

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

**PROVISIONAL MEASURES WITH REGARD TO
THE FEDERATIVE REPUBLIC OF BRAZIL**

MATTER OF THE URSO BRANCO PRISON

HAVING SEEN:

1. The orders of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of June 18 and August 29, 2002, April 22 and July 7, 2004, September 21, 2005, May 2, 2008, and November 25, 2009. In the latter, The Court decided, *inter alia*:

1. To reiterate to the State that it should continue to adopt immediately all necessary measures to protect the life and physical integrity of all the persons deprived of liberty in the Urso Branco Prison, and all the persons entering the prison, including the visitors and the security agents who provide their services therein.

2. To reiterate to the State that it should take all the necessary measures to ensure that the measures to protect the life and physical integrity are planned and implemented with the participation of the representatives of the beneficiaries, and, in general, keep them informed of progress in the execution of the measures.

[...]

2. The briefs filed between February 26, 2010, and June 17, 2011, and their respective attachments, in which the Federative Republic of Brazil (hereinafter "the State" or "Brazil") forwarded the twenty-sixth through thirty-first reports on the implementation of the provisional measures ordered by the Court in this matter.

3. The briefs filed between April 30, 2010, and June 7, 2011, and their attachments, in which the representatives of the beneficiaries (hereinafter "the representatives") submitted their observations on the State's reports and forwarded additional information regarding these provisional measures.

4. The briefs filed between May 12, 2010, and June 23, 2011, in which the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") forwarded its observations on the State's reports and the representatives' briefs.

CONSIDERING THAT:

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

2. Article 63(2) of the American Convention establishes that in “cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court may, in a case not yet submitted to its consideration, order such provisional measures as it deems pertinent at the request of the Commission. This provision is also regulated in Article 27 of the Rules of Procedure of the Court.¹

3. The relevant part of Article 27 of the Rules of Procedure stipulates that:

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

[...]

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

4. In its last order issued on November 25, 2009, owing to the alleged acts of violence that occurred while in custody, and the claims of torture and other ill-treatment attributed to state agents or other inmates of the same prison, the Court considered that there subsisted in the Urso Branco Prison (hereinafter “the Prison” or “Urso Branco”) “a situation of extreme gravity and urgency, and the risk of irreparable damage and, consequently, it was appropriate to maintain the provisional measures in force, by virtue of which the State has the obligation to protect the life and physical integrity of all the persons deprived of liberty in the Prison, as well as that of the other persons who may be in the prison.”²

a) Implementation of these provisional measures

5. In relation to the implementation of these provisional measures, the State indicated that:

a) Regarding the list of people who had died in the Prison presented by the State during the public hearing of September 30, 2009, “it has not yet been possible to conclude the work of correcting” it; this includes: (a) individual file cards with the information of the deceased; (b) the updated list of violent deaths, and (c) the names that were removed from the previous list of deaths with the respective justification. This updating process is still underway and should be concluded soon;

b) Regarding the complaints about violent incidents that allegedly occurred between July 2009 and December 2010, in which the victims have been identified, the State is taking action by inquiries initiated by the police, the Office for Internal Affairs, and the Public Prosecutors’ Office, as well as by the ongoing judicial proceedings. Moreover, the representatives were asked to present “complementary data and information that make it possible to clarify the reported facts”;

¹ Rules of Procedure approved by the Court at its eight-fifth regular session held from November 16th to 28th, 2009.

² *Matter of the Urso Branco Prison*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of November 25, 2009, forty-first considering paragraph.

- c) The criminal action concerning “the complaint of the torture [of] 16 inmates of cell F-16 that occurred on September 8, 2008,” was decided on February 28, 2011, with a judgment convicting four individuals to terms of imprisonment for the said crime. Three of those convicted filed an appeal before the Court of Justice of the state of Rondônia;
- d) The judgment in the criminal proceedings for the crime of coercion during an investigation was delivered on October 14, 2010; it sentenced two individuals to eight years and five months’ and five years and two months’ imprisonment, respectively. Those convicted filed an appeal, which was forwarded to the Court of Justice of the state of Rondônia on November 16, 2010;
- e) In May 2010, 18 people were tried for the incidents that occurred in January 2002. In this regard, 15 individuals were convicted and three were acquitted. Several of those convicted filed an appeal before the Court of Justice of the state of Rondônia;
- f) The judicial proceedings concerning other violent incidents that occurred in Urso Branco in April 2004 are in the preliminary stages. In addition, the proceedings concerning the investigation of gunshots fired in cell H-4 that injured four inmates on August 8, 2009, concluded with the conviction of one individual to one year and two months of suspended imprisonment;
- g) The Director of Security and the Director General of the prison were dismissed;
- h) Regarding the representatives’ request that the State present a “list of the employees who [work] in the Urso Branco Prison who are involved in any type of [...] administrative or judicial proceedings, it was not possible to prepare it due to “the absence of the representatives from the [last] meeting” of the Special Committee to monitor the provisional measures, and
- i) Regarding inmate F.S.B. who was found dead in his cell on March 29, 2011, the fact was communicated to the competent authorities and the body was transferred to the Institute of Forensic Medicine.

6. Regarding the implementation of these provisional measures, the representatives indicated, among other aspects, that:

- a) Twenty complaints of abuse were documented between July 2009 and December 2010. They included, among other matters, cases of “premeditated and organized violence,” the torture of prisoners during their transfer to another prison in the state of Rondônia, the attack on a detainee who had requested medical attention, the attempted murder of a prisoner by an official, and the indiscriminate use of firearms by security agents. Regarding these facts, the representatives reiterated the request made during the public hearing of September 30, 2009, that the State present a list of all the officials currently working in Urso Branco, expressly indicating those who are the object of administrative inquiries, police investigations, or judicial proceedings;
- b) The inmate F.S.B. supposedly committed suicide in March 2011, because he had received no response to his request that he be released from solitary confinement, and allowed outdoors;

- c) In April 2011, an inmate was wounded by gunshot and subsequently transferred to the psychiatric department of a hospital in Porto Velho;
- d) Regarding the convictions for the incidents that took place in January 2002, the 15 individuals convicted are detained and their sentences vary from 378 to 486 years' imprisonment. In this regard, no public agent was convicted for the deaths that occurred in the Prison; only the Urso Branco inmates were convicted, many of whom were tried by default or had inadequate legal assistance, and
- e) There has been no follow-up to the federal intervention proceedings before the Supreme Federal Court, proposed by the Attorney General of the Republic on October 7, 2008, since the representative filed a petition in the proceedings on March 24, 2010.

7. Regarding the information provided by the State and the observations of the representatives, among other considerations, the Commission stated that, in general, the information provided by Brazil "is imprecise and does not permit an overall analysis of the criminal proceedings that have been initiated; consequently, [it] hopes that the State will continue presenting clear, detailed updated information on the results of [the judicial] proceedings." In addition, it indicated that more specific information was required on the participation of the representatives in the implementation of the provisional measures.

b) Situation of risk in the Urso Branco Prison

8. In relation to the alleged situation of risk in the Urso Branco Prison, the State reported that:

- a) The prison security is provided by 27 agents per shift and an invitation to tender is underway to hire prison agents, and educators;
- b) The activities of the Rapid Intervention Group, responsible for the searches of the inmates, have been suspended. In addition, the State has assessed the creation of a special group to act in situations of crisis, governed by rules and regulations, and with specific training;
- c) Medical and legal assistance is provided by two doctors, and a public defender and three assistants, respectively;
- d) The office of the Ombudsman of the Rondônia Penitentiary System was established; it has a toll-free telephone number and an e-mail address for complaints;
- e) "Hygiene kits" are delivered to the inmates regularly; water is supplied five times a day; the inmates have the right to spend time outdoors from Monday to Thursday. In addition, the supply and quality of the inmates food is being analyzed by the Public Prosecutors' Office, and
- f) The state of Rondônia is building a prison to hold up to 470 inmates. In addition, the Ariquemes Prison is being built in two stages, with an anticipated capacity of 120 and 240 detainees. Additionally, the Urso Branco Prison will soon be remodeled, and its population varied between 656 in February 2010 and 669 in April 2011.

9. Regarding the situation of risk in the Urso Branco Prison, the representatives of the beneficiaries observed, among other aspects, that:

- a) "Twenty-seven officials per shift "is evidently insufficient for the prison population of around 700 inmates";
- b) The precarious detention conditions "are aggravated by the threats, attacks, coercion and other arbitrary acts perpetrated by some prison's officials against the inmates. As a whole, these detention conditions contribute to an unsafe, inhuman and degrading environment, which increases the probability of violence within the unit";
- c) The substitution of the Rapid Intervention Group by the Special Operations Command of the Military Police "does not solve the problems, since many of the problems observed with regard to the [Rapid Intervention Group] apply also to the actions of the [Special Operations Command] within the prison," and
- d) Due to the lack of adequate medical attention, the detainees with treatable illnesses are forced to live in pain. Food is often in bad condition, and access to hygiene products is always insufficient for basic needs. On visiting days, family members are submitted to humiliating searches and marital visits are carried out in unhygienic places.

10. Among other considerations, the Inter-American Commission observed that the State "had not presented precise information on the number of agents in the prison, or on the overpopulation", or the prison's total capacity. In addition, Brazil "had not indicated the measures it would be adopting to substitute the military officials with prison agents definitively, [and] the ratio between inmates and security agents would continue to be clearly disproportionate, which implies a serious inadequacy as regards the measures necessary to safeguard the life and personal integrity of those who are imprisoned." Additionally, it observed that the information provided in relation to the remodeling of "the cells is insufficient to determine their current condition," and it was unclear what impact the construction of new prisons in Rondônia would have on reducing the population detained in Urso Branco "to a level that was adequate and proportionate to the space available, the personnel assigned, the food supply, the medical services, and other benefits for the beneficiaries."

11. The President recalls that, since the Court adopted the order of November 25, 2009, it has been informed of the death of a detainee, other acts of violence, and also alleged harassment and threats against some beneficiaries. Moreover, the Inter-American Court has been informed of different measures adopted by the authorities. However, the parties disagree as to the implementation and effectiveness of the measures of protection ordered at the domestic level. Based on the above and on the time that has elapsed since the Court issued the last order, the President considers it appropriate to receive updated and detailed information on the status of the implementation of these provisional measures at a public hearing, together with the arguments of the State, the representatives, and the Inter-American Commission on the possible persistence of the situation of extreme gravity and urgency that resulted in the adoption and continuation of the said measures in favor of the beneficiaries, in order to evaluate the need to maintain them in force.

12. Finally, the President notes that the case has been before the Inter-American Commission since June 5, 2002. According to the information provided to the Court by the Commission on August 28, 2007, "case No 12,568, Persons Deprived of Liberty in the Urso

Branco Prison, Rondônia, is being processed, at the merits stage." In addition, the President observes that the parties have referred in their briefs to the detention conditions in the Urso Branco Prison, as well as to the investigations into the acts of violence that have occurred there (*supra* considering paragraphs 5 to 10). In this regard, the President recalls that, as can be inferred from the orders on provisional measures issued by the Court in this matter, these have a specific purpose (*supra* considering paragraph 4), so that analysis of the compatibility with the American Convention of all the detention conditions in Urso Branco, as well as the elements of the investigation into the facts must eventually be considered when examining the merits of case No. 12,568, currently before the Inter-American Commission. Consequently, the parties must take into account this fact in their arguments during the public hearing and in their future briefs.

THEREFORE:

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

in exercise of the powers conferred on him by Article 63(2) of the American Convention on Human Rights, and Articles 24(1) and 25(2) of the Court's Statute, and Articles 4, 27, and 31(2) of its Rules of Procedure,

DECIDES:

1. To convene the Federative Republic of Brazil, the representatives of the beneficiaries, and the Inter-American Commission on Human Rights to a public hearing to be held in Bogota, Colombia, on August 25, 2011, from 3 p.m. to 4.45 p.m., so that the Court may receive their arguments concerning the provisional measures ordered in this case.
2. To request the collaboration of the Republic of Colombia, in keeping with the provisions of paragraphs 1 and 3 of Article 26 of the Rules of Procedure, in order to hold the public hearing on provisional measures convened by this order in that country, as well as to facilitate the entry into and departure from its territory of the persons who will represent the Inter-American Commission, the State, and the beneficiaries during the hearing. To this end, the Secretariat is required to notify this order to the Republic of Colombia.
3. To require the Secretariat to notify this order to the Federative Republic of Brazil, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries of these measures.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary