

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**
OF JUNE 18, 2002**

**PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
WITH RESPECT TO THE FEDERAL REPUBLIC OF BRAZIL**

CASE OF URSO BRANCO PRISON

HAVING SEEN:

1. The brief filed by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of June 6, 2002 in which it filed before the Inter-American Court of Human Rights (hereinafter "the Court") or "the Inter-American Court"), pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), 25 of the Rules of Procedure of the Court, and 74 of the Rules of Procedure of the Commission, requesting provisional measures in favor of the inmates of the José Mario Alves Detention Center –known as the "Urso Branco Prison" – (hereinafter "the Urso Branco Prison" or "the prison"), located in the city of Porto Velho, State of Rondonia, Federal Republic of Brazil (hereinafter "Brazil" or "the State"), with the "aim [of] avoiding additional deaths of inmates" in the prison. The following are some of the facts stated by the Commission in its request for provisional measures:

- a) the situation of inmates in the Urso Branco Prison before January 1, 2002 was as follows: approximately 60 inmates were in special cells –known as "safety" cells- because they were imprisoned due to crimes considered immoral by the other inmates or because their lives or physical safety were threatened by other inmates; on the other hand, certain inmates deemed trustworthy by the authorities –known as "free cells"- enjoyed a degree of freedom of movement within the prison; however, a criminal sentence execution judge ordered that the latter be placed in cells;
- b) on January 1, 2002 the Urso Branco Prison authorities conducted a general relocation of inmates within the facilities, during which they effected the following changes: the inmates whom they believed endangered the life and safety of other inmates were transferred to cells located outside the general pavilions; the roughly 60 inmates who were isolated in "safety" cells were transferred to the general population cells, with five inmates per cell; and the inmates called "free cells" were also placed in the general pavilions. The procedure to determine which inmates were potential aggressors was not rigorous, so many of them remained in the general population;

* Pursuant to Article 4(3) of the Rules of Procedure of the Court, and due to the fact that he is a Brazilian citizen, the President of the Court, Judge Antônio A. Cançado Trindade, handed over the Presidency to Judge Alirio Abreu Burelli, the Vice-President of the Court, to hear this request for provisional measures.

* Judge Máximo Pacheco Gómez informed the court that, due to reasons of *force majeure*, he would not be able to attend the LV Regular Session of the Court, for which reason he did not participate in the deliberation and signing of the instant Order.

- c) the special forces that participated in relocation of the inmates withdrew that same day at about 18:00 hours. "Systematic murdering" of inmates coming from the "safety" cells began that same day, at approximately 21:00 hours. The inmates "yelled for help from the penitentiary police agents who did not intervene to avoid those deaths;"
- d) on January 2, 2002 an "assault team" of the Rondonia police entered the prison. The person in charge of that operation reported that they found 45 bodies of inmates, "some of them decapitated, others with arms and legs mutilated by use of stabbing weapons, and that others had died from wounds caused by 'chunchos' (stabbing weapons made by the inmates themselves)." On the other hand, the Government of the State of Rondonia issued a press release in which it stated that 27 people had died;
- e) after the abovementioned events, the prison authorities transferred a group of inmates to makeshift so-called "safety" cells. The inmates have also stated that the authorities have threatened to transfer them to the general pavilions;
- f) on February 18, 2002 the bodies of three inmates were found in a tunnel beneath one cell. Two days later, there were murder attempts against three "safety" cell inmates in the makeshift cells. On March 8, 2002 "there were new murder attempts within the prison," and at daybreak the following day the inmates destroyed 11 cells. The aforementioned events led to the intervention of the Riot Control Company, which stated that it had taken control of the Urso Branco Prison;
- g) two inmates were murdered on March 10, 2002 by other inmates, "in a courtyard in the presence of the other inmates, and the special forces did not avoid this happening" -according to information provided by the applicants-;
- h) on March 14, 2002 the Commission requested that the State adopt precautionary measures so as to protect the life and personal safety of the inmates of the Urso Branco Prison; and
- i) on April 14, 2002 an inmate was murdered "as a consequence of almost 50 'chuncho' stabs." On May 2, 2002 an inmate was murdered in the courtyard of the prison due to "chuncho" stabs. On May 3, 2002 an inmate died during an operation carried out by the State Secretariat for Security, Defense and Citizenry. On May 8, 2002 another inmate was murdered by means of blows with a contusive object. On May 10, 2002 an inmate was murdered and dismembered by other inmates.

The Commission furthermore based its request for provisional measures on the following:

- a) there is sufficient supporting evidence to presume that the life and safety of inmates at the Urso Branco Prison is at grave risk. The situation is extremely grave in light of the fact that from January 1, 2002 to June 5 of the same year, "37 people have been brutally murdered within the Urso Branco

Prison." Furthermore, it has been proven that the State has not regained control required to safeguard the lives of the inmates;

b) the urgent nature of the adoption of provisional measures is based "on preventive reasons and is justified by the existence of a permanent risk of continuing murders within the prison." There is also a tense situation among the inmates that can generate further deaths. This is worsened by "the existence of weapons in the hands of inmates, overcrowding and [...] lack of control by the Brazilian authorities with respect to the prevailing situation in that prison;"

c) the prison population is in constant fear of new violent events, "with respect to which they feel defenseless as the authorities have been unable to prevent the death of dozens of people over the last 5 months;"

d) after March 14, 2002, when the Commission requested that the State adopt precautionary measures, "another five people have been murdered within that prison," which proves that such measures have not attained the effects sought; and

e) the State is not complying with the positive obligation of preventing attempts against the life and physical safety of inmates in the Urso Branco Prison, since it has not adopted adequate security measures to avoid murders within that prison. The murder victims were imprisoned under State custody, and the inmates' living and detainment conditions depended on decisions by the State authorities.

Based on the above, the Commission requested that the Court order the State to:

1) Immediately adopt the necessary measures to protect the life and personal safety of all inmates in the José Mario Alves Detainment Center, "Urso Branco Prison," located in the city of Porto Velho, State of Rondonia, Brazil.

2) Immediately take all necessary measures to seize whatever weapons are in the hands of inmates of that prison.

3) Inform the Honorable Inter-American Court of Human Rights within a brief term, to be set by the Court itself, on the concrete and effective steps taken.

2. In its June 14, 2002 brief, in which the Commission reported that "on June 10, 2002 inmate Evandro Mota de Paula was seriously wounded [...] when the penitentiary agent, in passing the shotgun to a colleague, accidentally set off the trigger, wounding the inmate, who was taken to Joao Paulo II Hospital."

CONSIDERING:

1. Brazil has been a State Party to the American Convention since September 25, 1992 and pursuant to Article 62 of the Convention, it recognized the obligatory jurisdiction of the Court on December 10, 1998.

2. Article 63.2 of the American Convention provides that, in "cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may, in matters not yet submitted to the Court, upon a request by the Commission, order the provisional measures it deems pertinent.

3. In this regard, article 25 of the Rules of Procedure of the Court establishes that:

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

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

4. The background supplied by the Commission in its request for provisional measures, pertaining to events at the Urso Branco Prison, demonstrates *prima facie* a situation of extreme gravity and urgency with respect to the rights of the inmates to life and to personal safety.

5. The Inter-American Commission has requested that the State adopt precautionary measures, which have not led to the required effects in terms of protection and, instead, recent events make it reasonable to presume that the safety and lives of the inmates are at great risk and very vulnerable. Therefore, circumstances require that the State adopt provisional measures to avoid irreparable damage to said persons.

6. Article 1(1) of the Convention states the duty of the States Party to respect the rights and freedoms protected by the Convention, and to ensure their free and full exercise by all persons under their jurisdiction, including, in the instant case, the inmates at Urso Branco Prison. Therefore, the State must adopt the security measures required to protect the rights and freedoms of all individuals under its jurisdiction, which becomes even more evident in connection with those who are involved in proceedings before the supervisory bodies of the American Convention.¹

7. While this Court has at other times deemed it necessary to individualize persons in danger of suffering irreparable damage so as to grant them protective measures,² in the instant case the beneficiaries are identifiable, as “[i]n all places where persons are detained, there must be a bound record book with numbered pages stating for each detainee: a) His or her identity; b) The reason they are detained and the competent authority that ordered their detention; c) The day and time of their entry and exit.”³ Therefore this Court deems that the State must

¹ See *Case of the Peace Community of San José de Apartadó*, Provisional Measures. June 18, 2002 Order of the Inter-American Court of Human Rights, tenth considering; *Gallardo Rodríguez Case*, Provisional Measures. February 18, 2002 Order of the Inter-American Court of Human Rights, six considering; and *Gallardo Rodríguez Case*, Provisional Measures. February 14, 2002 Order of the Inter-American Court of Human Rights, seventh considering.

² See *Case of Haitians and Dominicans of Haitian Origin in the Dominican Republic*, Provisional Measures. September 14, 2000 Order of the President of the Inter-American Court of Human Rights. Series E No. 3, fourth considering; and *Case of Haitians and Dominicans of Haitian Origin in the Dominican Republic*, Provisional Measures. August 18, 2000 Order of the Inter-American Court of Human Rights, Series E No. 3, eighth considering.

³ United Nations, Office of the High Commissioner for Human Rights. *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and adopted by the Economic and Social Council through resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, rule number 7(1).

submit, in its first report on the provisional measures adopted (*infra* operative paragraph three), the list of inmates at the Urso Branco Prison, who are the beneficiaries of the instant provisional measures.

8. In light of the responsibility of the State to adopt security measures to protect persons who are under its jurisdiction, the Court deems that this duty is more evident with respect to persons detained in a State detention center, in which case the responsibility of the State must be presumed regarding what happens to those who are under its custody.

9. Under International Human Rights Law, the nature of provisional measures is not only that of a safeguard, in the sense that they preserve a juridical situation, but also fundamentally protective, because they protect human rights. Provided that the basic requirements of extreme gravity and urgency and of preventing irreparable damage to persons are met, provisional measures become a true preventive guarantee of a competent, independent and impartial judge previously established by law.⁴

10. The case to which the request by the Commission refers is not being heard by the Court regarding the merits and, therefore, adoption of provisional measures does not involve a decision on the merits of the controversy between the applicants and the State.⁵

11. Therefore, the State is under the obligation to investigate the events that motivate this request for provisional measures, so as to identify those responsible and punish them accordingly.

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 of its Rules of Procedure,

DECIDES:

⁴ See *Case of the Peace Community of San José de Apartadó*, Provisional Measures. June 18, 2002 Order of the Inter-American Court of Human Rights, fourth whereas; *Gallardo Rodríguez Case*, Provisional Measures. February 14, 2002 Order of the President of the Inter-American Court of Human Rights, fifth whereas; *"La Nación" Newspaper Case*, Provisional Measures. September 7, 2001 Order of the Inter-American Court of Human Rights, fourth considering.

⁵ See *Case of the Miguel Agustín Pro Juárez Human Rights Center et al.*, Provisional Measures. November 30, 2001 Order of the Inter-American Court of Human Rights, ninth and tenth considering; *James et al. Case*, Provisional Measures. November 26, 2001 Order of the Inter-American Court of Human Rights, eighth considering; See *Case of the Miguel Agustín Pro Juárez Human Rights Center et al.*, Provisional Measures. October 25, 2001 Order of the President of the Inter-American Court of Human Rights, seventh considering; and *Case of the Peace Community of San José de Apartadó*, Provisional Measures. November 24, 2000 Order of the Inter-American Court of Human Rights. Serie E No. 3, thirteenth considering.

1. To order the State to adopt all necessary measures to protect the lives and personal safety of all persons detained at the Urso Branco Prison, including that of seizing all weapons that are in the hands of inmates.
2. To order the State to investigate the facts that are the motive for adoption of these provisional measures, so as to identify those responsible and punish them accordingly.
3. To order the State, within 15 days from notification of the instant Order, to report to the Inter-American Court of Human Rights on the measures it has adopted to comply with this Order, and to submit a complete list of all persons detained at the Urso Branco Prison; and also, that the Inter-American Commission on Human Rights submit its observations on said report within 15 days of its receipt.
4. To order the State to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted and to submit updated lists of all persons detained at the Urso Branco Prison, so as to identify those who have been set free and those who enter that penitentiary; and also that the Inter-American Commission on Human Rights submit its observations regarding those reports within two months of their receipt.

Alirio Abreu-Burelli
President

Antônio A. Cançado Trindade

Hernán Salgado-Pesantes

Oliver Jackman

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Alirio Abreu-Burelli
President

Manuel E. Ventura-Robles
Secretary