and power services), to build three dining-rooms with outside paths, to refurbish a building for observation and isolation, to build premises for multiple uses, such as educational or administrative purposes (including bedroom, kitchen and dining room for officers), to refurbish the building for the inmates' assistance (which includes a nurse's station), to build a visitors' center (which includes visitors' bedrooms, a visiting area for relatives and a playground) and to build a facility for electricity, pottery, craftsmanship workshops, among others". By May, 2007, 85% of the project was completed.

c) As to the adoption of the steps necessary in order for the measures of protection ordered for the benefit of the Yare Prison inmates to be devised and implemented with the participation of the representatives of the measures' beneficiaries and, in general, to keep them posted on any progress made in their enforcement, that:

i. It has been not only coordinated with the representatives of the beneficiaries about the current measures, but also participation has been given to all other organizations that would like to provide significant contributions to the prison system;

ii. on March 29, 2006, it was held the first meeting with the non-governmental organizations that work in favor of the prison system in Venezuela in order to coordinate strategies that would make a positive contribution to the improvement of the prison system. On May 3, 2006, it was held the second meeting where different technical work teams presented their proposals. On May 23, 2006, it was held the third meeting in which proposals prepared by NGOs were submitted in order to contribute to the program of the Humanization of the Prison System;

iii. On April 10, 2006, it was held the meeting between the State's Agent and the beneficiaries' representatives, where suggestions were submitted in order to implement the provisional measures. On April 28, 2006, the Presidential Commission on Correctional Emergency gathered with the representatives who, apart from listening to the related proposals and agreed on attending the prison centers which is the subject-matter of the current provisional measure, as field work.

iv. On May 5, 2006, a field visit was made to Yare I and Yare II, with the State's Agent of the Presidential Commission on Correctional Emergency, the Office of the Public Prosecutor and the representatives of the beneficiaries;

v. on August 2, 2006, the State's agents and the beneficiaries' representatives gathered in order to discuss "different criteria" and

vi. the State and the representatives of the beneficiaries agreed to make a collective visit to the premises of the Prison Center, but the visit had to be

suspended until further notice since there was a change in Executory Power of Venezuela regarding the authorities.

d) In relation to the obligation to provide the Court with an up- to –date list of all the inmates confined at the prison, also specifying the characteristics of confinement for each person, That in May 2006, an up-to-date list of all the inmates confined at Yare was submitted to the Court, including the indicted and convicted inmates and the specification of confinement. In September, August and December, 2006 and in February, May, and July, 2007, a list was submitted to the Court, specifying the total population at the Yare Prison, differentiating between indicted and convicted inmates.

e) In relation to the obligation of investigating the facts that led to the adoption of the provisional measures and, as the case may be, identifying the perpetrators and punishing them as applicable, including administrative and disciplinary measures, that:

i. mechanisms have been implemented and instructions have been given to the personnel to comply with the rules enforced whenever a violent event occurs in order to identify the perpetrators and serve notice to the public prosecutor who is in charge of the investigations herein within the period established by section 112 and 113 of the current Organic Code of Criminal Procedure of Venezuela and,

ii. the Prison Center is, at the moment, under the charge of the 10^o Public Prosecutors' Office with jurisdiction over Execution and it has, for example, made several regular and extraordinary visits to the Prison, has provided Condom Programs for the Inmates' Assistance and assistance in issues related to the false kidnapping, insurrections and searches carried out inside the walls.

3. The notes submitted by the representatives of the beneficiaries (hereinafter the "representatives") dated July 12, 2006, November 30, 2006, February 9, 2007, April 20, 2007, June 26, 2007, August 16, 2007 and October 26, 2007 in which they stated, *inter alia*:

a) In relation to the obligation to adopt such measures as may be required to efficiently and conclusively prevent violence at the Yare Prison, that:

i. the serious situation of violence and unsafety remains within the premises as well as the violent events with cutting and thrusting weapons and firearms; the measures adopted so far are not enough since there have been several violent incidents inside the prison that have had as result injured people and deaths;

ii. from April to June, 2006, there have been 8 deaths and 7 persons got injured; from July to November, 2006, two deaths were registered and one inmate was injured; in December, 2006 and January, 2007, there have been 3 deaths; on March 28, 2007, a grenade exploded inside the premises of Yare I and as a result, there were 3 deaths and 3 inmates injured; in June 2007,

there have been 4 deaths and 6 inmates injured; on October 18, 2007, due to an insurrection and a fire, there were 21 inmates and 1 subtenant of the National Guard injured at Yare I and on October 19, 2007, an inmate died as a result of bullet impact;

iii. since there has been no way to access to the prison center since May, 2006, the information provided by the State concerning the number of injured people and deaths cannot be refuted;

iv. despite the fact that there are more guards who have been instructed in order to adequately treat the inmates, the violent incidents keep occurring. In January, 2006, 40 guards, 1 psychologist and 2 social workers started working at the Prison; said incorporation was made prior to the adoption of the provisional measures so that it is not related to such measures. The guards attend a one-month training course, which is enough time for the assigned task, and

v. on October 21, 2007, a representative from the National Prison Observatory could appreciate the presence of only 5 prison guards in the administrative area for controlling 700 inmates, who enter the confinement tower only when the morning and evening regular count of inmates is being done and in the company of National Guard's Officers.

b) In relation to the obligation to adopt such measures as may be necessary to: a) confiscate weapons in the possession of inmates, b) separate indicted inmates from convicted inmates and c) bring the conditions of confinement at the prison in line with the international standards on the matter, supervising the conditions of confinement and the physical condition and emotional state of the inmates, with the participation of the representatives, that:

i. despite the fact that several searches have been conducted, the incidents within the inmates' population has continued and as a result, there have been injured people and deaths. The procedure for the search and confiscation of weapons at the Yare Prison must be carried out by means of effective procedures in order not to cause any damage or additional violence to the inmates' population. Searches are generally conducted by means of physical and psychological ill-treatment such as stamps, insults and hits. It is highly recommended the implementation of metal detectors in order to avoid the entrance and traffic of weapons at the prison;

ii. the separation between indicted and convicted inmate does not adjust to the international standards since "the classification is not based on the crime committed, the age, the degree of danger or the category of primary and second offenders". During the visit of August 12, 2007, it was observed that no progress was made on this regard. The confined population is not classified accordingly; the sectorial classification proposed by the inmates themselves prevails and it is based on situations of comradeship. It could not be verified that the indicted and convicted inmates are effectively separated since there has been no access to the Yare Prison; the lists and charts submitted by the State do not allow to determine if there is an effective separation among the inmates confined to Yare I and Yare II;

iii. the facilities of the Yare Prison are totally abandoned. During the visit of May 5, 2006, it could be appreciated that there were broken walls, sewage all around and deteriorating conditions. The construction of the building known as "Yare III" should have been completed by November 2006; however, by such date, the construction was, practically, at the initial stage. During the visit of October 21, 2007, it could be noted that the physical conditions of the prison are absolutely sub human and that its deterioration is evident and of extreme seriousness, particularly in the area of the kitchen. Besides, there are no bathrooms in the confinement area;

iv. the inmates expressed nonconformity with the little amount and bad quality of the food served; furthermore, the water supply is restricted since the inmates only have 60 minutes during the morning and another 60 minutes during the evening to use it;

v. the periodic supervision of the confinement conditions and the physical and emotional state of the inmates, with the participation of the representatives, has not been exercised;

iv. the cultural, educational and hygienic activities are insufficient, shallow and do not tend to resolve, structurally speaking, and the sub human and degrading conditions of the prison;

vii. in relation to the health seminars, these are irregular and shallow, so that they do not represent a solid and structural measure in order to guarantee the right to health of the inmates and the minimum health conditions for the protection of their lives and their personal integrity. In the physical area called "nurse's station", there is a shortage of supplies to assist the inmates and there is only one doctor for a population of approximately 700 inmates;

viii. in the area of education, the measures are not sufficient to accomplish the social re-insertion of the inmates since the educational initiatives proposed by the State are informal and the percentage of inmates that attend such activities is very small;

ix. with regard to the legal advice area, the inmates demand the fulfillment of procedural time-limits. There is great disconformities, on the part of the indicted and convicted inmates, with regard to the proceedings carried out beyond the regular procedural deadlines; the granting of procedural benefits and the Alternative Measures for the Compliance with the Sentence and the presentation of the psychosocial examinations, and

x. in the sports area, the inmates stated that there are no activities formally organized by the State, oriented to the realization of sports activities.

c) As to the adoption of the steps necessary in order for the measures of protection ordered for the benefit of the people held in custody in the Yare Prison to be devised and implemented with the participation of the representatives of the

measures' beneficiaries and, in general, to keep them posted on any progress made in their enforcement, that:

- i. all the meetings have been held at the request of the petitioners, not at the State's initiative;
 - ii. the meetings carried out during March and May, 2006, were not aimed at treating the implementation of the provisional measures, but listening to the work proposals inside the prison system of the attending organizations;
 - iii. the State has not permitted nor made its participation easy in the planning and implementation of the measures, since the direct and regular contact with the inmates is subjected to the exclusive initiative of the executive authority;
 - iv. the access to the prison center has been conditioned to the organization of collective visits with the authorities on prison's issues and regarding the non-realization of such visits, the State has been justifying itself on the basis of changes in the structure of the Venezuelan Judiciary. In March 2007, it was prohibited the access to the Yare Prison since the representatives' access to the Prison was conditional on an express permit granted by the Department for Custody and Rehabilitation of the Inmate (*Dirección General de Custodia y Rehabilitación del Recluso*). The possibility of conducting regular visits, not subjected to the approval and initiative of the public authority, is important in order to inform on the true situation of the inmates;
 - v. as to the meeting with the correctional authorities, on August 2, 2006, it was agreed, in the first place, that the meetings will be held every 6 weeks with the participation of all the parties involved in order to observe the functioning and progress of the provisional measures, but these meetings have not been held; in the second place, it was agreed to schedule collective visits to the Yare Prison every 6 weeks, but the visits have not been carried out and access to the Prison has been denied; in the third place, it was agreed to convene a meeting with the General Directorate of Custody and Rehabilitation of Inmates and the petitioners, but this meeting has never been held; and in the fourth place, the authorities agreed to keep the petitioners informed of the activities related to the compliance with the measures, but as from the date of the meeting onwards, there has been no information regarding such compliance, and
 - vi. On August 12, 2007, personnel from the National Prisons Observatory NGO entered, for the first time in more than one year, the Yare Prison as regular visitors in order to verify the situation of the inmates; they entered, again, as visitors on October 21, 2007.
- d) In relation to the obligation to provide the Court with an up-to-date list of all the inmates confined at the prison, also specifying the characteristics of confinement for each such person, that the State has not submitted said information.
- e) In relation to the obligation to investigate the facts that led to the adoption of the provisional measures and, as the case may be, to identify the perpetrators and punish them as applicable, including administrative and disciplinary penalties, that

the State has not provided the Court with information regarding the investigation and the punishment of the perpetrators for the violent incidents, that is to say, for the dead and injured inmates of Yare.

4. The notes submitted by the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "Commission") of July 26, 2006, December 13, 2006, March 1, 2007, April 5, 2007, May 7, 2007, July 12, 2007 and September 7, 2007, in which it was stated, *inter alia*:

a) In relation to the obligation to adopt such measures as may be required to efficiently and conclusively prevent violence at the Yare Prison, that:

i. the State has adopted measures such as the increase in the number of prison guards, training on human rights for the personnel and regular searches with the purpose of controlling the violence, however, the continuous deaths and injuries of the inmates show that the measures adopted have not been sufficient and effective to avoid such situations;

ii. it is necessary for the State to implement immediate measures for dangerous situations; of the information provided by the State, there is no evidence that the State has implemented an immediate and specific measure in order to avoid, efficiently, violence inside the Prison Center;

iii. There are press releases that indicate that in March, 2007, it occurred a violent incident involving cutting and thrusting weapons and grenades among the inmates of Yare Prison, where three persons were killed and another three were injured;

iv. There is a discrepancy in the figures provided by the State concerning the months of September and October, 2006 as regards the amount of deaths and injured persons. Furthermore, the lack of specification regarding the names of the injured and dead persons does not allow verifying the correct figure. The State has not submitted information with respect to the months of November and December, 2006;

v. the basic measures that the State has catalogued as necessary, such as the adequate number of guardians appropriately trained, should be in progress at the moment since they are related to a situation which is not new. Nevertheless, the measures adopted by the Venezuelan State are not enough so far and,

vi. it notes a sharp decrease in the amount of officers that, according to State figures, should be guardians at Yare Prison, thus the imminent situation has not improved. In order for the State to comply with its duty to prevent violent incidents from happening, an adequate amount of guardians, duly trained is required.

b) In relation to the obligation to adopt such measures as may be necessary to:
a) confiscate weapons in the possession of inmates, b) separate indicted inmates from convicted inmates and c) bring the conditions of confinement at the prison in

line with the international standards on the matter, supervising the conditions of confinement and the physical condition and emotional state of the inmates, with the participation of the representatives, that:

i. the Commission recognizes the positive nature of the measures undertaken by the State, such as the searches; however, it is noted that its effectiveness is questionable: The violent incidents occurred while these provisional measures were being enforced evidence that the inmates were in possession of weapons. Besides, this type of control should be done while respecting the rights of the inmates;

ii. measures such as the installation of metal detectors or the weekly searches in strict compliance with the human rights of the inmates should have been considered in order to avoid the entrance and traffic of weapons in the prison center. The State has not submitted information about the measures adopted in order to make use of said metal detectors or the application of measures of similar nature in order to comply with the Court's order;

iv. the Commission hopes the State implements, with priority and promptness, those measures as may be necessary in order to overcome the physical and hygienic conditions of Yare Prison. To such respect, the State has informed about the repairs and the maintenance carried out in the areas of the kitchen and the perimeter lighting of the prison centers, but it has failed to inform about the measures adopted to improve the conditions inside the cells and pavilions ;

v. the Commission positively values the workshops and cultural, educational and sports activities carried out, which must be done periodically and must include the totality of the inmates in order to comply with the purpose of the social re-insertion of the inmates, as intended and

vi. the Commission points out that the health guarantees and the provision of health services by the State in favor of people who are under the State's custody should be continuous since the State is the guarantor of the life and integrity of those deprived of their freedom.

c) As to the adoption of the steps necessary in order for the measures of protection ordered for the benefit of the people held in custody in the Yare Prison to be devised and implemented with the participation of the representatives of the measures' beneficiaries and, in general, to keep them posted on any progress made in their enforcement, that:

i. the lack of access of the beneficiaries' representatives to the premises is highly concerning since it does not allow the beneficiaries the possibility of verifying the situation and it does not give them the active role in the design and implementation of the provisional measures and,

ii. Even though the access of the representatives to the prison center is just the first step in terms of participation in the planning and implementation

of the measures, the Commission considers that it is a *sine qua non* condition in order for the Court to evaluate, specifically, the situation of the measures' beneficiaries.

d) In relation to the obligation to provide the Court with an up-to-date list of all the inmates confined at the prison, also specifying the characteristics of confinement for each such person, that the Commission values that the State submitted the list of indicted and convicted inmates assigned to Yare I and Yare II with the specification of their ages and the crimes committed, among others. Nevertheless, it is necessary that the State includes specific information regarding the separation of adult men, young men, of the elderly, of convicted and indicted, of those confined due to civil reasons, those confined due to criminal issues and those confined due to the commission of a crime against life and physical or sexual integrity. Furthermore, it is also necessary that the State inform about the persons with mental disabilities and the kind of psychiatrist medical treatment that is being provided, in accordance with the corresponding medical opinion;

e) In relation to the obligation of investigating the facts that led to the adoption of the provisional measures and, as the case may be, identifying the perpetrators and punishing them as applicable, including administrative and disciplinary measures, that:

i. the State has informed that instructions were given in order to avoid impunity for the incidents that occur inside the prison centers; however, this refers to the possibility of carrying out investigations for future incidents;

ii. the information submitted is evidently insufficient and does not allow to verify how many investigations exist, the incidents involved in each investigation or what proceedings have been effectively carried out in order to establish the crimes committed and avoid getting away with them, and

iii. the Commission hopes the State submits a detailed report on the administrative and criminal investigative measures adopted with respect to the facts that caused the adoption of these provisional measures and the results produced so far.

5. The note of the CDH-S/1429 Secretary of July 24, 2007 whereby, following the instructions ordered by the President of the court, the Commission was requested to submit a report to the Court, no later than August 31, 2007, on the procedural stage of the issue at stake.

6. The note of August 31, 2007, in which the Inter-American Court informed that "the referred provisional measures do not have a directly related petition pending before the Commission".

CONSIDERING:

1. That Venezuela has been a State Party to the American Convention (hereinafter, the "American Convention") since August 9, 1977, and that it accepted the binding jurisdiction of the Court on June 24, 1981.

2. That Article 63(2) of the American Convention establishes that, “[i]n 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 1(1) of the Convention sets forth the general obligation of the State Parties to respect the rights and freedoms therein enshrined and to ensure to all persons subject to the jurisdiction of the Court the free and full exercise of such rights and freedoms.

4. That, the provisional measures have an exceptional nature, in response to the need for protection and, once ordered, should remain in effect so long as the Court considers that the basic requirements of extreme gravity and urgency and the avoidance of irreparable damage to the rights of persons protected by them continue to exist.¹

5. That according to the provision established in Article 63(2) of the Convention, provisional measures ordered by the Court are binding on the State in conformity to a basic principle of the law of international responsibility of the States, as supported by international case law, under which States are required to comply with international treaty obligations in good faith.²

6. That in light of the State’s responsibility to adopt protective measures to safeguard the persons under its jurisdiction, the Court deems that such obligation is even more evident regarding persons held in a detention center, in which case the State is the guarantor of the rights of the persons under its custody and given that the penitentiary authorities exercise total control over them.³

7. That one of the unavoidable obligations that the State has to assume in its capacity as guarantor, with the purpose of protecting and securing the right to life and humane treatment of the persons that have been deprived of their liberty, is that of providing such persons with the minimum decent conditions while they remain in the detention centers⁴. Additionally, the protection of life of all people deprived of their liberty requires that the

¹ Cf. Case of *the Constitutional Court*. Provisional Measures Order of the Inter-American Court of Human Rights of March 14, 2001, Considering Clause three. *Matter of Carlos Nieto et al.* Provisional Measures Order of the Inter-American Court of Human Rights of July 3, 2007, Considering Clause seven; *Matter of Monagas Judicial Confinement Center (“La Pica”)* Provisional Measures Order of the Inter-American Court of Human Rights of July 3, 2007, Considering Clause seven.

² Cf. *Matter of James et al.* Provisional Measures Order of the Inter-American Court of Human Rights of June 14, 1998; Considering Clause six; *Matter of Carlos Nieto et al.* Provisional Measures, *supra* note 1; Considering clause eight; Case of *Colotenango*. Provisional Measures Order of the Inter-American Court of Human Rights of July 12, 2007, Considering Clause five.

³ Cf. *Matter of Urso Branco Prison*. Provisional Measures Order of the Inter-American Court of Human Rights, of June 18, 2002; Considering Clause eight. *Matter of Monagas Judicial Confinement Center (“La Pica”)* Provisional Measures, *supra* note 1, Considering Clause ten and *Matter of Children Deprived of Liberty in the “Complejo do Tatuapé” of FEBEM*. Provisional Measures Order of the Inter-American Court of Human Rights of July 3, 2007, Considering Clause six.

⁴ Cf. Case of *Neira Alegria et al v. Perú*. Merits. Judgment of January 19, 1995. Series C N° 20, para. 60; *Matter of Mendoza Prisons*. Provisional Measures Order of the Inter-American Court of Human Rights, of August 22, 2007; Considering Clause sixteen and . *Matter of Monagas Judicial Confinement Center (“La Pica”)* Provisional Measures, *supra* note 1; Considering clause eleven.

State be particularly concerned with the living conditions during the time that liberty is deprived, as that right has not expired nor has it been restricted because of the detention or imprisonment.⁵

8. That the State's obligation to protect all the persons under its jurisdiction also encompasses the duty to control the action of third parties, an *erga omnes*.⁶

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9. That although this Tribunal favorably values the measures adopted by the State in compliance with the provisional measures ordered in the present case, a situation of extreme gravity and urgency and of possible irreparable damage to the rights to life and humane treatment of the inmates of Yare I and Yare II Capital Region Penitentiary Centre (the Yare Prison) persists.

10. That the violent events have continued in the Yare Prison despite the enforcement of the current measures and have caused the death of approximately 40 inmates and injury to 60 inmates (*supra* Having Seen clause 2.a.iii, 3.a.ii, 3.a.iii, 4.a.iii and 4.a.iv), which demonstrates the ongoing and urgent necessity to adopt effective measures of protection.

11. That as a result of what was previously stated, the Court considers it is necessary for the State to continue adopting and implementing immediate and effective measures of protection to fully guarantee the rights to life and humane treatment for the inmates of the Yare I and Yare II Capital Region Penitentiary Centre (the Yare Prison). Thus, the State should make use of all the possible resources to reduce the level of violence at the confinement center. In that respect, the Court considers that the rights to life and humane treatment not only imply that the State should respect those rights (negative obligation), but also require that the State adopt all appropriate measures to guarantee those rights (positive obligation), in compliance with its general duty established in Article 1(1) of the American Convention⁷.

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⁵ Cf. Case of the "*Juvenile Reeducation Institute*" v. Paraguay. Preliminary Objections, Merits, Reparations and costs. Judgment of September 2, 2004. Series C No. 112, para. 160; *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures, *supra* note 1, Considering Clause eleven and *Matter of Children Deprived of Liberty in the "Complejo do Tatuapé" of FEBEM*. Provisional Measures Order of the Inter-American Court of Human Rights of July 4, 2006, Considering Clause ten.

⁶ Cf. *Matter of the Peace Community of San José de Apartadó*. Provisional Measures Order of the Inter-American Court of Human Rights, of November 24, 2000; Considering Clause eleven. *Matter of Monagas Judicial Confinement Center ("La Pica")* Provisional Measures, *supra* note 1, Considering Clause twelve and *Matter of Children Deprived of Liberty in the "Complejo do Tatuapé" of FEBEM*. Provisional Measures, *supra* note 3; Considering clause seven.

⁷ Cf. Case of "*Street Children*" (*Villagrán Morales et al*) v. Guatemala, Judgment of November 19, 1999. Series C, Nº 63, para. 139; *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures; *supra* note 1; Considering Clause seven; and *Case of the Plan de Sánchez Massacre Provisional Measures* Order of the Inter-American Court of Human Rights of November 25, 2006, Considering Clause thirteen.

12. The Court notes with concern that the representatives of the beneficiaries of these provisional measures have not been officially authorized or allowed to enter the Yare Prison since May of 2006 (*supra* Having Seen clause 3.c.iv). In light of this situation, the Court observes that, in August and October of 2007, a representative of the NGO "*Observatorio Venezolano de Prisiones*" entered the Yare Prison as a regular visitor, not as a representative of the beneficiaries, in order to verify the prison conditions (*supra* Having Seen clause 3.c.vi). In this regard, the Court considers that the State should take all the corresponding steps to ensure that the representatives of the beneficiaries can enter the penitentiary center in order to verify the implementation of the measures ordered by this Tribunal.

13. That it is the duty of the State to protect and to respect the function served by the non-governmental organizations and other groups or individuals that defend human rights and fundamental freedoms of those deprived of liberty, because these entities constitute a positive and complementary contribution to the efforts made by the State in its role as guarantor of rights of those under its custody.⁸

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14. That the representatives and the Inter-American Commission pointed out that the State has not sent information regarding the investigations on the events that prompted the adoption of the provisional measures, the identification of those responsible for them, and the imposition of the corresponding sanctions (*supra* Having Seen clause 3.e and 4.e).

15. That the State must submit a report to the Tribunal on all the measures adopted in compliance with the decision of the Court in its Order of March 30, 2006 (*supra* Having Seen clause 1).

16. That the State must inform its prison population regarding their right to make requests or complaint.⁹ In this regard, the State must report on the means and

⁸ Cf. *Matter of Lysias Fleury*. Provisional Measures Order of the Inter-American Court of Human Rights, of December 2, 2003; Considering Clause ten. *Matter of Monagas Judicial Confinement Center ("La Pica")* Provisional Measures, *supra* note 1; considering clause 20 and *Matter of Giraldo Cardona*. Provisional Measures Order of the Inter-American Court of Human Rights, of November 29, 2006; Considering clause nineteen. .

⁹ Articles 35 and 36 of the *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Geneva in 1955 and approved by the Economic and Social Council in Resolution 663C (XXIV) of July 31, 1957 and 2079 (LXII) of May 13, 1977, provide, with respect to the right to make a complaint or request information of the prisoners, that:

"35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution. (2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him. (2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or

mechanisms available so that the prisoners may be informed of their rights and make complaints or requests accordingly.

17. That it is essential that the provisional measures are maintained in full force and effect until the Court orders their discontinuance and serves notice thereof upon the State¹⁰.

Therefore:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority granted by Article 63(2) of the American Convention on Human Rights and Article 25 and 29 of its Rules of Procedure,

Decides:

1. To repeat that the State must maintain the measures that it has already adopted, as well as immediately adopt complementary measures as may be necessary to effectively and definitively prevent the loss of lives and injuries to the physical, psychological, and moral integrity of all persons detained within the Yare I and Yare II Capital Region Penitentiary Centre (the Yare Prison), of all persons who in the future may be held as inmates within the prison, as well as those who are employed therein and of those who enter the prison as visitors, pursuant to the Order of the Court issued on March 30, 2006 in this matter.

2. To order the State to inform on the means and mechanisms available so that the people held in custody in the Yare I and Yare II Capital Region Penitentiary Centre may be informed of their rights and make complaints or requests accordingly.

3. To repeat that the State must carry out all appropriate actions in order to inform the representatives of the beneficiaries of these provisional measures of the State's progress in fulfilling the measures. In this regard, the State should facilitate the entry of the representatives of the beneficiaries of these provisional measures to the Yare I and Yare II Capital Region Penitentiary Centre (the Yare Prison).

4. To order the State to present a report on the measures adopted to comply with this Order, as well as the Order of March 30, 2006, no later than February 15, 2008.

to any other inspecting officer without the director or other members of the staff being present. (3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels. 4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay

¹⁰ Cf. *Matter of Lilliana Ortega et al. Provisional Measures* Order of the Inter-American Court of Human Rights, of December 1, 2005; Considering Clause ten. *Matter of Monagas Judicial Confinement Center ("La Pica") Provisional Measures*, *supra* note 1; considering clause 21 and *Matter of Pueblo indígena de Kankuamo. Provisional Measures* Order of the Inter-American Court of Human Rights, of January 30, 2007; Considering clause fourteen.

5. To order the State to continue informing the Inter-American Court of Human Rights every two months, as from the date of the report required in the prior operative paragraph, and to order the Inter-American Commission on Human Rights and the beneficiaries of these measures, or their representatives, to submit their observations to the State's report required in the prior operative paragraph, as well as with respect to the State's bi-monthly reports, within the period of six and four weeks, respectively, as of their receipt of the State's report

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