

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 4, 2006**

**PROVISIONAL MEASURES AND
REQUEST FOR EXTENSION OF PROVISIONAL MEASURES REGARDING THE
FEDERATIVE REPUBLIC OF BRAZIL**

**MATTER OF CHILDREN AND ADOLESCENTS DEPRIVED OF LIBERTY IN THE
"COMPLEXO DO TATUAPÉ" OF FEBEM**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court", or "the Inter-American Court") of November 17, 2005, by means of which it requested the Brazilian State (hereinafter "the State") to immediately adopt the necessary measures to protect the life and personal integrity of all the children and adolescents institutionalized in the Tatuapé Complex, of the *Fundação Estadual do Bem-Estar do Menor de São Paulo* [São Paulo State Foundation for the Welfare of Minors] (hereinafter "FEBEM"), as well as the life of all the people within said compound.

2. The Court Order of November 30, 2005, whereby it decided to:

1. Again request that the State immediately adopt the necessary measures to protect the lives and personal integrity of all the children and adolescents residing in FEBEM Tatuapé Complex, as well as that of all persons within it. To that end, the State shall adopt the necessary measures to prevent outbreaks of violence, and also to guarantee the security of the inmates and maintain order and discipline in the above mentioned compound.

2. Request the State to adopt, without delay, the necessary measures to prevent that the young inmates are subjected to cruel, inhuman or degrading treatment, among which lasting confinement and physical mistreatment are included.

3. Request the State, notwithstanding the measures of immediate implementation ordered in the operative paragraphs above, to adopt those necessary to: a) substantially reduce overcrowding in Tatuapé Complex, b) seize the weapons in the possession of young inmates, c) classify the inmates, according to the international standards on the matter and taking the best interest of the child into account, and d) provide the necessary medical attention to the institutionalized children in order to guarantee their right to personal integrity. In this sense, the State shall carry out a periodic supervision of the detention conditions and the physical and emotional state of the detainees, with the participation of the representatives of the beneficiaries of these provisional measures.

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- Judge Oliver Jackman informed the Court that, for reasons beyond his control, he was unable to be present during the deliberation of this Order.

4. Request the State to make all the pertinent approaches so that the protection measures are planned and implemented with the participation of the representatives of the beneficiaries and that, in general, they are informed regarding to the progress of their implementation.

5. Request the State to forward the Court an updated list of all the young inmates institutionalized in Tatuapé Complex and to precisely state: a) information regarding the minor's identity; b) date and time of entrance, eventual transfer and liberation, and c) if the prosecuted adolescents and those whose legal status has already been solved by the Judicial Power are physically located in different sections within the Complex.

6. Request the State to investigate the facts which give raise to the adoption of provisional measures, in order to identify the responsible parties and impose the corresponding sanctions, including those administrative and disciplinary.

7. Request the State to inform the Inter-American Court of Human Rights, no later than January 6, 2006, the results of the meeting that shall take place between the parties on December 15, 2005 in the city of São Paulo [...], and also the measures adopted to fulfill with what has been ordered by the Court, and request the representatives of the beneficiaries and the Inter-American Commission on Human Rights that they submit their observations regarding the above mentioned report within the term of four and six weeks, respectively, as from the notice of the reports of the State.

8. Request the State to, subsequent to the report mentioned in the precedent operative paragraph, keep informing the Inter-American Court of Human Rights on the provisional measures adopted, every two months, and request the representatives of the beneficiaries of the measures and the Inter-American Commission on Human Rights that they present their observations within the term of four and six weeks, respectively, as from the notice of the reports of the State.

[...]

3. The submission presented by the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") of December 16, 2005, whereby they requested the inclusion as "co-applicants" of the following NGOs in this case: *Associação de Mães e Amigos da Criança e do Adolescente em Risco* (AMAR), *Associação Conectas Direitos Humanos* (CONNECTAS), *Fundação Projeto Travessia* (TRAVESSIA) and *Fundação Interamericana de Defesa dos Direitos Humanos* (FIDDH).

4. The writ submitted by the representatives of December 22, 2005, whereby they informed the Court on the results of the meeting held between the parties on December 16, 2005 in the city of São Paulo. In this respect, the representatives said that in this meeting, the proposal of the Federal Government and the Inter-American Commission consisted in the formation of a follow-up team, limited to two organizations representing the beneficiaries and two representatives of the government of the State of São Paulo. However, the representatives rejected the proposal as they considered that the team did not have the necessary technical qualifications to reach its final aim and, furthermore, it excluded other representatives organizations.

5. The first State report of January 6, 2006 and its Appendixes, by means of which, *inter alia* and after the concession of a postponement, it mentioned that:

a) regarding to operative paragraph No. one, with the security reinforcement since June 2005 and the return to the pedagogic activities at Tatuapé Complex, episodes of disturbance and escapes have considerably

decreased. During November and December, 2005, several searches were carried out, and certain objects in the possession of the adolescents which could be used as weapons were seized. At present, Tatuapé Complex has four teams of ten and six external security agents in every working shift, which at the same time receive reinforcements of recently hired and duly trained security agents. This team also helps in the searches within the confinement units. Furthermore, periodic meetings with the surveillance company are being held in order to improve the searches performed on officers and visitors so as to avoid the smuggling of drugs, cell phones and weapons;

b) regarding to operative paragraph No. two, the adolescent inmates of Tatuapé Complex units have been subjected to the same disciplinary rules and regulations applied to all of FEBEM's confinement units. Said rules and regulations set forth that the maximum term of "retreatment" is of five days; consequently, it is not applied to lasting incarceration. Furthermore, regarding eventual episodes of mistreatment, any complaints of these acts are duly analyzed and investigated. Officers suspected of liability are removed from their offices until the completion of the disciplinary proceeding;

c) regarding to operative paragraph No. three, at present Tatuapé Complex has 17 units in operation; only one of them is deactivated. According to information of December 31, 2005, the Complex houses 1,372 adolescents, amount which is within its capacity, that amounts to 1,490 youngsters. Nonetheless, the Government has been intensely working towards its shutdown, purpose for which nine units are being built, which shall be finished between February and March, 2006. Other eleven units are undergoing a bidding process, awaiting the regularization of the areas; other ten are under a bidding process and other fourteen under negotiation with the city Council. These units shall jointly have capacity for 2.752 inmates. Consequently, soon six units of Tatuapé Complex shall be deactivated in order to allow the first stage of Parque Belem. Furthermore, each unit of Tatuapé Complex has a specific destination, reason for which the inmates are classified according to their age, repetition of offense and seriousness of the offense committed, as required by the Brazilian legislation. Likewise, it has taken several actions in response to what has been ordered by the Court, which have addressed pedagogic and health-related deficiencies within the confinement compounds. The youngsters receive specialized technical attention by psychologists and social workers, and 24-hour medical attention;

d) regarding to operative paragraph No. four, it stated that the representatives visited the units of Tatuapé Complex during October and November, 2005;

e) regarding to operative paragraph No. five, as Appendix to the report of the State, there is a list with the names of the inmates of the units of Tatuapé Complex, including their name, age, date of birth, offense committed, date of entrance to the confinement unit, repetition of offense and educational level. Also, a list of inmates liberated from Tatuapé Complex was presented as Appendix. According to the State, at that time there were no adolescents with a defined procedural status, as they had all been tried by the competent judicial authorities;

- f) regarding to operative paragraph No. six, FEBEM's Public Prosecutor has applied several sanctions for many years to the officers involved in cases of misconduct. Specifically in the case of Tatuapé Complex, eighteen proceedings regarding riots occurred within the compound during 2003 and 2005 have been instituted. Nine of them, where the removal from their offices of the officers involved has been ordered, are in progress or have already been completed; other five, regarding the deaths of adolescents, are in progress or have already been completed;
- g) regarding to operative paragraph No. seven, the FEBEM has participated in work groups of the State and Federal Councils, jointly with non-governmental organizations and the civil society, in order to let them participate in the planning of projects and programs that shall be developed in the Complex;
- h) Before the beginning of the meeting between the parties (*supra* Having Seen clauses No. 3 and 4) held on December 16, 2005, the representatives of the beneficiaries requested the participation of four organizations during the said meeting, to wit: AMAR, CONECTAS, TRAVESSIA and FIDDH. As the request was submitted on very short notice, the participation of the above mentioned organizations was not allowed in the meeting. Also, during that meeting, it was not possible to come to an agreement regarding the participation of the representatives in the implementation of the provisional measures ordered by the Court, and
- i) in order to analyze the validity of the provisional measures, it is indispensable to exhaust the remedies within domestic jurisdiction. The "Brazilian legal system provides proper legal precautionary measures in order to avoid irremediable damage in situations of extreme urgency and gravity." Reason for which, according to the State, it would be unnecessary to continue with these provisional measures.
6. The brief of observations of February 20, 2006 submitted by the representatives and its Appendixes, where they exposed information obtained in four visits to Tatuapé Complex between December 27 and January 31, 2006. In that presentation, *inter alia*, the representatives stated that:
- a) the few measures effectively implemented by the State are of long term nature, reason for which they escape the scope of the implementation of the provisional measures ordered by the Court;
- b) the arguments of the State regarding the applicability of the requirement of exhaustion of domestic remedies for the case of provisional measures disregard the Court jurisprudence on the matter;
- c) the conditions to which the adolescents of Tatuapé Complex are subjected continue to deteriorate. Thus, on December 5, 2005, during a search operation, the Fast Action Team apparently fired a rubber bullet at the young inmates, at a distance of nearly three meters. The projectile impacted directly in the eye of minor Djalbison Dos Santos Soares, affecting the optical nerve and entailing the definitive loss of his sight. On December 25, 2005, according to the account of the inmates of Unit 9, fifteen adolescents went to the unit roof to join in prayer and to wish a merry Christmas to one another,

event which generated the intervention of the fast action team, which began to shoot rubber bullets. The youngsters began to jump from the roof. Some of them got hurt with the fall, other were bitten by dogs, threatened and attacked once the situation was already under control. On January 27, 2006, Ron Cesar Mustafá de Souza, of sixteen years old, died because of serious injuries caused by other inmates during a football game. The investigations on the facts are being conducted by the FEBEM magistrate and the 81st Police Precinct of São Paulo. The actions by the security agents of both the support team and the fast action team are many times claimed by the inmates as continuous actions of violence against them;

d) the lack of control in the direction of the confinement units and the deterioration of the minimum conditions for the fulfillment of the social and educational measures are present in great part of Tatuapé Complex. There is no routine, discipline or programming developed by the technical body in these units. In many units the inmates have taken over and they decide which activities to perform. In the same context, there is a hierarchical classification among the adolescents. According to that division, in most cases, the adolescents considered vulnerable are victims of sexual abuse and beating, and they render small services and favors to those referred to as "leaders";

e) the lack of medical, psychological and psychiatric follow-up of the adolescents, plus the lack of pedagogic, sportive, recreational and religious activities, and the lack of visits of their next of kin generate a dissatisfaction and tension environment which contributes to the worsening of the confinement conditions, and to the risk to life and personal integrity of the adolescents, and

f) the meeting held on December 16, 2005 (*supra* Having Seen clause No. 3), with the presence of delegates of the Inter-American Commission, unfortunately did not come to a successful result.

7. The observations made by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of March 6, 2006, in which, *inter alia*, it expressed that:

a) the continuance of the violence acts and incidents not yet cleared up, including the death of Roni César de Souza, as well as the continuous lack of security and control, show that the State has not satisfactorily fulfilled its obligation to prevent attacks against life and personal integrity of the children and adolescents deprived from liberty at Tatuapé Complex, and that it has not adopted the security measures indispensable to prevent the violent incidents within the compound under protection;

b) the treatment given to the inmates by the security personnel would be in evident conflict with every obligation by the State under the American Convention;

c) the State has not informed on the number, training, shift distribution and working conditions of the personnel which is to take care of the internal custody of the institution and which is in direct contact with the detainees. It is clear that the lack of equilibrium between the number of officers in charge

of the custody and the number of inmates prevents the complete fulfillment of the function of control and care of the latter. It is necessary to immediately increase the number of officers and provide training to the security staff;

d) the State report does not include a list of concrete actions directed to guarantee the inmates protection; it only describes a series of plans that the state government has designed, most of which are still pending;

e) the State has not provided information on the measures taken to prevent the adolescents detained at Tatuapé Complex from being subjected to cruel, inhuman and degrading treatment, and

f) the State shall adopt the necessary measures to guarantee the effective participation of the representatives of the beneficiaries during the process and implementation of the provisional measures.

8. The second report of the State of April 5, 2006 and its Appendixes, by means of which, *inter alia*, expressed that:

a) regarding to operative paragraph No. one, during January and February, 2006, there were no rebellions or riots, although there were four runaways in which thirteen adolescents escaped, out of which nine were recaptured. Despite the decrease in the number of episodes, FEBEM continues to perform several searches in the units and to increase the number of security agents. Despite these measures, on the night of January 20, 2006, Ronie César Mustafá de Souza was assaulted by several other inmates and died at the Emergency Center of Tatuapé Complex;

b) regarding to operative paragraph No. two, as admitted by the representatives, mistreatment has decreased. Also, every complaint is duly analyzed and investigated, and the possible liable parties are removed from their offices and sanctioned;

c) regarding to operative paragraph three, Tatuapé Complex at present has a lower population than its capacity: 1,312 adolescents (information updated as of February 28, 2006), who are duly classified according to their age, repetition of offense, offense committed and seriousness of the offense. Furthermore, the inmates receive 24-hour technical assistance by psychologists and social workers, as well as health care within the Complex by two general practitioners, two psychiatrists, four nurses, forty-six nursing assistants and six dentists. By the end of March 2006, five additional general practitioners and five additional psychiatrists shall be available;

d) regarding to operative paragraph No. four, from January to February, 2006, the representatives visited Tatuapé Complex on several occasions;

e) regarding to operative paragraph No. five, the list of inmates confined in the Complex updated to February 28, 2006, was attached, and

f) regarding to operative paragraph No. six, the investigations regarding the deaths of Ronie César Mustafá de Souza and Jonathan Vieira Anacleto are still being conducted, as well as the disciplinary proceeding regarding to the civil servants accused of mistreatment.

9. The writ of the representatives of April 5, 2006, in which they informed about a mutiny which took place on April 4, 2006, with the result of "at least 32 people injured."

10. The observations of the representatives of May 10, 2006 and their Appendixes, whereby, *inter alia*, they expressed that:

a) regarding to operative paragraph No. one, mistreatment against inmates still persists. The representatives have received claims by the inmates regarding alleged physical and psychological assault by FEBEM officers;

b) regarding to operative paragraph two, the signs of aggression mentioned in several reports are innumerable. Said signs have been investigated by the Magistrate or Auditor and they resulted in the removal from their offices of some of the officers involved in such acts. However, intimidation and threats are evident means of retaliation to such claims. The continuance of riots and other episodes denote the lack of control on the part of the State. During a visit, it was possible to see that the inmates spent whole days confined in their cells, without the proper hygiene and habitability conditions. Also, they reported that the State has not been capable to overcome the poor conditions of sanitation and hygiene;

c) regarding to operative paragraph No. three, the classification of the inmates within the Complex is inadequate. During several visits, it was confirmed that some inmates need medical attention which has not been provided, and they are not given the medicine they need for the treatment of chronic diseases;

d) regarding to operative paragraph No. four, at no time were the representatives invited to participate in the planning and implementation of the measures. They have faced several difficulties to enter the units of Tatuapé Complex, and

e) regarding to operative paragraph No. six, some investigations on the deaths of adolescents within the Complex have been instituted without finding the responsible parties, while other have not had significant progress.

In the same writ, the representatives requested the extension of these provisional measures in favor of Mrs. Conceição Paganele, based on the fact that an investigation has been opened against her for injuries, incitement to crime, and organization of gangs and escapes. They also pointed out that there are other two police investigations against her, in order to investigate the rebellions at Tatuapé Complex which took place on November 23, 2005 and on April 4, 2006. Finally, they pointed out that she has received many life-threatening telephone calls. All of it as a retaliation for denouncing human rights violations allegedly occurred at FEBEM.

11. The brief of the Secretariat of the Court (hereinafter "the Secretariat") of May 18, 2006, whereby it made observations to the Commission and the State regarding the request to extend the provisional measures in favor of Conceição Paganele.

12. The observations of May 26, 2006 presented by the Commission to the second report of the State (*supra* Having Seen clause No. 8), whereby, after a postponement, it expressed that:

a) regarding the protection obligation, the continuance of violence episodes which ended up with several people injured, the violent treatment which is still being provided to the inmates by the security personnel, and the disproportion between the number of children and youngsters detained and the number of guards, which is notoriously unequal, have led police personnel to participate in tasks related to the Compound security. The lack of information regarding training, preparation and training for the treatment and attention of adolescents in conflict with the law are facts that show that the State has not satisfactorily fulfilled the obligation to prevent the attacks against life and personal integrity;

b) regarding the obligation to provide humane treatment to the young detainees, the State has omitted any comments on eventual investigations or sanctions regarding to violence acts perpetrated by the institution's personnel in detriment of the children and adolescents deprived of liberty. No specific provisions have been taken in order to prevent children and adolescents detained in the Complex from being submitted to cruel, inhuman or degrading treatment, among which lasting confinement and physical mistreatment are included;

c) regarding the specific obligations imposed by the Court, regarding to the institution security:

i) (decrease of overcrowding): in a visit made by the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission, it was noticed that an average of six inmates shared each one of the small cells, without enough light or fresh air;

ii) (weapons seizure): the searches performed with the support of the Military Police is not adequate, as this security body is not duly trained to deal with detained children and adolescents. Furthermore, the searches activity is questionable, based on the public information regarding the security crisis of São Paulo;

iii) (inmates classification): there is no classification among the young detainees according to age or to the nature of the offense committed, and

iv) (medical attention): youngsters who are victims of mistreatment by the institution officers do not receive any medical attention; several inmates have chronic diseases and do not receive any medicine, and psychological assistance is deficient.

d) regarding to the forwarding of an updated list of the inmates, the State has fulfilled what has been ordered by the Court, and

e) regarding to the investigation of the events, it has expressed its concern regarding the lack of information on the present state of the investigations referring to the violence incidents which served as precedent

for the adoption of provisional measures. Regarding the administrative proceeding against officers for mistreatment in detriment of the inmates, only three out of the twenty filed by the State refer to events which took place within the Complex, and all of them were set aside due to insufficient evidence.

In the same writ of observations to the second report of the State, the Commission presented its remarks regarding the request to extend the provisional measures submitted by the representatives (*supra* Having Seen clause No. 10), and it pointed out that such a request and the information provided are valid, reason for which the provisional measures should be extended for the benefit of Mrs. Paganele.

13. The writs of the Commission and the representatives of June 5, 2006 and their Appendixes, where they informed on the death of young detainee Ricardo Pereira Cunha, of 17 years old due to multiple injuries with cutting and thrusting weapons afflicted by several other inmates of unit 12 of Tatuapé Complex.

14. The note of the Secretariat of June 6, 2006, in which, following instructions given by the President of the Court, the State was requested to provide information –in its next bimestrial report- regarding the circumstances of the death of Ricardo Pereira Cunha, the steps taken in order to investigate the facts and the measures taken to avoid that the same are repeated.

15. The third State report, dated May 19, 2006, and its Appendixes, whereby, *inter alia*, it pointed out that:

- a) at present, the Tatuapé Complex houses 1,190 adolescents (information updated as of May 2, 2006), and it has a capacity to hold 1,256; consequently, there is no overcrowding. The Complex is being gradually cleared;
- b) five new psychiatrists have been hired and a selection process for the hiring of five new general practitioners has begun;
- c) out of the 1,190 inmates, 1,134 are registered and attending classes of primary and secondary level;
- d) the State keeps on working in the disarticulation of Tatuapé Complex. Twenty-two units are being built;
- e) there has been a significant decrease of episodes of rebellions, escapes and riots within the Complex, which allowed to protect the physical integrity of the youngsters;
- f) FEBEM continues to adopt several measures to reinforce the Complex security. In March and April, several revisions of the units were performed. At present, the Complex has a total number of 231 duly trained security agents to control the security within the Complex, and that has been useful to seize weapons eventually in the adolescents possession;
- g) as a result of the pedagogic and disciplinary activities at FEBEM, 289 adolescents were removed from confinement. FEBEM keeps on implementing

the Social and Educational State Plan and other pedagogic activities within the Complex;

h) FEBEM applies the Internal Rules and Regulations in order to keep disciplinary control. Also, it has a Permanent Supervisor who investigates the officers activities and, whenever there are signs of irregularities, the latter are removed from their offices, and

i) regarding the construction of the Experimental Health Unit for the attention of adolescents with behavior disturbance, it is expected to be finished by August 2006.

16. The observations by the State of June 12, 2006 regarding the request to extend the provisional measures (*supra* Having Seen clause No. 10), whereby, after two postponements, it expressed that:

a) the State has tried to keep direct contact with Mrs. Paganele through the assistants of the international area and the National Protection Program of Human Rights Defenders of the Special Secretariat of Human Rights, but Mrs. Paganele has decided not to meet them;

b) administrative proceeding No. 2820/05 regarding the alleged threats against Mrs. Paganele was instituted at FEBEM. In that context, she was summoned three times to appear and give her statement on the facts, but she "remained unjustifiably inert", which resulted in the setting aside of the proceeding;

c) the Court must not accept the request for extension due to the lack of sufficient evidence. The imposition of such a measure leads to the need of minimum evidence, which is not shown in the request. "In this sense, by means of the evidence submitted, it seems that for the time being, there are no elements to accept the request of the petitioners and the [Commission];"

d) regardless of any decision by the Inter-American Court, the State has taken provisions to make findings concerning the alleged threats, and

e) regarding to the investigations against Mrs. Paganele, the Commission acts hurriedly when it requests that the State is commanded to "refrain from using its police and judicial structure in order to question the actions developed by Mrs. Paganele for the benefit of the addressees of these measures". The State considers that the Commission should address the observance of the due process of law in the conduction of the investigation. The State has the right to investigate every person, as long as there are sings of materiality and perpetration of a certain criminal conduct. If the signs turn into concrete elements of evidence or, on the other hand, if they result in facts fabricated with the deliberate purpose of persecution, only the investigation shall reveal so.

CONSIDERING:

1. That Brazil is a State Party to the American Convention since September 25, 1992 and, according to Article 62 of the Convention, it acknowledged the adversarial jurisdiction of the Court on December 10, 1998.

2. That Article 63(2) of the American Convention sets forth that, “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. Regarding to a case not yet submitted to the Court, it may act at the request of the Commission.”

3. That under the terms of Article 25 of the Court’s Rules of Procedure,

[...]

2. Regarding to a case not yet submitted to the Court, it may act at the request of the Commission.

[...]

6. The beneficiaries of provisional or urgent measures granted by the President may submit their observations to the State’s report directly to the Court. The Inter-American Convention of Human Rights shall submit observations to the State report and to the observations of the beneficiaries of said measures or their representatives.

[...]

4. That through the Decision of November 30, 2005, the Inter-American Court again requested the State to “immediately adopt the necessary measures to protect the life and personal integrity of all the children and adolescents institutionalized in FEBEM’s Tatuapé Complex, as well as the life of all the people within said compound.” Furthermore, the Court requested the State to inform “on the results of the meeting held between the parties on December 15, 2005 in the city of São Paulo.”

5. That this Court understands that on December 16, 2006, the State and the representatives, with the assistance of the members of the Inter-American Commission, held a working meeting in the city of São Paulo, in order to dialogue on the mechanisms tending to face the problems presented on the matter under discussion. However, it regrets that the parties did not consensually arrive to an agreement regarding the constitution of a working team for the implementation of the measures (*supra* Having Seen clauses No. 4 and 5).

6. That, based on the information provided by the State, the representatives and the Commission (*supra* Having Seen clauses No. 4, 6, 7, 8, 9, 10, 12, 13 and 15), it is clearly seen that, despite certain measures have been taken by the State to improve the confinement conditions (*supra* Having Seen clauses No. 5, 8 and 15) and the decrease of violence episodes, a situation of extreme gravity and urgency and possible irreparable damage of the rights to life and personal integrity of the beneficiaries of the said measures still persists. Particularly, violence episodes among the inmates, such as the death of Roni Cesar Mustafá de Souza, which occurred on January 27, 2006 (*supra* Having Seen clauses No. 6 and 7), and of Ricardo Pereira Cunha, which occurred on May 28 of the same year (*supra* Having Seen clause No. 13); apart from possible aggressions on the part of security agents, such as the injuries caused to youngster Djalbison dos Santos Soares, who lost his right eye vision due to a rubber bullet allegedly shot by one of the security officers (*supra*

Having Seen clause No. 6); and new mutinies which have resulted in several injured people (*supra* Having Seen clauses No. 8 and 9).

7. That in the scope of International Human Rights Law, provisional measures not only have a provisional characteristic, as they preserve a legal status, but also a fundamentally protective nature because they protect human rights. As long as the basic requirements of gravity, urgency and prevention of irreparable damage to people are present, provisional measures turn into a true jurisdictional guarantee of preventive nature.

8. That, by virtue of the liability of the State to adopt security measures to protect the people under its jurisdiction, the Court understands that this obligation becomes more evident in the case of people confined in a detention center, in which case the State is the guarantor of the people under its custody.¹

9. That the State obligation to protect all the people under its jurisdiction encompasses the duty to control the action of third parties, an *erga omnes*² obligation.

10. That the protection of a child's life "requires that the State is particularly concerned with the surrounding circumstances during the time he is deprived of liberty, as that right has not expired nor has it been restricted because of his detention or imprisonment."³

11. That although the Court makes a positive assessment of the actions taken by the State to fulfill the provisional measures ordered in this case, the episodes of violence which took place during their enforcement show the need to continue to immediately adopt effective protection measures, reason for which this Court understands that it is convenient to maintain these provisional measures in favor of these people.

12. That the problem of confinement compounds require medium and long term actions, in order to adapt their conditions to international standards. However, the States have the obligation to take immediate actions which guarantee the physical, psychic and moral integrity of the inmates, as well as their right to life and the right

¹ Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering clause No. 9; *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. 9; *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. 7.

² Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures, *supra* note 5, Considering clause No. 14; *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures, *supra* note 1, Considering clause No. 16; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures, *supra* note 1, Considering clause No. 14.

³ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures, *supra* note 1, Considering clause No. 9; *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C, No. 112, para. 160. In the same sense, *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A, No. 17.

to the minimum conditions of a dignified life, especially in the case of children, who require special attention on the part of the State.⁴

13. That the Court considers that it is necessary that the State implements and adopts, immediately and effectively, all the necessary measures to guarantee the total exercise of the rights to life and personal integrity of the detainees within Tatuapé Complex, so that facts as those described above are not repeated. The adoption by the State of certain protection measures is not enough: it is also required that the latter and their implementation are efficient.

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14. That the State pointed out that in order to analyze the validity of the provisional measures, the previous exhaustion of domestic jurisdiction remedies is indispensable (*supra* Having Seen clause No. 5). On that matter, the Court understands that, considering the nature itself of the provisional measures (*supra* Having Seen clause No. 7), it is not possible to subject the protection of human rights at serious and urgent risk to the requirement of exhaustion of domestic remedies.

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15. That the representatives have informed that they face several difficulties to enter the confinement units of Tatuapé Complex.

16. The State must take every step so that the protection measures are planned and implemented with the representatives' participation and, in general, it must keep them informed on the progress of their implementation.

17. That the State must protect and respect the functions that can be exercised by non-governmental organizations and other groups or individuals defending the human rights and fundamental liberties of the people deprived of liberty, as these constitute a positive and supplementary contribution to the efforts made by the State.⁵

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18. That the representatives requested the extension of the provisional measures in favor of Mrs. Conceição Paganele, based on the alleged acts of duress, criminal investigations, public accusations and life threats against her. The Commission supported that request, but the State, on the other hand, requested its rejection for lack of evidence.

19. That the representatives claimed that in November, 2005, certain civil servants presented accusations through the press, accusing human rights

⁴ Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center. Provisional Measures*, *supra* note 1, Considering clause No. 17; *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures, *supra* note 1, Considering clause No. 19; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures, *supra* note 1, Considering clause No. 18.

⁵ Cf. *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures, *supra* note 1, Considering clause No. 14.

organizations, and especially Mrs. Paganele, of being responsible for the riots, mutinies and violence at FEBEM.

20. That the Court understands that said fact –even though it could complicate the tasks performed by Mrs. Paganele and the organization to which she belongs– does not fulfill the “extreme gravity” requirement demanded by Article 63(2) of the American Convention, as the fact itself does not expose the petitioner to irreparable damage.

21. That, according to the documentation submitted by the representatives, some alleged threats against Mrs. Paganele took place before February, 2005, which gave rise to police investigation IP No. 070/2005 of February 28, 2005. That is to say, more than a year before the request of extension of the provisional measures (*supra* Having Seen clause No. 10), situation which questions the “urgency” nature necessary for the adoption of the measures.

22. That the representatives stated that the threats against Mrs. Paganele continued after February, 2005. Nonetheless, they gave no further information on the matter, such as the date and the time of the threatening telephone calls, and the action taken to give notice to the national competent authorities.

23. That, even though it is true that the facts which motivated the request for provisional measures or their extension do not have to be fully proven, a minimum degree of detail and information is necessary so as to allow the Court to assess *prima facie* a situation of extreme gravity and urgency.

24. That the State has informed that assistants of the international area and of the National Protection Program for Human Rights Defenders of the Special Secretariat of Human Rights have tried to contact Mrs. Paganele in order to assess her risk situation and to discuss possible measures to protect her, but she “preferred not to meet” them. Furthermore, the State informed that FEBEM, in the context of administrative proceeding No. 2820/05, summoned Mrs. Paganele on three different occasions, so that she could clarify and point out which officers would have threatened her, but she “remained unjustifiably inert”, fact which resulted in the setting aside of the file.

25. That taking the above into consideration, the Court understands that Mrs. Paganele has not provided the State the necessary elements for the assessment of her risk situation and the adoption of certain preventive and corrective measures.

26. That there is no controversy between the parties regarding to the investigations instituted against Mrs. Paganele, for alleged defamation, damage, incitement to crime, ganging or aiding to escape. Regarding that matter, the State has expressed that it has the right to look into any person, if there are signs of materiality and perpetration of a certain criminal conduct. Furthermore, it pointed out that the Special Secretariat of Human Rights would remain alert regarding to Mrs. Paganele’s case in order to protect the due process of law.

27. That, although the Court is concerned with the complaint filed by the representatives regarding the use of criminal processes as a means to intimidate human rights defenders, it is not its responsibility to deepen into the grounds of the claims against Mrs. Paganele, or if such claims have grounds or not within the context of a provisional measures proceeding. Such a task is within the scope of the

judicial authorities of the State, or, should it be the case, within the scope of the bodies of the Inter-American System in an adversarial case in which there are allegations of violations against human rights. As it has already expressed before, this Court recognizes the existence of the power, and even the obligation of the State to guarantee the security and to keep public order,⁶ reason for which it is not possible to prevent the State from looking into the claims brought before it through a provisional measures proceeding.

NOW THEREFORE:

THE INTER AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To again request the State to immediately maintain and adopt the necessary measures to protect the life and personal integrity of all the children and adolescents institutionalized at FEBEM's Tatuapé Complex, as well as that of all the persons within it. For that matter, it shall adopt the necessary measures to prevent violence outbursts, as well as to guarantee the security of the inmates and maintain order and discipline in the above mentioned compound.
2. To again request the State to maintain the necessary measures to prevent the inmates from being submitted to cruel, inhuman or degrading treatment, among which lasting confinement and physical mistreatment are included.
3. To again request the State, without prejudice of the measures of immediate implementation ordered in the operative paragraphs above, to maintain and adopt those necessary to: a) substantially reduce overcrowding in Tatuapé Complex, b) seize the weapons in the possession of the youngsters, c) classify the inmates according to the international standards on the matter and taking the best interest of the child into account, and d) provide the necessary medical attention to the detained children in order to guarantee their right to personal integrity. In this sense, the State shall carry out a periodic supervision of the detention conditions and the physical and emotional state of the detained children, with the participation of the representatives of the beneficiaries of these provisional measures.
4. To again request the State to make all the pertinent approaches so that the protection measures are planned and implemented with the participation of the representatives of the beneficiaries of said measures and that, in general, they are informed regarding to the progress of their implementation.

⁶ Cf. Case of *Neira-Alegría et al.* Judgment of January 19, 1995. Series C, No. 20, para. 75.

5. To request the State to ease the entry of the representatives of the beneficiaries of the measures to the units of Tatuapé Complex, as well as the communication between them and the young inmates.
6. To again request the State to forward the Court an updated list of all the young inmates residing at Tatuapé Complex and to precisely provide: a) information regarding the minor identity; b) date and time of entrance, eventual transfer and liberation, and c) if the prosecuted adolescents and those whose legal situation has already been solved by the Judicial Power are physically located in different sections within the compound.
7. To request the State to investigate both the facts which give raise to the adoption of provisional measures and the violence episodes which subsequently took place, in order to identify the responsible parties and impose the corresponding sanctions, including those administrative and disciplinary.
8. To again request the State to keep informing the Inter-American Court of Human Rights, every two months, on the provisional measures taken, and to forward, in its next report, information regarding the death of young Ricardo Pereira Cunha, the steps taken towards fact-finding and the action taken so as to prevent similar incidents from taking place again.
9. To again request the representatives of the beneficiaries of the measures and the Inter-American Commission on Human Rights to submit their observations to the State's report within the term of four and six weeks, respectively, from the moment it is received.
10. To overrule the request to extend the provisional measures in favor of Mrs. Conceição Paganele.
11. To order the Court Secretariat to serve notice of this Order to the State, the Inter-American Commission on Human Rights and the representatives of the beneficiaries of the measures.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

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