

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS¹
OF FEBRUARY 9, 2006**

**PROVISIONAL MEASURES REGARDING THE BOLIVARIAN REPUBLIC OF
VENEZUELA**

MATTER OF THE MONAGAS JUDICIAL CONFINEMENT CENTER ("LA PICA")

HAVING SEEN:

1. The writing of December 29, 2005 and its Appendixes, by means of which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") and Article 74 of the Rules of Procedure of the Commission, with the purpose, *inter alia*, that the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") "may protect the life and personal integrity of the persons detained in the Monagas Judicial Confinement Center, also known as 'La Pica'" (hereinafter "La Pica Confinement Center," "La Pica" or "the Confinement Center.")

2. The communication of December 30, 2005 whereby the Commission informed that on December 29, 2005, it had "registered petition P-1487/05, filed on behalf of the persons held in custody" at the Confinement Center.

3. The alleged facts upon which the request for provisional measures, filed by the Commission, is grounded are listed below:

a) the penitentiary system of Venezuela is actually in a very precarious and serious condition. From January 1 to November 30, 2005, approximately 425 persons died and other 657 persons were injured during violent actions occurred within the jails of Venezuela;

b) at La Pica Confinement Center, located in the city of Maturín, 43 persons died and at least 25 were seriously injured, which accounts for over 10% of the violent deaths occurred within premises of the penitentiary system nationwide;

¹ Judge Diego García-Sayán informed the Court that, for reasons beyond his control, he would be unable to be present at the deliberations and sign this Order.

- c) due to several prison riots, alleged tortures, deaths and injuries occurred during year 2005, La Pica inmates are subject to some risks that have increased during the last months;
- d) the authorities have conducted several searches at La Pica Confinement Center and seized several arm fires, bullet cartridges, bullets and drugs;
- e) the inmates of La Pica Confinement Center are guarded by 16 guards who work in two shifts of 24 hours each; therefore there is one guard for every 63 inmates;
- f) the next of kin of some deceased inmates have accused members of the National Guard and warders of the Confinement Centers as the alleged authors of some of the deaths. Accusations for excessive use of force by the authorities in charge of assuring the control of the Confinement Center are permanent;
- g) the detention area of La Pica Confinement Center comprises 3 cellblocks, however, there are three circumstances that cause overcrowding: a) destroyed cells that are completely uninhabitable; b) individual cells, which have been appropriated by the leaders of the inmate groups that control the premises, known as PRAT (or leaders within their own groups), who keep the control by using arms; and c) inmates that cannot live in the general detention area because their lives are at risk and consequently they are forced to live in improvised places within the Center, in overcrowded conditions;
- h) collective cells have been designed to lodge 7 persons, but at present there are up to 15 inmates living in each of them. In said cells, inmates have not beds or bed clothes; they sleep on the floor and some of them, on foamrubber pieces;
- i) the Confinement Center has improvised extension premises near the administrative area, where the women in custody are lodged in deplorable living conditions. In the improvised additional premises, 22 to 24 women are housed, distributed in three rooms that do not meet the conditions necessary to lodge people. The women sleep on the floor or on cardboards and the only bathroom they have for cleaning and sanitary purposes is very small, with only one toilet, where the sewage system is almost permanently collapsed. Consequently, odor is unbearable and running water mixes with sewage waters. The bathroom is the main place where mice and rats can be found;
- j) people detained in the Confinement Center live under unacceptable conditions that generate strained relations or aggravate circumstances such as the following:
- i) in the cellblocks, there are no tables and inmates get the light by connecting improvised cables as there are no lamps nor light bulbs in the cells;
 - ii) In each cellblock there is one bathroom that was originally built for providing sanitary services and showers for all inmates. At present, there are no toilets in the bathrooms and inmates have to move their

bowels in a hole shared with the other inmates. The external part of the showers is destroyed and prison authorities do not provide soap for the inmates. Moreover, the sewage system has collapsed and there is no treated water pumping;

iii) as inmate workers are lodged in an improvised Appendixed area, they must sleep in the corridors;

iv) the infirmary has been dismantled and lacks any kind of elements or materials. The name of a physician is included in the payroll, but he does not actually visit the Confinement Center. Consequently, the inmates that are injured or ill do not receive adequate and timely medical assistance, or they must wait to be sent to the Manuel Núñez Tovar Hospital, in the city of Maturín, to receive any health care assistance; and

v) the lack of health care assistance also affects detained women. They do not have any gynaecological care and consequently, the majority of them –not only those who have delivered children- suffer from the Papiloma virus.

k) during year 2005, inmates at La Pica Confinement Center went on several hunger strikes to protest for the lack of security within the premises of the confinement center and for the deplorable detention conditions inmates were subject to, for the mistreatment and/or the delays in proceedings and unexpected transfers;

l) after a hunger strike made in the month of May, 2005, where 39 children were kept with the inmates, the *Tribunal Superior de Menores* (Superior Juvenile Court) of the state of Monagas prohibited the entry of children to the Confinement Center as long as an appropriate place were constructed and assigned for children visitors, in order to assure that children would not be kept locked during riots or hunger strikes. Thus, since May 2005, those parents who are detained in La Pica Confinement Center cannot see their children;

m) female visitors of the Confinement Center have to undergo vaginal searches and they are obliged to take off their clothes and hop and jump while squatting before being authorized to enter the corresponding cellblock;

n) by the end of year 2005, 501 inmates were housed at La Pica Confinement Center, 363 of which were indicted and 138 have already been sentenced; but there was not adequate separation between these two groups of inmates;

o) delegates of the executive, legislative and judicial power visited the Confinement Center during the last months of year 2005 but they did not take any efficient measure to prevent any deaths and further problems related to detention conditions;

p) through Executive Order N° 3,265 of November 23, 2004, the President of the Republic created the Presidential Committee to handle the Jail Emergency, whose powers and duties would be the following:

- i) to evaluate the confinement centers and supporting services as regards their infrastructure, personnel and services supplied to inmates;
- ii) propose and recommend the guidelines, plans and strategies driven to give a solution to the various problems arisen in the confinement centers and of the human factor involved;
- iii) to recommend the Judicial Power the actions that would assure compliance with the right to a speedy trial and the right of convicted persons to have access to alternative means for penalty enforcement; and
- iv) to propose and recommend measures addressed to assuring the enjoyment and exercise of human rights of inmates during their stay at the confinement centers.

q) before the creation of the Presidential Committee, the National Assembly had requested the Executive Power to declare the jail emergency; and

r) The Presidential Committee advanced the date of a census in order to know the legal status of inmates and urge the reduction of jail overcrowding and the delay in proceedings.

4. The statements made by the Commission in its request for provisional measures, citing the 2004-2005 Annual Report of the non-governmental organization named *Programa Venezolano de Educación-Acción en Derechos Humanos* (Venezuelan Program of Education-Action on Human Rights)(PROVEA), pursuant to which "it is premature to assess the impact of the process started by the Jail Emergency Executive Order, and to determine the degree of achievement in attaining the goals established by the *Comisión Presidencial para Atender la Emergencia Carcelaria* (Presidential Committee for Jail Emergency)," and "the value of the declaration of the emergency and of the creation of a top level commission consisting of different institutional players and presided over by the Home and Justice Minister. This is a clear evidence of the concern of the government for the condition of the penitentiary system, and an attempt to find solutions agreed upon by the several parties involved." Moreover, "the methodology adopted, pursuant to which the different sectors involved were called to participate in order to conduct a series of surveys with the purpose of obtaining a thorough and broad diagnosis of the existing conditions, which would then allow to define the measures and policies to be implemented, permit us to recognize the apparent seriousness and strictness of the actions taken. On the other hand, the preliminary results that [PROVEA has] learnt of, regarding both the assessment and the [proposed] aspects, are consistent with those established by the international rules and recommendations." However, "the position of non[-]governmental organizations [...] that participate in the penitentiary system, as well as that of different technicians and professionals [...], make us think that the discussion and consultative process was not as broad as it would have been desirable, and as the executive order itself established."

5. The legal arguments of the Commission to ground its request for provisional measures, where it stated that:

- a) the facts described are serious enough for the Court to urgently intervene in order to safeguard the life and personal integrity of the persons subject matter of this request;

- b) the domestic measures adopted (*supra* Having Seen clauses No. 3(o), 3(p), 3(q) and 3(r)) have not been efficient to safeguard the life of inmates and deter new violent acts at La Pica Confinement Center;
- c) the urgency required by Article 63(2) of the American Convention for the Court to issue provisional measures is evidenced in the instant case by the death of 43 inmates and the serious injuries suffered by, at least, 25 inmates. These facts prove that there exists an imminent danger caused by the poor safety conditions of the premises and the high rates of violence among inmates and of guardians against inmates, all of which require the urgent intervention of the Court in order to avoid an irreparable harm;
- d) the measures necessary in the instant case cannot be delayed until medium or long term plans are implemented, since current conditions are critical and must be remedied through immediate action;
- e) the death and injuries inflicted on several inmates detained at La Pica Confinement Center show the State's carelessness in the fulfillment of its duties. This lack of due diligence poses a risk of irreparable harm to the life of beneficiaries since it encourages the repetition of violent situations as those referred above;
- f) the repeated use of hunger strikes shows that there are not speedy communication channels among inmates, prison authorities and civil organizations, all of which contribute to aggravate the situation;
- g) the permanent violent acts, which caused more than forty deaths, as well as the ongoing lack of safety and control, show that the State of Venezuela has not fully complied with its obligation to prevent any attacks against the life and personal integrity of detainees at La Pica Confinement Center, and that the said State has not adopted the indispensable safety measures to avoid new violent actions in the said premises;
- h) due to the extremely serious and urgent situation, and to the need to avoid irreparable harm to people, the possibility of identifying the beneficiaries is sufficient in order to grant them the abovementioned protection measures. In the instant case, the beneficiaries of the requested protection are the detainees lodged at La Pica Confinement Center, who are at great risk and extremely defenseless, as well as those persons that may enter said premises as detainees in the future;
- i) the measures to be adopted must include those tending to maintain an environment of respect of human rights among the detainees, particularly, their segregation into different categories, measures to avoid the introduction of arms into the premises and the improvement of detention conditions. Moreover, the State must design and apply jail policies to prevent critical situations and avoid greater risks; and
- j) the final solution to the problem of Venezuelan jails, and especially, that of La Pica Confinement Center, also requires the implementation of integral medium and long-term actions. However, the urgency and imminent risk currently existing require the State to adopt measures with immediate

effects on the situation of risk the detainees are undergoing, as they are the beneficiaries of the protective measures.

6. The request made by the Inter-American Commission so that the Court, grounded on Article 63(2) of the American Convention, may require the State:

- a) to adopt, without delay, all safety and control measures that may be necessary to safeguard the life and physical integrity of the inmates held at La Pica Confinement Center, as well as of those persons who may enter the Confinement Center as detainees in the future;
- b) to adopt, without delay, all measures necessary to prevent that torture or physical penalties be applied to detainees;
- c) to provide La Pica Confinement Center with a sufficient number of duly trained personnel in order to prevent new acts of violence;
- d) to conduct reliable, complete and speedy investigations of the acts of violence that took place within the premises of the Confinement Center; to identify those persons liable for such acts and to apply the corresponding penalties as a deterrent against new acts of violence; and
- e) to assure the periodic surveillance of detention conditions and inmates' physical conditions through an independent body, whose reports shall be sent to the Court.

7. The note issued by the Secretariat of the Court (hereinafter, "the Secretariat") on December 30, 2005, whereby, following the instructions of the President, said Secretariat granted the State a term expiring on January 5, 2006, to file its objections to the request made by the Commission (*supra* Having Seen clause No. 1).

8. The State, through a communication issued on January 5, 2006, whereby it submitted its objections to the Commission's request, stated, *inter alia*, that:

- a) through the strategies designed for the jail environment, the State has created specific action plans that were implemented, by stages, with the participation of male and female detainees of the whole country, specially at La Pica Confinement Center, to safeguard the right to life and physical integrity, the health, food, education, sports, culture and entertainment activities of the population of jails and confinement centers, further taking into account the infrastructure of the premises and any event intended to improve their living conditions;
- b) through the *Comisión Presidencial para Atender la Emergencia Carcelaria* (Presidential Committee for Jail Emergency), an additional loan of one hundred and ten thousand Bolivares was requested, which would be applied to the infrastructure equipment, the execution of projects for productive work and for the improvement of safety level of both inmates and jail officers;
- c) several training programs designed to educate and train officers of the jail system are under progress;

- d) several measures are currently being adopted to solve, as prompt as possible, any deficiency in the quantity and training of jail personnel;
 - e) several searches and inspections have been conducted in the Confinement Center during year 2005;
 - f) measures have been adopted to take care of the health and food of inmates;
 - g) several investments were made to improve the infrastructure of the Confinement Center;
 - h) two officers reporting to the *Dirección General de Derechos Humanos* (Human Rights General Board) have been assigned to work in each penitentiary of the country on an ongoing and daily basis;
 - i) On January 2005, section 493 of the Organic Code of Criminal Procedure was overruled;
 - j) the acts of violence that took place in the Confinement Center are being investigated; and
 - k) in the light of the aforementioned, the State requested the Court to take into account the work that is under progress through the process of humanization of the penitentiary system implemented by the *Ministerio del Interior y Justicia* (Ministry of Home Affairs and Justice), in order to analyze this matter from an objective and equitable standpoint and, consequently, to consider the possibility of dismissing the request for provisional measures and thereupon, to allow the State to submit additional information on the events denounced.
9. The communication sent by the State on January 6, 2006, whereby it informed that it would send a copy of an official letter sent by the government officer to the *Dirección de Derechos Humanos* (Human Rights Board) of the *Ministerio del Interior y Justicia* (Ministry of Home Affairs and Justice) whereby she had requested certain information from said entity, and whereby it also insisted on requesting the Court to abstain from deciding on the provisional measures requested until the State had sent the results of said request for information.
10. The notice sent by the Secretariat on January 6, 2006, whereby, following the President's instructions, it granted the State a period of time extending to January 11, 2006, to submit the information referred to in the State's communication of January 6, 2006.
11. The communication sent by the State on January 12, 2006, whereby the *Ministerio del Interior y Justicia* (Ministry of Home Affairs and Justice of Venezuela) informed on "the situation of the human rights of the detainees at the Monagas Judicial Confinement Center 'La Pica'," pointing out, *inter alia*, that:
- a) a "disarmament plan" has been developed with the purpose of guaranteeing the right to life within the Confinement Center;

- b) during year 2005, the *Fondo Nacional para Edificaciones Penitenciarias* (National Fund for Jail Construction) carried out several works to refurbish the Appendixed building of the Center assigned for lodging female detainees;
- c) during year 2006, several works will be carried out to improve the infrastructure of the Confinement Center.
12. The Order of the President, dated January 13, 2006, whereby he decided:
1. To request the State to maintain and reinforce the measures it has already been implementing, as well as to immediately adopt the supplementary measures necessary to efficiently and definitively avoid any type of violence within the Monagas Judicial Confinement Center ("La Pica"), and to avoid the death or any harm to the physical integrity of any inmate or any other person within the Confinement Center.
 2. To request the State to carry out all actions necessary for planning and implementing the protective measures issued in favor of the detainees held at the Monagas Judicial Confinement Center ("La Pica"), with the participation of the representatives of the beneficiaries of such measures and, generally, to keep the Court informed on the progress of said implementation.
 3. To request the State to send the Court an updated list of the persons held in custody in said Confinement Center, stating in detail the characteristics of their detention.
 4. To request the State to conduct an investigation of the events that prompted the issuance of the urgent measures, in order to identify the persons liable and to impose them the corresponding penalties, both administrative and disciplinary.
 5. To request the State to submit to the Inter-American Court of Human Rights, not later than January 23, 2006, a report on the provisional measures adopted in compliance with this Order, and to request the representatives of the beneficiaries and the Inter-American Commission on Human Rights to submit their objections to the abovementioned report within a term of five and seven days, respectively, as from the day they received the notice of the report submitted by the State.
- [...]
13. The communication of the Commission on January 17, 2006, whereby it informed that on January 13, 2006, an inmate of La Pica Confinement Center died from a bullet wound.
14. The written statement filed by the State on January 23, 2006, whereby it stated, *inter alia*, that:
- a) as of year 2004, the State has adopted urgent measures in order to improve the conditions existing within the prisons of the country, including the enactment of an executive order declaring the state of national emergency of confinement centers;
 - b) It requested the Court a reasonable term within which the State could effectively prove that the events that prompted the Order of the President did not derive from a systematic policy of the State consisting in violating the human rights of the detainees held at La Pica Confinement Center, but from a temporary situation regarding which several measures had been adopted in order to solve it;

- c) As from January 2006, 30 guards graduated at the *Escuela de Custodios Penitenciario* (School of Penitentiary Guards) of the State of Trujillo, would be incorporated to the staff of La Pica Confinement Center;
- d) Humberto Prado, Director of the non-governmental organization *Observatorio Venezolano de Prisiones* (Venezuelan Prison Watch), was invited to teach a course on human rights and other topics related to the penitentiary system;
- e) multidisciplinary teams were created, which would provide integral assistance to La Pica inmates;
- f) the State has ordered that weekly searches be made in order to assure compliance with the ban on the possession of articles, arms or drugs that can generate violence;
- g) several religious groups were asked to strengthen the work they were developing in order to promote awareness of moral values and respect for life among inmates;
- h) structural reparations would be made in the Confinement Center;
- i) the Confinement Center would be provided with office tools and adequate cleaning and safety materials;
- j) it had requested that cleaning and trash collection services were supplied twice a week in order to prevent diseases that could put at risk the health of inmates; moreover, it had further requested that the brush and debris of the perimetral areas were cleared since such areas impair jail's safety, which could derive in violent acts and possible escapes;
- k) some room within the Confinement Center was prepared to receive two officers of the *Dirección General de Derechos Humanos* (Human Rights General Board) who shall be appointed on an ongoing basis and whose duties shall be to assure the respect for the human rights of inmates;
- l) it also requested that fumigation and vaccination campaigns were made, as well as a dentistry/medical campaign.
- m) the State was analyzing the possibility of enlarging a section of the aqueduct which would reach the Confinement Center to supply it with drinking water for the inmates on an ongoing basis;
- n) the representatives of the beneficiaries were invited to submit proposals and execution mechanisms addressed to improve the condition of the Confinement Center. The following strategies were presented at said meeting:
 - i. the *Observatorio Venezolano de Prisiones* (Venezuelan Prison Watch) was incorporated to the *Comisión Presidencial para Atender la Emergencia Carcelaria* (Presidential Committee for Jail

- Emergency) so that it may present projects and working plans for the improvement of the penitentiary system;
- ii. petitioners will be kept informed on the progress of the implementation of the measures adopted;
 - iii. a proposal was presented to organize a conference of non-governmental entities to discuss matters related to the jail system deficiencies and the possible solutions; and
 - iv. non-governmental entities were authorized to visit the Confinement Center and make the corresponding recommendations and inform on the outcome of same.
- o) it presented charts showing the percentage of indictees and sentenced persons, and of detainees held in the confinement center but who belong to other judicial circuit;
- p) the *Ministerio del Interior y Justicia* (Ministry of Home Affairs and Justice) carried out a census with the purpose of addressing the possible delays in proceedings and of analyzing the alternative ways of penalty enforcement; and
- q) the State requested the *Fiscal de Ejecución* (Penalty Enforcement Prosecutor) of the Criminal Circuit of the State of Monagas a list describing the cases where acts of aggression and other wrongful acts committed in the Confinement Center are investigated, in order to learn about the stage of proceedings of said cases.
15. The Order of the Court of January 30, 2006, whereby the Court decided:
1. To call the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these urgent measures and the State of Venezuela to a public hearing that would be held at the seat of the Court on February 9, 2006, as of 9.00 a.m., so that the Court might hear the arguments on the facts and circumstances that prompted the adoption of [said] Order.
- [...]
16. The communication of the representatives of the beneficiaries (hereinafter, "the representatives") of January 31, 2006, whereby they filed their objections to the government report dated January 23, 2006 (*supra* Having Seen clause No. 14), whereby they stated that:
- a) despite the general rules passed by the State, the existing conditions were extremely serious and gave rise to the violation of the right to life and personal integrity of La Pica inmates;
 - b) on January 28, 2006, two days after the search conducted in the Confinement Center in compliance with the President's Order, inmate Leonardo Marcano was wounded with a firearm by a cell mate. The following day, inmate Edixon José Coraspe died in a struggle between two groups of inmates that were fighting to gain the control of one of the cellblocks;
 - c) since the population held in custody in La Pica amounts to 503 inmates, the number of guards to be assigned should be, at least, greater than the 30 guards proposed by the State in order to guarantee an efficient

control of the Confinement Center. The State must provide detailed information about how will the selection of the new guards to be sent to La Pica be made or how has it been made. By January 26, 2006, the guards mentioned by the State in its report of January 23, 2006 (*supra* Having Seen clause No. 14(c)) had not been transferred yet to La Pica Confinement Center;

d) an effective improvement of the guards' capacity to guarantee La Pica internal safety would consist in providing them with adequate physical and safety conditions that would allow them to perform their duties efficiently;

e) on January 20 the *Observatorio Venezolano de Prisiones* (Venezuelan Prison Watch) visited La Pica Confinement Center. At that time, the Director of the Center stated that the Confinement Center was under the control of the inmates, and that they authorized or allowed the Director to enter the places where they are lodged;

f) on January 26, 2006, upon the request of the *Ministerio del Interior y Justicia* (Ministry of Home Affairs and Justice), Mr. Humberto Prado taught a first training course to the guards of the *Centro Penitenciario Región Capital Yare* (Penitentiary Center of the Region Capital Yare), but not to those of La Pica Confinement Center;

g) during the search made by the State in La Pica Confinement Center, on January 26, 2006, several arms, bullets, grenades and drugs were found;

h) the living conditions of La Pica inmates are, per se, an extremely serious and urgent situation that poses an imminent threat of irreparable harm to the life and personal integrity of inmates. Said conditions demand the extension of the provisional measures the Court may order for the purpose of assuring that the State may effectively and urgently adopt all measures necessary to solve such problem;

i) in its report of January 23, 2006 (*supra* Having Seen clause No. 14), the State did not refer to any measure adopted in order to guarantee the visit of children to their parents held in jail;

j) it is of the utmost importance to avoid overcrowding in jails, to classify and segregate detainees according to their particular characteristics, to give them a dignified treatment and to assure them adequate sanitary conditions;

k) the State must inform on the current distribution of inmates in the cells, specifying the actual capacity of each cell –pursuant to international standards- and the number of inmates currently lodged in each cell;

l) they recognized the State's willingness to make the representatives participate in the meetings of the *Comisión Presidencial para Atender la Emergencia Carcelaria* (Presidential Committee for Jail Emergency) as well as the significance of the express authorization the State gave them to visit the Confinement Center and the prompt action of the State to call a meeting to be held by the State and the representatives on January 18, 2006, but they consider that the State has not assured them an adequate participation in the planning and implementation of the effective measures addressed to

overcome the difficulties that prompted the urgent measures ordered by the President;

m) the State must inform the date when it prepared the list of sentenced and non-sentenced detainees that was sent with its report of January 23, 2006 (*supra* Having Seen clause No. 14). Moreover, the State must inform the name of the inmates that are released and the date such inmates effectively leave the Confinement Center;

n) during the visit of the representatives on January 20, 2006, it was verified that, up to that time, sentenced inmates were not separated from those that have not been sentenced yet;

o) the State must provide accurate information on the investigations made regarding each of the violent events reported by the Commission, including the investigations into the deaths and injuries occurred on January 2006;

p) they requested the Court to ratify, by means of an Order for Provisional Measures, the urgent measures ordered by the President, and to call upon the State to adopt the measures necessary to adjust jail conditions to the applicable international standards on human rights, to guarantee the visit of children of inmates and to abstain from attacking the representatives due to their participation before the Inter-American system.

17. The communication of the Commission of February 1, 2006, whereby it stated that:

a) no room or space has been assigned to the new officers that will be incorporated to the staff of guardians at La Pica Confinement Center, who, according to the State, come from other regions of the country;

b) the death of other three inmates due to acts of violence proves that the jail is not safe enough;

c) the State should make clear if the information included in the list submitted as an attachment to the government report of January 23, 2006 (*supra* Having Seen clause No. 14(o)) has been updated. Moreover, according to said list, La Pica inmates are not separated by categories;

d) the State must present a detailed information on the investigations conducted in relation to the acts of violence occurred at La Pica Confinement Center and the outcome of said investigations up to the present time;

e) the recent deaths occurred after the issuance of the provisional measures show that there is not an efficient internal safety control at La Pica Confinement Center;

f) the type of articles seized during a search and seizure procedure last January 26, 2006 proves the existence of a serious problem of arms, liquor and drug trafficking at La Pica Confinement Center, which increases the permanent risk existing for the life and physical integrity of beneficiaries;

g) although no results have been attained through the actions taken by the State up to the present time, the Commission appreciates the State's intention to adopt medium-term measures driven to improve detention conditions; and

h) the State must adopt all actions necessary to prevent that inmates be subjected to torture or physical punishments, to increase the number of guards assigned to control internal and external safety in La Pica Confinement Center, to train the prison staff not only regarding human rights but also in relation to techniques for managing jail emergencies; to implement a system for the periodic monitoring of detention conditions and the physical condition of detainees, through an independent body; to conduct periodic searches in the Confinement Center in order to seize arm fires; to promptly separate the inmates by categories, pursuant to the applicable international standards; and to investigate the acts of violence occurred in the confinement center.

18. The communication of February 6, 2006, whereby the representatives informed that on February 4, 2006 a new act of violence occurred at La Pica Confinement Center, the outcome of which was the death of an inmate caused by four bullet wounds.

19. The public hearing on the request for provisional measures held at the seat of the Inter-American Court on February 9, 2006, where the following persons were present:

For the Inter-American Commission:

Víctor H. Madrigal-Borloz, advisor;
Juan Pablo Albán, advisor; and
Deborah Benchoam, advisor;

For the representatives:

Humberto Prado, Venezuelan Prison Watch;
Carlos Ayala;
Tatiana Rincón, CEJIL; and
Mariana Meléndez;

For the State:

Nora Uribe-Trujillo, Ambassador of Venezuela in Costa Rica;
María Auxiliadora Monagas, Agent of the State for Human Rights;
Ricardo Jiménez-Dan, Vice-Minister of City Safety of the *Ministerio del Interior y Justicia* (Ministry of Home Affairs and Justice);
Erlin Rojas, General Director of Rehabilitation and Custody of the *Ministerio del Interior y Justicia* (Ministry of Home Affairs and Justice);
José Vacarello, Prosecutor with national jurisdiction on penitentiary matters;
José María Aristimuño, Sociologist of the Ministry of Foreign Affairs;
Herly Peña-Escalona, Human Rights Affairs Deputy Officer of the Embassy of Venezuela in Costa Rica; and
María Clara González, Director of Prisons of the *Ministerio del Interior y Justicia* (Ministry of Home Affairs and Justice).

20. The arguments stated by the Commission at the above-referred public hearing, whereby it repeated the arguments included in its prior writings (*supra* Having Seen clauses No. 1, 3, 4, 5, 6, 13 and 17) and pointed out that:

a) governmental authorities have focused on proposing the implementation of medium and long term integral actions that, although they may be part of the final solution to prison problems, are not sufficient due to the urgency and imminence of the current situation. The State must implement actions with immediate effects in order to overcome the crisis of the safety system and the culture of violence that surrounds the inmates of the Confinement Center;

b) it acknowledged that the State, in compliance with the Order of the President, has adopted certain measures with immediate effects, such as, for example, the incorporation of 30 new guards that, as far as the Commission has been able to learn, were sent to the Confinement Center on February 7, 2006; the fumigation of the area where women are lodged; the delivery of the list of inmates requested by this Court and the search conducted on January 26, 2006;

c) it appreciates the political will of the State to improve the conditions of the national penitentiary system;

d) measures such as the installation of metal detector devices or weekly searches made in strict observance of the duty to respect inmates' human rights may be considered as a means to prevent the introduction and trafficking of arms;

e) inmates with a background of high level of violence must be segregated from the rest of the population of the jail; and

f) although the elimination of inmates risk is the exclusive liability of the State, it is of the utmost importance that the beneficiaries participate in the design of the measures to be carried out by the State to achieve such eradication. The Commission is concerned about alleged statements made by high authorities of the State, which were intended to disaccredit the work of said organizations and have a direct impact on the effectiveness of the measures and the creation of new spaces for dialogue.

21. The arguments submitted by the representatives at the above-mentioned public hearing (*supra* Having seen clause No. 19) whereby they agreed with the Commission's statements, repeated those expressed by them in their prior writings (*supra* Having Seen clauses No. 16 and 18), and they added that:

a) the Court should extend the measures ordered by the President in order to specifically address any matter related to detention conditions;

b) when transferring the new guards to La Pica Confinement Center, the State shall see to provide them with the physical conditions, within the premises of the confinement center, that allow them to perform an excellent work. Guards have not a room where to take a rest, and therefore, they are forced to share the place with a group of detainees.

- c) In order to conduct searches actually effective to dismantle violent elements and avoid acts of violence, firstly, such searches must be accompanied by the immediate start-up of the investigations intended to identify the net or networks accountable for the introduction of arms into the prison and to efficiently attack that or those networks; in second place, searches must be made on a weekly basis; and finally, they must be conducted jointly with the prompt implementation of measures intended to inform inmates about the purpose of the searches and seizures; and
- d) there is a great concern about the State's reaction to the President's Order, by the aggressive statements made against Humberto Prado and the non-governmental organization he represents, the Venezuelan Prison Watch, since Prado resorted to the Inter-American system of protection of human rights and required the Commission to request the Court for provisional measures.
22. The arguments of the State at the above-mentioned public hearing (*supra* Having Seen clause No. 19), whereby it repeated the statements made in its prior writings (*supra* Having Seen clauses No. 8, 9, 11 and 14), and pointed out, *inter alia*, that:
- a) by February 6, 2006, La Pica detainees amounted to 500 inmates, out of which 75.60% were indicted detainees and 24.40% were sentenced;
- b) multi-disciplinary teams are being created to deal with the treatment designed for inmate rehabilitation at La Pica; said teams will consist of a social worker, a psychologist, an expert in criminology, four drivers, a chaplain, a sports coordinator, an educator, a nutritionist, an assistant nutritionist, a dentist, two nurses and three physicians, who will live 365 days a year in the premises that are being refurbished for such purpose;
- c) since January 2, 2006, 176 psycho-social surveys have been made, which are the technical reports necessary for the sentenced inmates to have access to alternative methods of penalty enforcement;
- d) the new guards that will be incorporated to La Pica Confinement Center have been specially trained, especially regarding human rights issues;
- e) on December 24, 2005, the *Ministerio del Interior y Justicia* (Ministry of Home Affairs and Justice) gave a toy to each inmate in all prisons of the country. Furthermore, the "Bolivarian prison games" took place with the participation of 27 centers of the whole nation; and
- f) some restoration works and improvements to the infrastructure of the Confinement Center are in progress; some of said improvements are the construction of an underground tank of 250 thousand liters capacity to solve the problem of lack of drinking water, and the construction of a dividing wall that shall separate inmates of 18 to 21 years old from the rest of the inmates.

23. The documents filed by the State and the representatives at the public hearing held in the instant case.

CONSIDERING:

1. That Venezuela is a State Party to the American Convention since August 9, 1977 and, pursuant to Article 62 of said Convention, it recognized the jurisdiction of the Court on June 24, 1981.

2. That Article 63(2) of the Convention establishes that “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court may, at the request of the Commission, adopt such measures as it deems pertinent in matters that have not yet been submitted to its consideration.

3. That in this regard, Article 25 of the Rules of Procedure provides as follows:

[...]

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

[...]

5. If the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court at its next session.

6. The beneficiaries of provisional measures or urgent measures ordered by the President may address their comments on the report made by the State directly to the Court. The Inter-American Commission on Human Rights shall present observations to the State's report and to the observations of the beneficiaries or their representatives.

4. That the purpose of provisional measures in the domestic legal systems (domestic law of procedure) generally, is to preserve the rights of the parties during the dispute, ensuring that the execution of the judgment on the merits is not impaired or obstructed by the actions of the parties, *pendente lite*.

5. That in the International Human Rights Law, the provisional measures not only have a preventive nature, as they preserve a certain legal status, but also –and mainly- a protective nature, since they protect human rights as long as they are intended to prevent irreparable damage to persons. Provided the basic requirements of extreme seriousness and urgency, and the prevention of irreparable damage to persons are met, provisional measures are an effective judicial guarantee with preventive nature.

6. That Article 1(1) of the Convention sets forth the general obligation of the State Parties to respect the rights and freedoms enshrined in said Convention and to guarantee their free and full enjoyment by any person under its jurisdiction.

7. That the Court is not trying the merits of the case that gave rise to these provisional measures, and the issuance of provisional measures does not involve a decision on the merits of the dispute existing between petitioners and the State. In ordering provisional measures, the Court is only exercising its powers under the

Convention, in cases extremely serious and urgent that require protective measures to avoid irreparable damage to persons.

8. That the Commission requested this Court to order the protection of “the persons deprived of liberty at the Monagas Judicial Confinement Center [, known as ‘La Pica’;] and of those persons that may enter said confinement center as detainees in the future.” Although in some cases the Court has considered it is indispensable to identify the persons at risk of suffering irreparable harm, before ordering the protective measures,² in other cases the Court has issued protective measures regarding a group of persons not previously identified, but who can be identified and whose identification can be determined, and who are at risk of suffering an imminent damage because they belong to a group or community,³ such as the detainees at a confinement center.⁴ In the instant case, the possible beneficiaries are identifiable as they are lodged in the above-referred confinement center.

9. That in the light of the State’s liability to adopt protective measures to safeguard the persons under its jurisdiction, the Court deems that such obligation is even more evident regarding persons lodged in a government confinement center, in which case the State is the guarantor of the rights of the persons under its custody.⁵

10. That by virtue of the relationship existing between detention conditions and the guarantee of the right to life and personal integrity, the protection of detainees at a confinement center where the conditions are those referred above is possible through an order for provisional measures issued by this Court.

11. That from the information provided by the Commission, the representatives and the State, and their statements made during the public hearing (*supra* Having

² Cf. *Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic. Provisional Measures Regarding República Dominicana*. Order of the President of the Inter-American Court of Human Rights of September 14, 2000. Series E No. 3, Considering clause No. 4; and *Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic. Provisional Measures*. Order of the Inter-American Court of Human Rights of August 18, 2000. Series E No. 3, Considering clause No. 8.

³ Cf., *inter alia*, *Matter of Pueblo indígena de Sarayaku. Provisional Measures*. Order of the Inter-American Court of Human Rights of July 6, 2004, Considering clause No. 9; *Matter of Pueblo indígena de Kankuamo. Provisional Measures*. Order of the Inter-American Court of Human Rights of July 5, 2004, Considering clause No. 9; *Matter of the Communities of Jiguamiandó and Curbaradó. Provisional Measures*. Order of the Inter-American Court of Human Rights of March 6, 2003, Considering clause No. 9; and *Matter of the Peace Community of San José de Apartadó. Provisional Measures*. Order of the Inter-American Court of Human Rights of June 18, 2002, Considering clause No. 8. Besides, Cf. *Case of the Mayagna (Sumo) Awas Tingni Community. Provisional Measures*. Judgment of August 31, 2001. Series C No. 79, para. 149.

⁴ Cf. *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 November 30, 2005, Considering clause No. 6; *Matter of the Mendoza Prisons. Provisional Measures*. Order of the Inter-American Court of Human Rights of November 22, 2004, Considering clause No. 5; and *Matter of Urso Branco Prison. Provisional Measures*. Order of the Inter-American Court of Human Rights of June 18, 2002, Considering Clause No. 6.

⁵ Cf. *Matter of Children Deprived of Liberty in the “Complejo do Tatuapé” of FEBEM. Provisional Measures*, *supra* note 4, Considering clause No. 7; *Matter of Urso Branco Prison. Provisional Measures*. Order of the Inter-American Court of Human Rights of September 21, 2005, Considering clause No. 6; and *Matter of the Mendoza Prisons. Provisional Measures*. Order of the Inter-American Court of Human Rights of June 18, 2005, Considering clause No. 6.

Seen clauses No. 1, 3, 4, 5, 6, 8, 9, 11, 13, 14, 16, 17, 18, 20, 21, 22 and 23), it can be clearly inferred that, in spite of the measures adopted by the State to improve detention conditions (*supra* Having Seen clauses No. 3(o), 3(p), 3(q), 3(r), 4, 8, 9, 11, 14, 16(a), 16(f), 16(g), 16(l), 17(g), 20(a), 20(b), 20(c) and 22), the extreme serious and urgent conditions and the possibility of irreparable damage to the rights to life and personal integrity of La Pica inmates still exist. Specially, it is worth pointing out that during year 2005, 43 inmates died due to acts of violence committed in La Pica Confinement Center, and 25 inmates were injured (*supra* Having Seen clause No. 3(b)), and by this date of year 2006, other three detainees died and one was injured (*supra* Having Seen clauses No. 13, 16(b), 17(b) and 18). That pursuant to the information furnished by the parties it can be inferred that the factors that generate the serious conditions and the risk for La Pica detainees are the overcrowding, the lack of separation of inmates by categories, the deficient sanitary, physical and safety conditions they are subject to, and the lack of personnel duly trained and qualified (*supra* Having Seen clauses No. 3, 5, 16, 17, 20, 21 and 22). Moreover, the situation is aggravated by the lack of control of the introduction and possession of arms within the confinement center (*supra* Having Seen clauses No. 3(d), 3(g), 5(i), 14(f), 16(g), 17(f), 17(h), 20(d) and 21(c)).

12. That the State has expressed that it agrees with the Commission that the situation described in the instant case is critical. Besides, according to the information furnished by the State, several measures have been or are being adopted with the purpose of safeguarding the life and physical integrity of the penitentiary population in Venezuela, mainly at La Pica Confinement Center, as well as of improving the imprisonment conditions of said population (*supra* Having Seen clauses No. 8, 9, 11, 14 and 22). Among said measures we can point out the creation of the *Comisión Presidencial para Atender la Emergencia Carcelaria* (Presidential Committee for Jail Emergency), the appropriation of funds for improving the infrastructure of the Confinement Center, as well as the training of the jail system officers, the several searches and seizures conducted in search of arms within the confinement center, the enhancement of food and health care services for inmates, the review and overruling of rules of the Organic Code of Criminal Procedure, and the investigation of the acts of violence occurred in the Confinement Center, among other measures.

13. That the positive participation of the State, the Commission and the representatives at the public hearing held in the instant case is a significant advance in the development of these proceedings and contributes to the effectiveness of the principles enshrined in the American Convention.

14. That the State must protect and respect the functions that may be exercised by non-governmental entities and by other groups or individuals that defend human rights and the essential liberties of persons deprived of liberty, since said actions are a positive contribution and a supplement to all efforts made by the State in its capacity of guarantor of the rights pertaining to the persons held under its custody.

15. That, under the circumstances of the instant case, the Commission alleges that several detainees have died and have been injured as result of the fights among inmates.

16. That the obligation of the State to protect all persons subject to its jurisdiction encompasses the duty to control the actions of third party individuals, an *erga omnes* obligation.⁶

17. That the State must adopt forthwith the measures necessary to efficiently and definitively prevent any kind of violence at La Pica Confinement Center, so that no inmate be killed or his/her personal integrity be affected. *Inter alia*, the State must adopt measures addressed to prevent any future rebellions, riots or other acts that could affect the order within said confinement center. In investigating public disorders, as those occurred in the instant case, the State must do it in full compliance with and applying the domestic laws in furtherance of public order, provided said laws and the actions taken are fully consistent with the human rights protection rules applicable to the particular case.⁷ In effect, as it has been previously pointed out, this Court recognizes "the existence of the power, an even, of the obligation of the State to 'guarantee [the] safety and maintain public order.'" However, governmental power in this matter is not unlimited; it is necessary that the State acts "within the limits and pursuant to the procedures that allow to preserve both public security and the fundamental rights of human beings."⁸ In this sense, the Court deems that the use of force or of coercive instruments is authorized only in exceptional cases, upon exhausting and after the failure of all other methods of control.

18. That the State must use all possible means to reduce violence to the minimum level within the Confinement Center. In connection with this, the Court considers that the rights to life and to personal integrity "not only imply that the State must respect said rights (negative obligation), but they also require the State to adopt all adequate measures to guarantee such rights (positive obligation,) in furtherance of its general duty set forth in Article 1(1) of the American Convention."⁹

19. That the problem of confinement centers requires medium and long term actions in order to adapt its conditions to international standards. However, the States are obliged to implement prompt actions to guarantee the physical,

⁶ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM. Provisional Measures*, supra note 4, Considering clause No. 14; *Matter of Eloisa Barrios et al. Provisional Measures*. Order of the President of the Inter-American Court of Human Rights of September 22, 2005, Considering clause No. 7; and *Matter of Luisiana Rios et al. (Caracas Radio –RCTV- Radio). Provisional Measures*. Order of the Inter-American Court of Human Rights of September 12, 2005, Considering clause No. 11.

⁷ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM. Provisional Measures*, supra note 4, Considering clause No. 12; *Matter of Urso Branco Prison. Provisional Measures*. Order of the Inter-American Court of Human Rights of July 7, 2004, Considering clause No. 12; and *Matter of Urso Branco Prison. Provisional Measures*. Order of the Inter-American Court of Human Rights of April 22, 2004, Considering clause No. 10.

⁸ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM . Provisional Measures*, supra note 4, Considering clause No. 12; *Matter of Urso Branco Prison. Provisional Measures*, supra note 7, Considering clause No. 12; and *Matter of Urso Branco Prison. Provisional Measures*, supra note 7, Considering clause No. 10. Besides, Cf. *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 124.

⁹ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM . Provisional Measures*, supra note 4, Considering clause No. 15; *Case of the girls Jean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 173; *Case of the "Juvenile Reeducation Institute"*, supra note 6, para. 168; and *Case of the Gómez-Paquiyaury brothers*. Judgment of July 8, 2004. Series C No. 110, para. 129.

psychological and moral integrity of inmates, as well as their right to life and to enjoy the minimum conditions of a dignified life.

20. That pursuant to its international duty to guarantee all people the enjoyment of human rights, the State must design and apply a penitentiary policy for preventing critical situations as those that prompt the issuance of these provisional measures.¹⁰

21. That the information provided by the parties (*supra* Considering clause No. 11), regarding the events occurred at La Pica Confinement Center, show, *prima facie*, a situation of the utmost seriousness and urgency as regards the rights to life and personal integrity of the inmates of said confinement center.

22. That the standard of *prima facie* assessment in a certain case and the application of presumptions due to the need for protection, have caused the Court order provisional measures in several cases. Therefore, this Court deems that it is necessary to protect said persons by means of provisional measures, in the light of the provisions set forth in the American Convention.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To request the State to maintain and extend the measures the State has informed it is adopting, as well as to adopt forthwith the supplementary measures necessary to efficiently and definitively avoid violence within the Monagas Judicial Confinement Center ("La Pica"), so that no inmate or any other person be killed or his/her personal integrity be affected within the confinement center.

2. To request the State that, without prejudice of the measures for immediate implementation ordered in the preceding operative clause, it may adopt the necessary measures: a) to significantly reduce overcrowding in the Monagas Judicial Confinement Center ("La Pica") b) to seize any weapons found in the possession of inmates; c) to separate non-sentenced inmates from those who have already been sentenced; d) to adjust the detention conditions existing in the Confinement Center to the applicable international standards and e) to provide the necessary health care to inmates so that their personal integrity is guaranteed. In this sense, the State shall conduct a periodic surveillance of the detention conditions and physical and emotional condition of detainees, with the participation of the representatives of the beneficiaries of these provisional measures.

3. To request the State to carry out all actions necessary in order that the protective measures issued in favor of the detainees at the Monagas Judicial

¹⁰ Cf. *Matter of Urso Branco Prison. Provisional Measures*, *supra* note 5, Considering clause No. 19; and *Matter of Urso Branco Prison. Provisional Measures*, *supra* note 7, Considering clause No. 11.

Confinement Center ("La Pica") be planned and implemented with the participation of the representatives of the beneficiaries of such measures and, that, generally, they be kept informed on the progress of the performance of such measures.

4. To request the State to send the Court an updated list of all persons detained at the prison and, moreover, to accurately indicate the particulars of their detention.

5. To request the State to investigate the facts that prompt the adoption of the provisional measures and, if applicable, to identify the responsible persons, and to impose on them the corresponding penalties, including administrative and disciplinary sanctions.

6. To request the State to submit to the Inter-American Court of Human Rights, not later than March 10, 2006, a report on the provisional measures adopted in compliance with this Order, and to request the representatives of the beneficiaries and to the Inter-American Commission on Human Rights to present their objections to said report within a term of four and six weeks, respectively, as from the notice of the report made by the State.

7. To request the State that, upon filing the report referred to in the preceding operative clause, it continues informing the Inter-American Court of Human Rights, on a bimonthly basis, on the provisional measures adopted, and to request the representatives of the beneficiaries of said measures and to the Inter-American Commission on Human Rights to submit their objections within a term of four and six weeks, respectively, as from the notice of the reports filed by the State.

8. To give notice of this Order to the State, to the Inter-American Commission on Human Rights and to the representatives of the beneficiaries of the said provisional measures.

Judge García-Ramírez informed the Court of his Concurring Opinion, and Judges Cançado Trindade and Ventura-Robles informed the Court of their Joint Concurring Opinion, all of which will be attached to this Order.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

**CONCURRING OPINION OF JUDGE SERGIO GARCÍA-RAMÍREZ
REGARDING THE RESOLUTION OF THE INTER-AMERICAN COURT OF HUMAN
RIGHTS ON THE PROVISIONAL MEASURES RELATED TO INHABITANTS OF
THE MONAGAS JUDICIAL CONFINEMENT CENTER ("LA PICA") (VENEZUELA),
OF FEBRUARY 9, 2006.**

1. In different public hearings and concurring or separate opinions I have expressed my points of view regarding the infringement of human rights in places of confinement for adults or minors. I refer to what I have expounded on those occasions regarding the situation of inmates, their rights, the State's position as a guarantor and the duties arising therefrom.

2. I reiterate the concern aroused by the problems that prevail in numerous prisons located in different countries of the Continent, which the Inter-American Court has examined when deciding cases or provisional measures. These problems are extremely serious, they have multiplied themselves—at least nowadays they are more perceptible; they have always existed and have been of considerable importance—and they constitute one of the most dramatic scenes in the general picture of human rights violations. The characteristics of the latter, in prisons, are particularly dramatic. In the hearing on the Monagas judicial confinement center, an Agent used the adjective "Dantesque" to describe the situation in prisons. He was right. And this appreciation is certainly not limited to the case under discussion.

3. In view of this truly serious situation, which has not been solved in a general and systematic manner, we should draw the attention of States, national societies and the Organization of American States itself. I mentioned this in the hearing held today in San José to examine the facts that took place at "La Pica" prison.

4. Along these lines, I deem it relevant, and even indispensable, to carry out an urgent continental process of reflection upon this topic, so as to examine and adopt measures to immediately improve the present situation and provide thorough solutions to avoid the persistence and multiplication of the problems observed in prisons and constant human rights violations, either at the hands of State agents or third parties—the inmates themselves or other persons—whose behavior is not controlled by the public entities charged with guaranteeing security and order in prisons, with specific observance of legality and legitimacy in the treatment of inmates.

5. I understand that it is necessary to adopt numerous measures, of different kinds, to deal with petitioners' claims in these cases—and to secure the scope of the aims that the States themselves have set and that the Court recognizes and appreciates--, and I am also aware of the complex nature of many of the measures that should be executed and of the time and resources that such an execution would require.

6. In any case, I have deemed it necessary to remark—as I have also done in the hearings and opinions I mentioned before and on which I insist—that the State

must immediately adopt all supplementary measures to finally and efficiently avoid violence in the prison, so that no person whatsoever is deprived of his life or has his integrity affected by violent acts that authorities should prevent and impede.

7. I reiterate my recognition –also expressed by other Judges during the hearing— of the good will shown by the State, the Inter-American Commission and inmates' representatives to make immediate progress in the solution of the above mentioned problems, enhancing adopted measures or carrying out others to achieve established aims. Concurring wills and action will help to better deal with said aims. There could hardly be any disagreement as to the prevailing situation –the characteristics of which were described by the appearing parties—, and the urgent need to modify it and act in common agreement.

Sergio García-Ramírez
Judge

Pablo Saavedra-Alessandri
Secretary

JOINT SEPARATE OPINION OF JUDGES A.A. CANÇADO TRINDADE AND M.E. VENTURA-ROBLES

1. Through our votes, we have concurred with the adoption, by the Inter-American Court of Human Rights, of this Order on Provisional Measures of protection in the matter of the Monagas Judicial Confinement Center (“La Pica”), regarding Venezuela, and we also feel obliged to express, in this Joint Separate Opinion, our stance on the issue under discussion. Firstly, the full Court has rightly convened a public hearing to examine this request for provisional measures, pursuant to its Order of January 30, 2006.

2. Said Order of the Court accepted a proposal made by the undersigned Judges regarding this matter. Indeed, we have consistently insisted, in the bosom of the Court, on the need to promptly convene public hearings in cases of extreme gravity and urgency, especially in relation to chronic problems affecting people who are deprived of their freedom.

3. We take cognizance that, in the instant case, as stated in this Order (Having Seen clause 2), the Inter-American Commission of Human Rights promptly registered the corresponding petition, prior to requesting provisional measures from the Court. Furthermore, it made a prompt request, and did not contemplate granting its own precautionary measures first. We believe this is the correct procedure to be followed in cases of extreme gravity and urgency, as provided by Article 63(2) of the American Convention.

4. These measures seek to provide a more effective protection for those who need it, and they reinstate the *rule of law* as regards this subject. Holding the hearing that we requested, convened by the full Court, proved highly useful thanks to the elements furnished to the Court by the three intervening parties – the beneficiaries' representatives, the Inter-American Commission and the State. It is significant that the Court recognized the need to provide prompt protection, even of a preventive nature, to all the people in the above mentioned prison (“La Pica”), as well as to take care of human rights defenders' personal security.

5. We allow ourselves to highlight the importance of *Considering clause 16* hereof, in the sense that the duty of the State to protect all the people within its jurisdiction includes the duty of due diligence and special care and control of third parties' actions (in the field of interindividual relationships). Said duty of due diligence becomes even more imperative because of its *erga omnes* nature and because people involved are in the custody of public authorities.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Judge

Pablo Saavedra-Alessandri
Secretary