

Institution: Inter-American Court of Human Rights
Title/Style of Cause: Urso Branco Prison v. Brazil
Doc. Type: Order
Decided by: President: Alirio Abreu-Burelli;
Judges: Antonio A. Cancado Trindade; Maximo Pacheco-Gomez; Hernan Salgado-Pesantes; Oliver Jackman; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo
Dated: 29 August 2002
Citation: Urso Branco Prison v. Brazil, Order (IACtHR, 29 Aug. 2002)
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HAVING SEEN:

1. The June 6, 2002 brief filed by the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) in which, 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, it submitted a request for provisional measures in favor of the inmates at 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 Rondônia, 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;

- 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 Rondônia 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 Rondônia issued a press release in which it stated that 27 people had died;
- e) after the above mentioned 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 conducted by forces of the State Secretary 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 as 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 detention 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 measures required 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 Rondônia, 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 and its appendix, 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.”

3. The June 18, 2002 Order of the Court in which it decided:

- 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 gave rise to 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 [...] 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.

4. The July 8, 2002 brief filed by the State, in which it submitted the report ordered by the Court in operative paragraph three of the aforementioned Order. In this report, it stated that, to comply with the measures ordered by the Court, the Ministry of Foreign Affairs, the State Secretary for Human Rights and the Ministry of Justice sent an investigative mission to the State of Rondônia where it met with various State authorities. It added that the following steps have been taken to protect the inmates' rights to life and to personal safety:

- a) the special police force that had been entrusted with security at the Urso Branco Prison has gradually been substituted by penitentiary agents;
- b) a competitive public test was held to hire new penitentiary agents. 45 candidates were accepted, appointed, and began work at their posts in March, 2002;
- c) two new penitentiaries are being built in Rondônia, which will reduce overcrowding in the Urso Branco Prison. The first, located in the city of Guajará-Mirim, should be ready in 40 days, and will house 68 high-risk prisoners. The second one, which should be ready in 90 days, will house 120 prisoners, and will be primarily for "safe" inmates, those who are the most vulnerable segment of the prison population;
- d) the prison will be visited on a regular basis by the Criminal Sentence Execution Judge, in charge of the branch of Criminal Sentence Execution; by the State Penitentiary Council; by the Office of Court Appointed Counsel, and by the Brazilian Bar Association (OAB/RO), with the aim of recovering weapons made by the inmates, listening to the inmates and to the administration, avoiding abuse and detecting critical situations that might cause new killings or rebellions. Records must be taken of those visits and sent to the Ministry of Justice; and
- e) the State Penitentiary Council, formed by representatives of the Government and of civil society, was convened, and it decided to promote a pro bono legal assistance "social service" to the prisoners, an action coordinated by the Brazilian Bar Association (OAB/RO) with support from university students.

As regards investigation of the facts that gave rise to these provisional measures, the State pointed out that:

- a) an administrative process began on January 2, 2002 for the deaths occurred at the Urso Branco Prison that same day;
- b) a police inquiry was opened on each death occurred at the Urso Branco Prison. In view of the fact that the investigations are proceeding slowly, the representative of the Public Prosecutors' Office in the State Penitentiary Council requested the appointment of a unit of the civil police to accelerate them. The Governor of the State is studying that request; and
- c) there is no evidence that State agents participated in the deaths of the 38 inmates that occurred during this year. What has been established is that there is a firm intent by certain prisoners to kill the inmates they dislike, as a form of protest.

Regarding the complete list of all persons incarcerated at the Urso Branco Prison, the State explained that the Director of the Penitentiary submitted an updated list on June 29, 2002, stating the 860 persons who are serving sentences of incarceration under the closed system. The Director added that the list changes daily, as the Criminal Sentence Execution Law provides for progression in the system of incarceration for inmates due to good behavior, allowing them to move forward until attainment of parole.

5. The observations of the Commission to the first report filed by the State on July 26, 2002, as ordered by the Court in operative paragraph three of the June 18, 2002 Order. The Commission appended a brief with observations of the applicants to the report filed by the State, which it requested the Court to consider as “a constituent part of the Observations of the Commission.” The latter document refers to the measures that the State reported having taken to protect the inmates’ rights to life and to personal safety, and to investigate the facts that led to the adoption of these provisional measures. In brief, the document stated that:

- a) the investigative mission sent by the State of Rondônia restricted its activities to work meetings with State authorities. It did not visit the Urso Branco Prison or the construction work on the other penitentiaries;
- b) the presence of military police within the prison is an illegal measure, one that is not allowed by Brazilian legislation;
- c) with respect to the hiring of new penitentiary officers, the President of the Union of Penitentiary Agents of Rondônia reported that military were hired instead of the candidates recently approved in the contest for penitentiary officers;
- d) regarding construction and completion of the new penitentiaries in Rondônia, the prison in the city of Guajará-Mirim will not be completed within the time reported by the State, as the construction works have been paralyzed for a month, and its capacity is for 40 inmates, rather than 68. The cells of this new penitentiary have no ventilation, appropriate lighting, nor locks;
- e) the measure pertaining to regular inspections of the Urso Branco Prison has not been carried out;
- f) it is not possible to assess the real status of the administrative investigation, because the State submitted very limited information and the applicants do not have access to this administrative procedure;
- g) with respect to assignment of a civil police unit to accelerate the criminal investigation, it has been established that the investigations have not been entrusted to a special unit, and no one has been indicted for the deaths of the 27 inmates;
- h) the statement made by the State to the effect that there is no evidence that State agents participated in the deaths of 38 prisoners during this year prejudices the subject matter of a police inquiry and an administrative investigation. It also reveals the bias and lack of involvement of the federal government to establish the responsibility of State authorities for the murders in the Urso Branco Prison, and it ignores the responsibility of the State to ensure the life and personal safety of the inmates under its custody. Furthermore, in the case of the murder of inmate Francisco Néri da Conceição, participation of a police officer has been established; and
- i) 400 of the 860 inmates at the Urso Branco Prison are provisional, that is, they are awaiting trial.

The Commission also reported certain especially grave facts that took place after the Court ordered the provisional measures, among which the following stand out:

- a) on June 23, 2002, an inmate was murdered within the prison, with deep wounds to his head and nape. The press reported that to reach the place where the inmate was located, the perpetrators broke recently-built double walls;

- b) 308 inmates of the A and B pavilions were placed in the jail courtyard as punishment from June 23 to 27, 2002. They were in the open courtyard four consecutive days, naked, without food, receiving water sporadically, without access to bathrooms; they were beaten and their heads were shaved. Furthermore, all the personal belongings of these inmates (clothes, TV sets, personal documents, medicine) were taken out of their cells and thrown into a place called the “church”, so that when they returned to their cells, after four days under the sun and without a roof, they did not find their personal belongings, and this caused great unrest among the inmates;
- c) on July 5, 2002, roughly 34 detainees from the Police Station at Porto Velho were transferred to the Urso Branco Prison and placed in one of the “safe cells” together with the nine detainees already there. The detainees who were transferred beat the nine inmates who were in the “safe cell” already, in face of which the agents of the Riot Control Company entered the cell and assaulted all the inmates. The nine inmates who had been attacked were provisionally placed in the nursery, which is near the cell where the prisoners who had beaten them were. Furthermore, the inmates who were beaten receive death threats daily;
- d) 22 inmates have received death threats, including the nine who were attacked on July 5, 2002, and two survivors of the January 1 and 2, 2002 massacre, who have received death threats because they stated who some of the authors of the massacre were. Only 13 of the inmates who received death threats have been transferred to the Enio Pinheiro Prison;
- e) with the aim of overseeing compliance with the provisional measures ordered by the Court, members of the NGO Global Justice Center (Centro de Justicia Global) visited the Urso Branco Prison on July 15, 2002. On July 16, 2002, at dawn, as reprisal for said visit, all the prisoners who were in the cells that were visited by members of the Global Justice Center were brutally beaten and gravely tortured by penitentiary agents and military police. These facts are a violation of the inmates right to humane treatment and, furthermore, their effect is to intimidate them to stop them from providing information on the grave situation at the prison; and
- f) the problem of overcrowding at the Urso Branco Prison has worsened because it continues to receive prisoners every week from the Central Police Station.

For the aforementioned reasons, the Commission requested that the Court maintain the provisional measures ordered, that it convene a public hearing, and that it order the State to:

- a) immediately begin a serious and effective investigation to determine criminal and administrative responsibilities and to punish those responsible for tortures committed on July 16, 2002 against the inmates who supplied information to members of the Global Justice Center on the situation at the Urso Branco Prison;
- b) report to the Court the names of all penitentiary agents and military police who were at the Urso Branco Prison on July 16, 2002;
- c) adopt effective measures to ensure the right of the inmates at the Urso Branco Prison to freely communicate with members of the organizations that receive information regarding the provisional measures ordered by the Court, without this having ulterior consequences;
- d) report to the Court the number and names of inmates at the Urso Branco Prison who have been convicted, as well as the number and names of those detained without a conviction;
- e) report whether the prisoners who have and have not been convicted are separated;
- f) submit specific information on the other facts mentioned in the brief with observations on the Report submitted by the State and in the attached report; and

g) report to the Court on the measures adopted with the aim of complying with the provisional measures ordered by the Court.

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 provides 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. Under International Human Rights Law, the nature of provisional measures is not only preventive, 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 jurisdictional guarantee.

5. Article 1(1) of the Convention sets forth the general obligation of the States Party to respect the rights and freedoms embodied in that Convention and to ensure the free and full exercise of those rights and freedoms by all persons under their jurisdiction, which carries with it the duty to adopt security measures necessary for their protection. These obligations become even more evident in connection with those who are involved in proceedings before the oversight bodies of the American Convention.

6. 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 incarcerated 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.

7. Pursuant to the Court Order (supra “Having seen” 3), the State must adopt measures to protect the life and personal safety of all inmates at the Urso Branco Prison, including that of seizing all weapons that are in the hands of inmates, and investigating the facts that gave rise to adoption of the provisional measures, with the aim of identifying those responsible and punishing them accordingly.

8. This Court has studied the report submitted by the State (supra “Having seen” 4) and the observations of the Commission on said report (supra “Having seen” 5).

9. Information supplied by the Inter-American Commission in its brief with observations on the report submitted by the State (supra “Having seen” 5), regarding certain grave facts that have taken place at the Urso Branco Prison to the detriment of the inmates after the Court ordered provisional measures in its June 18, 2002 Order, demonstrates prima facie that there is a situation of extreme gravity and urgency that makes it reasonable to presume that the life and safety of the

inmates at the Urso Branco Prison continues to be at grave risk and highly vulnerable. Therefore, the State must be ordered to adopt, forthwith, whatever provisional measures are necessary to protect the life and personal safety of all inmates at the prison.

10. The Court deems it pertinent and necessary, so as to protect the life and personal safety of the inmates at the Urso Branco Prison, for conditions at that penitentiary to be in accordance with applicable international standards for protection of human rights. Specifically, the Court deems that there should be a separation among categories, so that “[t]he different categories of prisoners shall be kept in separate [...] parts of institutions taking account of [...] the legal reason for their detention and the necessities of their treatment,” and “[u]ntried prisoners shall be kept separate from convicted prisoners.” Likewise, regarding discipline and punishment, it should be underlined that penitentiary officers “shall not, in their relations with the prisoners, use force except in self-defense or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations”, and that “Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments [are] completely prohibited as punishments for disciplinary offences.”

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To order the State to continue adopting all measures required to protect the life and personal safety of all persons incarcerated at the Urso Branco Prison.
2. To order the State to submit information on the grave facts to the detriment of the inmates at the Urso Branco Prison (supra “Having seen” 5) that took place after the Court ordered adoption of provisional measures of protection, through its June 18, 2002 Order.
3. To request the State and the Inter-American Commission on Human Rights to take the necessary steps to establish an appropriate mechanism to coordinate and oversee compliance with the provisional measures ordered by the Court, so as to guarantee free communication between the inmates and the authorities and organizations in charge of verifying compliance with the measures, and to ensure that there are no reprisals against the inmates who provide information in this regard.
4. To order the State to investigate the facts that gave rise to adoption of the provisional measures in the instant case, with the aim of identifying those responsible and punishing them accordingly, including the investigation of the grave acts that have taken place at the Urso Branco Prison after the Court issued its June 18, 2002 Order.
5. To order the State to report to the Inter-American Commission on Human Rights, in accordance with the Commission’s request, the name of all penitentiary officers and military police who were at the Urso Branco Prison on July 16, 2002, and the name of those who are currently working at that public institution.
6. To order the State, with the aim of protecting the life and personal safety of the inmates at the Urso Branco Prison, to adjust conditions at this prison to applicable international standards

for protection of human rights, pursuant to the provisions of the tenth Considering of the instant Order.

7. To order the State, when it submits the complete list of all persons incarcerated at the Urso Branco Prison, to state the number and names of the inmates who have been convicted and those who are detained without a conviction; and, furthermore, to state whether the inmates who have and have not been convicted are located in different sections.

8. To request the State to submit detailed information, no later than October 1, 2002, on compliance with the provisional measures ordered by this Court in its June 18, 2002 Order and in the instant Order; and the Inter-American Commission on Human Rights to submit its observations to said report within 15 days of the date when it was received.

Alirio Abreu-Burelli
President

Antônio A. Cançado Trindade
Máximo Pacheco-Gómez
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