ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MARCH 30, 2006*

REQUEST FOR PROVISIONAL MEASURES
SUBMITTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
REGARDING THE BOLIVARIAN REPUBLIC OF VENEZUELA

MATTER OF THE YARE I AND YARE II CAPITAL REGION PENITENTIARY CENTER

HAVING SEEN:

1. The brief of March 28, 2006 and the appendixes thereto, whereby 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," "the Inter-American Court" or "the Tribunal") a request for provisional measures pursuant to Article 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 in order that, *inter alia,* the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") would protect "the inmates of the Yare I and Yare II Capital Region Penitentiary Center [hereinafter, "the Yare Prison"] from impending violations of their rights to life and humane treatment." The Commission noted that this matter "ha[d] been registered by the Executive Secretariat under No. 07/2006, and processed in accordance with the rules and internal procedures of the Commission."

2. The alleged facts on which the request for provisional measures submitted by the Commission is based, namely:

a) the Venezuelan penitentiary system is undergoing a serious situation. From January 1, 2005 through March 2006 more than 400 were killed and 700 injured in violent incidents that took place at Venezuelan correctional facilities;

b) due to a series of riots, hunger strikes, fights, beatings and punishments from 2005 to date, the inmates of the Yare Prison, located in the Municipality of Simón Bolívar, State of Miranda, face risks that are materializing increasingly more often;

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* This Order was issued by the Inter-American Court of Human Rights in its XXVII Special Session, held in the City of Brasilia, Brazil, from March 27 through 31, 2006.

c) from January 2005 to date, there have apparently been various violent incidents at the Yare Prison, with 59 violent deaths by firearm, stabbing, hanging and decapitation, as well as no less than 67 people seriously injured. The latest violent death at the penitentiary took place on February 28, 2006, and the latest violent incident, as a result of which one inmate was injured, happened on March 15, 2006;

d) the Yare Prison is divided into two wings referred to as Yare I and Yare II. Yare I was built for a population of 750 inmates, and currently houses 507 convicted offenders and 13 accused. Yare II, prepared to house 680 inmates, currently holds 158 accused and 1 convicted offender;

e) the authorities have carried out several inspections at the Yare Prison, confiscating a number of weapons and grenades. Some officers were allegedly involved in the trafficking of weapons at said correctional facility;

f) the inmates at Yare I and Yare II are supervised by 15 and 8 guards, respectively, who work in 24-hour shifts. Given the control exerted by certain groups of inmates over the access ways to certain wards of the facility, the guards refrain from regularly entering such wards and when they do enter, they do so in the company of National Guard officers, and the inmates do not wander into other areas of the facility because of their fear of being physically assaulted;

g) the inmates are living in unacceptable conditions that create further or aggravate the existing tension, and without the required security and control measures;

h) there have been allegations of mistreatment and physical punishment of the inmates by the guards;

i) on November 19, 2004, the National Assembly requested the Executive Branch to declare a "correctional emergency;"

j) through Executive Order No. 3.265 of November 23, 2004, the President of Venezuela created the Presidential Commission on the Correctional Emergency, in order to:

> i) evaluate confinement centers and the related support services regarding infrastructure, staffing, and the provision of services to inmates;
> ii) propose and recommend the guidelines, plans and strategies to successfully deal with the different problems affecting confinement facilities;
> iii) recommend action through which the Judiciary may guarantee the right to speedy action in judicial proceedings and provide the inmates with access to alternative means to serve their sentences; and
> iv) propose and recommend measures aimed at guaranteeing the enjoyment and exercise of the inmates' human rights throughout their stay at correctional facilities; and

k) the Presidential Commission carried out a census to assess the legal situation of inmates and foster an improvement in the overcrowding of correctional facilities and the reduction of procedural delays.

3. The legal arguments raised by the Commission in support of its request for provisional measures, as part of which it stated that:

a) the facts therein described are sufficiently serious to warrant the Court's urgent intervention to safeguard the life and integrity of the beneficiaries of this request;

b) the measures tried domestically (*supra* Having Seen clauses No. 2(i), 2(j) and 2(k)) have proven to be ineffective in safeguarding the life of the inmates and deterring new acts of violence at the Yare Prison;

c) the urgency required by Article 63(2) of the American Convention in order that the Court may order provisional measures has been proven in the instant case by the deaths of scores of inmates and the serious injuries inflicted upon nearly as many between January 2005 and March 2006. These facts evidence a grave situation of imminent danger given the deficient security conditions of the facility and the high rates of violence amongst inmates and by the guards towards the inmates, and calls for the urgent intervention of the Court to prevent irreparable damage;

d) the measures required to be taken in the instant case cannot be deferred until the implementation of medium- or long-term plans, since the situation is already critical and should be remedied through immediate action;

e) the deaths of and injuries sustained by several inmates at the Yare Prison evidence the State's negligence in carrying out its duties of care. This lack of due diligence creates a risk of irreparable harm to the lives of the beneficiaries, since it fosters the recurrence of violent situations such as those described above and aggravates the atmosphere of tension and violence among inmates;

f) the constant acts of violence, as well as the ever-present lack of security and control, show that the Venezuelan State has failed to fully comply with its obligation to prevent the attacks on the life and integrity of the Yare Prison inmates, and that it has not adopted the basic security measures to prevent new violent incidents from taking place at the aforementioned facility;

g) given the situation of extreme gravity and urgency, and the need to avoid irreparable damage to persons, the fact that the beneficiaries are "identifiable" is enough to grant the measures of protection under consideration. In the instant case, the beneficiaries of the protection sought are the inmates of the Yare I and Yare II Capital Region Penitentiary Center, who are in a situation of grave danger and vulnerability, as well as said facility's future inmates;

h) any measures to be adopted should include measures favoring an atmosphere of respect for the inmates' human rights among the inmates themselves, specifically the separation of inmates based on inmate

categories, measures intended to prevent the existence of weapons inside the premises, and an improvement in the conditions of confinement. Furthermore, the State should design and enforce a correctional policy for the prevention of critical situations so as to avoid greater risks;

i) in the instant case, priority lies with the adoption of all measures required to guarantee that no further inmates are killed or injured and, in general, that the Yare Prison security conditions are adequate, so as to avoid new violent situations. Such measures are to be adopted in a context of respect for the dignity and rights of the inmates; and

j) a final solution to the problems affecting all Venezuelan confinement centers generally, and the Yare Prison specifically, also calls for comprehensive medium- and long-term action. However, the urgent and imminent nature of the situation at present requires that the Sate implement actions bearing instant impact on the situation of risk affecting the inmate beneficiaries of the measures of protection.

4. The Inter-American Commission's request that the Court, in reliance on Article 63(2) of the American Convention, call upon the State to:

a) immediately take all such security and control measures as may be required to preserve the life and integrity of the inmates housed at the Yare Prison, as well as of any future inmates of said confinement center;

b) immediately adopt all measures required to prevent inmates from being subjected to mistreatment and physical punishment;

c) staff the Yare Prison with sufficient and duly qualified correctional officers to prevent further acts of violence from taking place;

d) promptly submit a report on the investigations undertaken to determine the historical truth of the acts of violence at the Yare Prison, identify the perpetrators and apply the appropriate punishment, and to continue to carry out investigations on the matter; such investigations should be dynamic, exhaustive and effective as a prevention mechanism against the recurrence of new acts of violence; and

e) guarantee the periodic supervision of the conditions of confinement and the physical condition of the inmates, through an independent agency, and have the reports issued by such entity submitted to the Court.

CONSIDERING:

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

2. That 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 adopt such provisional measures as it may deem pertinent at the Commission's request in matters not yet submitted to the Court.

3. That, on this issue, Article 25 of the Rules of Procedure provides that:

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> 2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.
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> [...]
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> 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, in the context of municipal legal systems (domestic procedural law), provisional measures are usually intended to preserve the rights of the parties to a dispute, guaranteeing that the enforcement of the judgment on the merits of the case will not be hindered or prevented by any action taken by the parties *pendente lite*.

5. That, in the International Law of Human Rights, provisional measures are not only precautionary, to the extent that they maintain the legal *status quo,* but also and essentially they are protective in nature, as they protect human rights, insofar as they are intended to avoid irreparable damage to persons. Provided that the basic requirements of extreme gravity and urgency and prevention of irreparable damage to persons are met, provisional measures become a true preventive judicial guarantee.

6. That Article 1(1) of the Convention lays down the general obligation of State Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

7. That the merits of the case that led to the adoption of these provisional measures have not been submitted to the Court, and that the adoption of provisional measures does not entail a ruling on the merits of the dispute between the petitioners and the State. By ordering provisional measures, the Court is merely exercising its authority under the Convention in cases of extreme gravity and urgency that warrant the adoption of measures of protection in order to avoid irreparable damage to persons.

8. That the Inter-American Commission has requested that this Tribunal order the protection of the inmates housed at the Yare Prison, as well as any future inmates of that facility. Even though in ordering provisional measures the Court has found that, in certain specific cases, it is essential to specifically identify the persons who are in danger of sustaining irreparable damage so as to provide them with the required measures of protection,[1] in previous cases the Tribunal has ordered the

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[1] *Cf. Matter of Haitians and Dominicans of Haitian-Origin in the Dominican Republic. Provisional Measures.* 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*

protection of a plural number of persons not previously identified, but who can be identified and ascertained, and who are in a situation of grave danger because of their capacity as members of a given group or community,[2] such as inmates at a confinement center.[3] In this case, the potential beneficiaries can be identified, as they are persons housed at the aforementioned center.

9. That, given the State's obligation to adopt security measures to protect all persons subject to its jurisdiction, it is the Court's opinion that such duty becomes even more clear in the case of persons confined at a state facility, at which the State is responsible for guaranteeing the rights of those in its custody.[4]

10. That given the relationship between the conditions of confinement and the safeguarding of the rights to life and humane treatment, it is possible to give protection to inmates at a confinement center living in the alleged conditions through an order for the adoption of provisional measures issued by the Tribunal.

11. That, based on the information provided by the Commission (*supra* Having Seen clause No. 2), it is clear that, in spite of certain measures that the State has adopted with a view to improving the inmates' confinement conditions (*supra* Having Seen clauses No. 2(i), 2(j) and 2(k)), a situation of extreme gravity and urgency and possibly of irreparable damage to the Yare Prison inmates' rights to life and humane treatment still exists. Specifically, it should be noted that, from January 2005 to date, several violent incidents have taken place at the Yare Prison, with 59 inmates violently killed by firearm shots, stabbing, hanging and decapitation, as well as at least 67 inmates seriously injured (*supra* Having Seen clause No. 2(c)). That it is also clearly evident that, among the factors causing the situation of gravity and risk for the Yare Prison inmates, there are the deficient confinement and security conditions in which they are living, and the unavailability of duly qualified and trained staff (*supra* Having Seen clauses No. 2(g), 3(c), 3(h) and 3(i)). Moreover, the situation is further aggravated by the lack of access controls and the possession

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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.

[2] *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. Also, *cf. Case of the Mayagna (Sumo) Awas Tingni Community.* Judgment of August 31, 2001. Series C No. 79, para. 149.

[3] *Cf. Matter of Monagas Judicial Confinement Center ("La Pica"). Provisional Measures*. Order of the Inter-American Court of Human Rights of February 9, 2006, Considering clause No. 8; *Matter of Children Deprived of Liberty in the "Complexo 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.

[4] *Cf. Matter of Monagas Judicial Confinement Center ("La Pica"). Provisional Measures. supra* note 3, Considering clause No. 11; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of* FEBEM. *Provisional Measures, supra* note 3, Considering clause No. 7; and *Matter of Urso Branco Prison, Provisional Measures*. Order of the Inter-American Court of Human Rights of September 21, 2005, Considering clause No. 6.

of weapons inside the confinement facility (*supra* Having Seen clauses No. 2(c), 2(e) and 3(h)).

12. That, based on the information supplied by the Commission, several measures have been or are about to be adopted for the purpose of protecting the life and physical integrity of the correctional community in Venezuela, as well as to improve the confinement conditions of the inmates (*supra* Having Seen clauses No. 2(i), 2(j) and 2(k)). Such measures include, most importantly, the creation of the Presidential Commission on the Correctional Emergency, the inspections carried out in search of weapons inside the prison, and the review and revocation of certain provisions of the Code of Criminal Procedure, among others.

13. That, under the circumstances of the case at hand, the Commission claims that several inmates have been killed and injured as a result of fights among the prisoners.

14. That the State's obligation to protect all persons subject to its jurisdiction includes the duty to control the action of private third parties, an obligation enforceable as against all.[5]

15. That the State is required to immediately adopt such measures as may be necessary to efficiently and conclusively prevent all violence at the Yare Prison, in a manner such that no inmate is killed or their physical integrity impaired. Such measures include measures intended to prevent future uprisings or other situations that may disturb the peace at said center. In quashing disturbances such as the ones that took place in the instant case, the State is to act in line and in accordance with its municipal laws and regulations, seeking to maintain public order, provided, however, that such laws and regulations and the action taken pursuant thereto are, in turn, in line with the applicable human rights protection rules.[6] As a matter of fact, as noted on previous occasions, the Court recognizes the existence of the State's power, and even its obligation, to guarantee security and maintain public order. However, the State's power in this regard is not unbounded; the State must act within boundaries and pursuant to the procedures that allow the preservation of public security and the fundamental rights of human beings.[7] In this regard, the Tribunal believes that force or coercive instruments may only be used in exceptional cases, if all other means of control have been unsuccessfully tried first.

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[5] *Cf. Matter of Monagas Judicial Confinement Center ("La Pica").* Provisional Measures. *supra* note 3, Considering clause No. 16; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM.* Provisional Measures, *supra* note 3, Considering clause No. 14; and *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.

[6] *Cf. Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures; *supra* note 3, Considering clause No. 17; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures, *supra* note 3, Considering clause No. 12; and *Matter of Urso Branco Prison*. Provisional Measures. Order of the Inter-American Court of Human Rights of July 7, 2004, Considering clause No. 12.

[7] *Cf. Matter of Monagas Judicial Confinement Center ("La Pica").* Provisional Measures, *supra* note 3, Considering clause No. 17; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures, *supra* note 3, Considering clause No. 12; and *Matter of Urso Branco Prison*. Provisional Measures, *supra* note 6, Considering clause No. 12.

16. That the State is required to use all available means to reduce violence at the prison to a minimum. In this regard, the Court believes that the rights to life and humane treatment not only entail the State's duty to respect such rights (a negative duty), but also require the State to take all appropriate measures to guarantee their enforcement (a positive duty), in compliance with its general duty under Article 1(1) of the American Convention.[8]

17. That the problems affecting confinement centers call for medium- and long-term action to bring their conditions in line with the applicable international standards. This notwithstanding, States are under a duty to take immediate action to guarantee the physical, mental and moral integrity of inmates, as well as their right to life and the right to decent living conditions.

18. That, in discharging its international obligation to guarantee all persons the full exercise of human rights, the State is required to design and enforce a correctional policy to prevent critical situations such as the ones giving rise to these provisional measures.[9]

19. That the background information supplied by the Commission regarding the events at the Yare Prison (*supra* Having Seen clause No. 2) prove, *prima facie,* a situation of extreme gravity and urgency in connection with the rights to life and humane treatment of the inmates confined at said facility.

20. That application of the *prima facie* standard in a given case and the use of presumptions given the need for protection have repeatedly led the Court to order provisional measures. Accordingly, this Tribunal deems it necessary to protect such persons through provisional measures in accordance with the provisions of the American Convention.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To call upon the State to immediately adopt such measures as may be required to efficiently and conclusively prevent violence at the Yare Prison, in order that no inmate or any other person at said facility is killed or their personal integrity impaired.

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[8] *Cf. Matter of Monagas Judicial Confinement Center ("La Pica").* Provisional Measures, *supra* note 3, Considering clause No. 18; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM.* Provisional Measures, *supra* note 3, Considering clause No. 15; and *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 120.

[9] *Cf. Matter of Monagas Judicial Confinement Center ("La Pica").* Provisional Measures*, supra* note 3, Considering clause No. 12; *Matter of Urso Branco Prison.* Provisional Measures, *supra* note 4, Considering clause No. 19; and *Matter of Urso Branco Prison.* Provisional Measures, *supra* note 6, Considering clause No. 11.

2. To call upon the State, notwithstanding the measures ordered in the preceding operative paragraph for immediate implementation, to adopt such measures as may be necessary to: a) confiscate weapons in the possession of inmates, b) separate indicted inmates from convicted inmates, and c) bring the conditions of confinement at the prison in line with the international standards on the matter. In this regard, the State is required to periodically supervise the conditions of confinement and the physical condition and emotional state of the inmates, with the representatives of the beneficiaries of these provisional measures involved in such supervision.

3. To call upon the State to take all steps as may be necessary in order for the measures of protection ordered for the benefit of the Yare Prison inmates to be devised and implemented with the participation of the representatives of the measures' beneficiaries and, in general, to keep them current on any progress made in their enforcement.

4. To call upon the State to provide the Court with an up-to-date list of all inmates confined at the prison, also specifying the characteristics of confinement for each such person.

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

6. To call upon the State in order that, by April 28, 2006, it will submit to the Inter-American Court of Human Rights a report on such provisional measures as it may have adopted in compliance with this Order, and request that the representatives of the beneficiaries and the Inter-American Commission on Human Rights submit their comments and observations on such report within a period of four and six weeks, respectively, as from notice of the State's report.

7. To request that, following submission of the report ordered in the preceding operative paragraph, the State continue to report to the Inter-American Court of Human Rights once every two months on any provisional measures it may have adopted, and to request the representatives of the measures' beneficiaries and the Inter-American Commission on Human Rights to submit their comments and observations thereto within a period of four and six weeks, respectively, as from the date of notice of the State's reports.

8. To request that the Secretariat of the Court give notice of this Order to the State, the Inter-American Commission on Human Rights and the representatives of the measures' beneficiaries.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary