

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JULY 3, 2007**

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

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

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of January 13, 2006, whereby the Court ordered *inter alia*:

1. [t]o require that the State maintain and extend the measures the State has informed it is already 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 person in the Confinement Center is killed or treated inhumanely[;]

2. [t]o require that the State carry out all actions necessary in order that the protective measures in favor of the detainees at the Monagas Judicial Confinement Center ("La Pica") are planned and implemented with the participation of the representatives of the beneficiaries of those measures, and so that, generally, the representatives remain informed in regards to any progress in the adoption of such measures[;]

3. [t]o request that the State submit an up-to-date list to the Court of all persons currently detained at the prison and, furthermore, precisely indicate the detainee's status of detention[, and]

4. [t]o request that the State investigate the facts that call for the adoption of provisional measures, with the aim of identifying those responsible and imposing upon them the appropriate penalties, including administrative and disciplinary sanctions.
[...]

2. The Order of the Inter-American Court of Human Rights of February 9, 2006, whereby the Court ordered, *inter alia*:

1. [t]o require that the State maintain and extend the measures the State has informed it is already 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 person in the Confinement Center is killed or treated inhumanely[;]

2. [t]o request that the State, without prejudice to the measures for immediate implementation ordered in the preceding operative paragraph, adopt those measures necessary to: a) substantially reduce overcrowding in the Monagas Judicial Confinement Center ("La Pica"), b) confiscate any weapons found in the possession of inmates, c) separate the accused inmates from the convicted inmates, d) conform the detention conditions in the Confinement Center to the applicable international standards and e) provide any necessary health care to the inmates so that their right to humane treatment is guaranteed. In this regard, the State shall, together with the participation of the representatives of the beneficiaries of these provisional measures, conduct a periodic inspection of detention conditions and of the physical and emotional state of the detainees[;]

3. [t]o require that the State carry out all actions necessary in order that the protective measures in favor of the detainees at the Monagas Judicial Confinement Center ("La Pica") are planned and implemented with the participation of the representatives of the beneficiaries of these measures, and so that, generally, the representatives remain informed in regards to any progress in the adoption of such measures[;]

4. [t]o request that the State submit an up-to-date list to the Court of all persons currently detained at the prison and, furthermore, precisely indicate the detainee's status of detention[, and]

5. [t]o request that the State investigate the facts that call for the adoption of provisional measures and, as the case may be, identify those responsible and impose upon them the appropriate penalties, including administrative and disciplinary sanctions.

[...]

3. The communications presented by the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") on March 23, 2006; July 6, 2006; September 11, 2006; February 14, 2007; March 28, 2007, and May 30, 2007, whereby the State informed, *inter alia*, that:

a) regarding the necessary measures to efficiently and definitively prevent violence in the Monagas Judicial Confinement Center ("La Pica"):

i. State officials have visited the Confinement Center and studied present and future measures to prevent violence in La Pica. They agreed to the immediate adjustment and designation of guards and the use of metal detectors to prevent the entrance of weapons, firearms and homemade weapons that can increase the violence;

ii. since February 2006 new guards have been incorporated; by the end of March 2007 the number of guards for internal custody had increased to 22, and in May 2007 there were 18 guards;

iii. regarding the violence incidents, between the months of January 2006 and May 2007, 19 detainees died and 22 were injured;

iv. from June 16 to 21, 2006 the detainees went on a hunger strike asking for the dismissal of Franklin Arias, the Captain of the National Guard, and the amendment or annulment of certain articles of the Criminal Procedure Code, and

v. on January 25, 2007 a detainee died from gun shot wounds when he refused to stop at the command of the National Guards who found him trying to escape from the Confinement Center.

b) regarding the measures necessary to: a) substantially reduce overcrowding at Monagas Judicial Confinement Center ("La Pica"), b) confiscate weapons in the hands of detainees, c) separate accused detainees from those who have been convicted, d) conform the conditions at the Confinement Center to international standards, and e) provide the necessary medical attention to detainees in such a way that guarantees their right to humane treatment:

i. the Presidential Decree of November 23, 2004 created the *Presidential Commission to attend the Prison Crisis* ("*Comisión Presidencial para atender la Emergencia carcelaria*") to evaluate and propose solutions for the recovery and optimization of the detention centers holding pre-trial and convicted detainees. Said Commission holds periodic meetings, aimed at totally solving the penitentiary situation in Venezuela. A new "Strategic Plan for Humanizing Detention Centers" was created which will be carried out within six years and has the following three fundamental areas: a new institutional framework, full attention to the detainee, and infrastructure, including the construction of fifteen new penitentiaries between 2006 and 2012. For this purpose a Commission composed of lawyers, judges, and State agents carried out an on-site visit on June 16-17, 2006, where they agreed to visit the detention center every two months and they drew up a Visit Report that highlighted the shortcomings of the detention center, such as poor food preparation, lack of hygiene, complete abandonment of the workshops, cultural events, and education classes, lack of medical and pharmaceutical staff, and a lack of potable water;

ii. the State created a Commission comprised of two state officials, a lawyer and legal assistant, effective as of January 30, 2006, to work permanently and daily as observers to the activities in the Confinement Center involving the participation of the detainees, and prepare periodic reports about the situation of the detainees;

iii. regular and surprise searches have been carried out at the Confinement Center, during which the State has confiscated firearms, munitions, drugs, alcoholic beverages, grenades, and knives. Visitors to the Confinement Center are also searched to prevent the entrance of weapons;

iv. studies have been carried out with the aim of presenting proposals to the relevant authorities regarding the separation of accused and convicted detainees;

v. alternative sentencing and accessory measures have been ordered, such as work programs, open prison, conditional liberty, and precautionary measures;

vi. regarding infrastructure, repairs and maintenance have been made to several areas in the Confinement Center, including the upgrading of the bathrooms; sealing and painting; the construction of a prison area for 18 to 21 year-olds; the upgrading of the woman's annex; the placing of electric wire around the perimeter wall of the detention center; the construction and repairs of an open area and a children's park within the detention center; an area with a roof and without walls that has concrete tables and chairs; the construction of a septic tank and drain; and the inauguration of a new kitchen;

vii. the medical assistance area was transformed and adapted to improve services given to detainees; a new Community Treatment Center is being built and medical assistance such as ophthalmology services, general medical services, dentistry, viral vaccinations, basic medications and corrective glasses have been provided;

viii. regarding cultural activities and sports; the sports field and volleyball court have been repaired and a new bocce ball court and pool table were provided; different cultural, religious and sporting events have taken place between the different sections of detainees and the Worker's Annex under the coordination of the Center's social worker. Regional sports and cultural events have taken place as well. A mixed drama group was started as well as a musical group in order to create mechanisms aimed at the detainees' social readaptation and to avoid new violence incidents, and

ix. regarding education, several religious groups have carried out educational activities for the detainees in the subject areas of formal education, agriculture, electricity, public works construction, bricklaying, baking, among others.

c) regarding the planning and implementing of protective measures for those deprived of their liberty in the Confinement Center with the participation of the representatives of the beneficiaries of these measures, and so that, generally, the representatives remain informed in regards to any progress in the adoption of such measures:

i. a meeting was planned for March 29, 2006 that would include the participation of the representatives of the beneficiaries, NGOs devoted to the Venezuelan penitentiary system at the national level, and other personalities with no political affiliation, that would address and confront the prison crisis;

ii. on April 20, 2006 the State's Human Rights Agent and the Legal Advisor went to the NGO "*Observatorio de Prisiones*" to learn about their impressions and proposals regarding the prison crisis, which resulted in a *Proposal to Create Inter-Institutional Prison Committees* in each region of the country, and

iii. on May 31 and June 1, 2006 the *Second National Conference of Dialogue with Prisoners* occurred with the combined participation of

spokespersons from different prison populations in the country, the State, as well as private and public decentralized institutions.

d) regarding the submission of an up-to-date list of all persons currently detained at the prison, precisely indicating the detainee's status of detention:

i. in March 2006 the State sent the Court up-to-date lists of the accused and convicted prisoners which included the status of their detention; in September 2006, January, March and May, 2007, the state submitted figures concerning the total population at the Confinement Center, differentiating between accused and convicted. On May 28, 2007, the population of the Confinement Center included 507 detainees separated into the following categories: 352 accused detainees (20 women), 107 convicted detainees (14 women), 11 foreigners, and 37 detainees in the work program, and

ii. a registry containing judicial information of each detainee is maintained and updated daily.

e) with respect to the investigation of the facts that prompted the adoption of the provisional measures, as well as the identification of those responsible and the imposition of corresponding penalties, including administrative and disciplinary sanctions:

i. on February 22, 2006, based on the inspection carried out at the Confinement Center by the General Direction of Human Rights of the Ministry of the Interior and Justice, certain irregularities were acknowledged, such as inadequate nutritional management, for which the Director, the Manager and the Administrative Clerk of the Confinement Center were suspended;

ii. the Confinement Center is permanently served by corresponding offices of the public prosecutor which have performed several proceedings at the Confinement Center, such as conducting regular and surprise visits and providing riot and search assistance, and

iii. violence incidents within the Confinement Center instigated criminal investigations concerning detainees, personnel and security guards, which are still in progress.

4) The communications presented by the representatives of the beneficiaries on February 17, 2006; May 18, 2006; August 30, 2006; November 29, 2006; March 21, 2007, and May 17, 2007, whereby the representatives stated, *inter alia*, that:

a) regarding the necessary measures to efficiently and definitively prevent violence in the Detention Center of Monagas ("La Pica"):

i. nearly 3 years after having declared a prison crisis in Venezuela, the grave situation of violence and insecurity persists in the detention center and there have been no advances made, which implies that the State has not adopted the necessary and adequate measures to control and overcome the problem;

ii. even though the State has implemented policies in an attempt to end the violence in the Confinement Center, 21 detainees have died and 9 were injured between April 2006 and May 18, 2007;

iii. despite the increase in security guards, the number of personnel continues to be lower than what is required in the Standard Minimum Rules for the Treatment of Prisoners, which establish that there should be one guard for every 10 inmates. Additionally, the State indicated that the Confinement Center employs 22 guards for internal custody; however, the representatives observed during their May 8, 2007 visit that only 6 guards were present, which clearly contradicts the minimum international standards of imprisonment and contributes to the increase in violence;

iv. the policies employed by the Ministry of Interior and Justice are directed more towards the repression of detainees rather than at the holistic or prevention treatment, and

v. on June 16, 2006 the detainees went on a hunger strike which ended on June 21, 2006 with the promise by the authorities to deny the Captain of the National Guard access to the detention center.

b) regarding the measures necessary to: a) substantially reduce overcrowding at Monagas Judicial Confinement Center ("La Pica"), b) confiscate weapons in the hands of detainees, c) separate accused detainees from those who have been convicted, d) conform the conditions at the Confinement Center to international standards, and e) provide the necessary medical attention to detainees in such a way that guarantees their right to humane treatment:

i. the State has not taken any concrete measure to reduce overcrowding;

ii. the State should increase the security measures to completely and effectively disarm the detainees. Detainees have stated that the searches generally include physical and psychological mistreatment by the personnel who conduct them. Searches should be made in the presence of the officials from the Ombudsman ("*Defensoría del Pueblo*") or from the Office of the Public Prosecution ("*Ministerio Público*") to guarantee effective procedures that thwart harm or additional violence amongst the prisoners;

iii. the State has not proceeded with the separation of the detainees as ordered by the Court. The fact that the State has an up-to-date registry with legal information on each detainee is not a concrete action in compliance with the requirement to physically separate accused detainees from those who are convicted;

iv. given the number of detainees who have completed their sentences and remain deprived of their liberty, they have expressed the need for the State to assign them 2 or 3 Public Defenders;

v. regarding legal assistance, the prisoners described a lack of conformity due to the failure of the State to comply with the procedural period of time in the case of some prisoners who are being tried. They also complained about

unjustified delays in the implementation of alternative measures of compliance with the sentencing of those prisoners who have been convicted;

vi. awful infrastructural conditions are most evident in the "female annex"; regarding the detention areas the inhumane conditions persist; in the area named "the prison", there are no bathrooms and the prisoners are required to relieve themselves in the open and in bags. In this area, in sections 1 and 2 there are no showers for daily cleaning, and detainees are forced to bathe themselves using a hose in a physically open space;

vii. the representatives recognize the State's efforts to improve health services for the prison population; the construction of a Center for Community Treatment; the implementation of an Alternative Formula of Compliance with Sentencing ("*Fórmula Alternativa de Cumplimiento de la Pena*"), known as Open Regime ("*Régimen Abierto*"), as well as the construction of a children's park, a social area for visits, and a separate section for housing inmates between the ages of 18 and 21;

viii. the percentage of inmates participating in work and education programs is low considering the size of the prison population; the education programs are superficial, unsound and not sustainable over the long-term, in part because they lack the necessary tools to conduct the classes;

ix. sports and cultural activities should be guaranteed on a regular basis since the activities mentioned by the State are carried out informally and infrequently;

x. the State discusses plans and preparations that have not materialized into concrete measures for the physical and mental well-being of the detainees; the medical conferences do not represent a structural and concrete solution to the alarming unhealthy conditions that exist at the Confinement Center, and

xi. on May 8, 2007 medical services that were provided by Cuban doctors were suspended, presumably because their work was only for a "fixed period of time". Such a situation demonstrates the infringement by the State of the prison population's right to health in the Confinement Center.

c) regarding the planning and implementing of protective measures for those deprived of their liberty in the Confinement Center with the participation of the representatives of the beneficiaries of these measures, and so that, generally, the representatives remain informed in regards to any progress in the adoption of such measures:

i. the representatives look favorably upon the State's initiative to arrange meetings between the NGOs and state officials; however it is obvious that the State has not complied with this measure since several actions carried out by the State were done without the participation or awareness of the representatives of the beneficiaries, and

ii. various declarations by high ranking State officials qualify as new acts of intimidation and violate the provisional measures that require the State to

guarantee the participation of the representatives of the beneficiaries in the planning and the implementation of the provisional measures.

d) regarding the submission of an up-to-date list of all persons currently detained at the prison, precisely indicating the detainee's status of detention:

i. in the list admitted by the State there was no record of the procedural delays or deferrals of each of the detainees. This information is important in order to determine those detainees who have the right to alternative sentencing measures, those who have completed their sentences and are still deprived of the freedom, and for the adoption of measures that would help overcome the current overcrowding problem, and

ii. the list submitted by the State does not provide information regarding the specific section and the cell of each one of the detainees. This information is important to determine the physical location of the detainees and facilitate the adoption of the measures that would guarantee the separation of the accused from those who are convicted.

e) with respect to the investigation of the facts that prompted the adoption of the provisional measures, as well as the identification of those responsible and the imposition of corresponding penalties, including administrative and disciplinary sanctions:

i. the State has not provided information regarding the investigation and sanctioning of those responsible for the acts of violence and resulting deaths and injuries of the detainees in the Confinement Center, which combined with the existing conditions of detention gave rise to the adoption of these provisional measures;

ii. the technicians and employees of the auxiliary investigation agency, Criminal and Scientific Investigation Agency (*"Cuerpo de Investigaciones Científicas Penales y Criminalísticas"*), do not have access to the Confinement Center due to the prison's lack of security, which impedes the accurate investigation of the crimes committed there, and

iii. regarding the suspension of the Director of the Confinement Center, according to information that circulated in some forms of media and at the Confinement Center itself, the Director stepped down from his position. It is relevant to the compliance of the provisional measures that the State supplies the Court with a copy of the administrative case file and of the corresponding dismissal.

5. The communications submitted by the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on May 30, 2006; August 31, 2006; December 11, 2006; March 30, 2007; May 17, 2007, and June 1, 2007, whereby it stated, *inter alia*, that:

a) with respect to the efficient and definitive measures needed to prevent violence in the Judicial Confinement Center of Monagas ("La Pica"):

i. the State's reports reveal that the State has not implemented any concrete or immediate measures to effectively and definitively eliminate the

violence in the Confinement Center. The incidents of violence in the prison persist and have resulted in more deaths and injuries, including the deaths of at least six inmates on May 13, 2007. Although the Commission recognizes the State's goodwill, the safety of the Center is inadequate and the actions undertaken by the State have been insufficient;

ii. although the number of violent incidents provided by the State and the representatives differ, the reports indicate that such problems persist;

iii. although the State reiterated its plan to construct 15 new penitentiaries, the State's report shows that it has not implemented any concrete action towards that goal;

iv. the State informed that the number of security guards in the Confinement Center has increased from 14 to 22. The Commission expects that more guards will be added in the coming months, and

v. the lack of separation between the inmates awaiting judgment and the convicted inmates, combined with the absence of an adequate regimen of security and control, aggravate the tension and violence amongst the inmates and between the prisoners and guards.

b) regarding the measures necessary to: a) substantially reduce overcrowding at Monagas Judicial Confinement Center ("La Pica"), b) confiscate weapons in the hands of detainees, c) separate accused detainees from those who have been convicted, d) conform the conditions at the Confinement Center to international standards, and e) provide the necessary medical attention to detainees in such a way that guarantees their right to humane treatment:

i. the State has not provided information regarding the specific measures undertaken to reduce the overcrowding or to implement the separation of inmates;

ii. the Court should require the State to submit a detailed report regarding the existing capacity of the cells, as well as a listing of the inmates that specifies their actual physical location, in order to establish and reduce the level of overcrowding;

iii. the State should advise when it will open the area of confinement for individuals between the ages of 18 and 21 and how said facilities will "substantially reduce overcrowding";

iv. the National Guard's participation in the arms searches demonstrates a lack of planning as well as disdain for the international standards applicable to this type of action. Complaints regarding abuse and maltreatment to the detriment of the prisoners during the searches persist;

v. on November 24, 2006, the State authorities held a meeting in which they agreed to "the use of metal detectors in the future." The Commission expects the State to provide further information regarding the implementation of said agreement;

vi. the State informed that it has drafted instructions for the improvements, repairs and renovations to the Confinement Center's facilities; however, the reports do not indicate the effective execution or completion of such projects;

vii. the State merely reported that it is adapting the facilities to accommodate group of doctors that would remain in the establishment, from which in can be inferred that there are currently no medical personnel on duty in the Confinement Center, and

viii. the State has not undertaken any other actions to guarantee that all of the inmates receive health care in accordance with their needs.

c) regarding the planning and implementing of protective measures for those deprived of their liberty in the Confinement Center with the participation of the representatives of the beneficiaries of these measures, and so that, generally, the representatives remain informed in regards to any progress in the adoption of such measures:

i. the meetings held on March 29 and May 3, 2006 constitute positives steps towards the effective participation of the representatives of the beneficiaries in the process of designing and implementing the provisional measures;

ii. although some meetings have been organized between governmental authorities and organizations of civil society, said organizations are not parties to the instant proceedings. Compliance with the Court's order requires coordination with the organizations involved in the instant case, and

iii. it is necessary for the Court to reiterate the importance of the participation of the representatives.

d) regarding the submission of an up-to-date list of all persons currently detained at the prison, precisely indicating the detainee's status of detention:

i. the State sent the listing ordered by the Tribunal. However, it would be useful for this listing to also include the exact block and cell for each of the inmates in order to verify the separation of inmates by category, and

ii. the Commission appreciates the State's compliance with sending the list of prisoners that distinguishes the "convicted" from the "accused". However, the State does not indicate the date on which it updated the information, nor do the numbers of said lists coincide with the information contained in the report.

e) with respect to the investigation of the facts that prompted the adoption of the provisional measures, as well as the identification of those responsible and the imposition of corresponding penalties, including administrative and disciplinary sanctions:

i. the State has not provided information with respect to the investigation of the violent acts that occurred in 2005, 2006, or 2007.

Moreover, the State does not refer to any administrative measures it has undertaken, and

ii. the State should include a detailed report regarding the administrative and criminal investigations, as well as their results thus far.

CONSIDERING:

1. That Venezuela has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since August 9, 1977 and that it accepted the binding 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 shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission”.

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

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

[...]

6. The beneficiaries of the 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 of Human Rights shall present observations to the State’s report and to the observations of the beneficiaries or their representatives.

4. 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.

5. That in International Human Rights Law, provisional measures are not only of a precautionary nature in the sense that they preserve a certain legal status, but they are also fundamentally protective of human rights, in the sense that they seek to avoid irreparable damage to persons. The measures are applied as long as the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met. It is in this way that provisional measures are transformed into a true preventative judicial guarantee.¹

6. That the merits of the case that gave rise to these provisional measures is not at present before the Court, 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

¹ Cf. *Case of the Constitutional Court*. Provisional Measures. Order of the President of the Court of April 7, 2000, Considering paragraph eleventh; *Matter of Ramírez Hinojosa et al.* Provisional Measures. Order of the Inter-American Court of May 17, 2007, Considering paragraph fifth, and *Case of 19 Tradesmen*. Provisional Measures. Order of the Inter-American Court of May 12, 2007, Considering paragraph sixth.

of extreme gravity and urgency and when necessary to avoid irreparable damage to persons.²

7. That provisional measures are of an exceptional nature and are issued depending on the need for protection. Once they are ordered, they should be maintained as long as the Court believes that there exists a situation of extreme gravity and urgency and when necessary to avoid irreparable damage to persons³.

8. That according to the provision established in Article 63(2) of the Convention, provisional measures ordered by the Court are binding on the State in conformity to a basic principle of the law of international responsibility of the States, as supported by international case law, under which States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*)⁴.

9. That in other cases the Court has issued protective measures regarding a group of persons not previously identified, but who can be identified and ascertained, and are at risk of being in severe danger because they belong to a certain group or community,⁵ such as the detainees at a prison.⁶ In the instant case, the possible beneficiaries are identifiable as they are held in the above mentioned detention center.

10. That in light of the State's responsibility to adopt protective measures to safeguard the persons under its jurisdiction, the Court deems that such obligation is even more evident regarding persons held in a detention center, in which case the State is the guarantor of the rights of the persons under its custody and given that the penitentiary authorities exercise total control over them.⁷

11. That "one of the unavoidable obligations that the State has to assume in its capacity as guarantor, with the purpose of protecting and securing the right to life and humane

² Cf. *Matter of James et al.* Provisional Measures. Order of the Inter-American Court of May 17, 1998, Considering paragraph seventh; *Matter of Adrián Meléndez Quijano et al.* Provisional Measures. Order of the Inter-American Court of May 12, 2007, Considering paragraph fifteenth, and *Matter of the Pueblo indígena Kankuamo*. Provisional Measures. Order of the Inter-American Court of January 30, 2007, Considering paragraph sixth.

³ Cf. *Case of the Constitutional Court*. Provisional Measures, *supra* note 1, Considering paragraph third; *Case of Raxcacó Reyes et al.* Motion to extend the Provisional Measures. Order of the Inter-American Court of February 2, 2007, Considering paragraph fourth, and *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*. Provisional Measures. Order of the Inter-American Court of February 2, 2007, Considering paragraph twelfth.

⁴ Cf. *Matter of James et al.* Provisional Measures. Order of the Inter-American Court of June 14, 1998, Considering paragraph sixth; *Matter of Adrián Meléndez Quijano et al.* Provisional Measures, *supra* note 2, Considering paragraph sixth, and *Case of Raxcacó Reyes et al.* Motion to extend the Provisional Measures, *supra* note 3, Considering paragraph fifth.

⁵ Cf. *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of November 24, 2000, Considering paragraph seventh; *Matter of the Pueblo indígena Kankuamo*. Provisional Measures, *supra* note 2, Considering paragraph thirteenth, and *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of July 7, 2006, Considering paragraph eighth.

⁶ Cf. *Matter of Urso Branco Prison*. Provisional Measures. Order of the Inter-American Court of June 18, 2002, Considering paragraph seventh; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*. Provisional Measures, *supra* note 3, Considering paragraph sixth, and *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures. Order of the Inter-American Court of September 30, 2006, Considering paragraph eighth.

⁷ Cf. *Matter of Urso Branco Prison*. Provisional Measures, *supra* note 6, Considering paragraph eighth; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*. Provisional Measures, *supra* note 3, Considering paragraph seventh, and *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures, *supra* note 6, Considering paragraph eleventh.

treatment of the persons that have been deprived of their liberty, is that of providing such persons with the minimum decent conditions while they remain in the detention centers."⁸ Additionally, the protection of life of all people deprived of their liberty "requires that the State be particularly concerned with the living conditions during the time that liberty is deprived, as that right has not expired nor has it been restricted because of the detention or imprisonment."⁹

12. That the State obligation to protect all the persons under its jurisdiction also encompasses the duty to control the action of third parties, an *erga omnes* obligation.¹⁰

13. That the problem of detention 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, psychological and moral integrity of inmates, as well as their right to life and to enjoy the minimum conditions of a dignified life.¹¹

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14. That although this Tribunal favorably views the actions taken by the State in compliance with the provisional measures ordered in the present case, a situation of extreme gravity and urgency and of possible irreparable damage to the rights to life and humane treatment of the inmates at the Monagas Judicial Confinement Center ("La Pica") persists.

15. That violent events have taken place in the Confinement Center while the instant measures have been in effect that have caused approximately 20 deaths and 20 injured (supra Having Seen paragraphs 3.a.iii, 4.a.ii, 5.a.i and 5.a.ii), which demonstrates the ongoing and urgent necessity to adopt effective measures of protection.

16. That as a result of what was previously stated, the Court considers it necessary for the State to continue adopting and implementing immediate and effective measures of protection to fully guarantee the rights to life and humane treatment for the inmates at the Monagas Confinement Center ("La Pica").

⁸ Cf. *Neira Alegría et al. Case*. Judgment of January 19, 1995. Series C No. 20, para. 60; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*. Provisional Measures, *supra* note 3, Considering paragraph seventh, and *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures, *supra* note 6, Considering eleventh.

⁹ Cf. *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, para. 160; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures. Order of the Inter-American Court of November 30, 2005, Considering paragraph ninth, and *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures. Order of the Inter-American Court of July 4, 2006, Considering paragraph tenth. Similarly, *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17.

¹⁰ Cf. *Matter of the Peace Community of San José de Apartadó*. Provisional Measures, *supra* note 5, Considering paragraph eleventh; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*. Provisional Measures, *supra* note 3, Considering paragraph fifth, and *Matter of the Pueblo indígena Kankuamo*. Provisional Measures, *supra* note 2, Considering paragraph fourth.

¹¹ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures, *supra* note 9, Considering paragraph eighteenth; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM*. Provisional Measures, *supra* note 9, Considering paragraph twelfth, and *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures. Order of the Inter-American Court of March 30, 2006, Considering paragraph seventeenth.

17. Thus, the State should utilize all possible means to reduce the level of violence at the Confinement Center. In that respect, the Court considers that the rights to life and humane treatment not only imply that the State should respect those rights (negative obligation), but also require that the State adopt all appropriate measures to guarantee those rights (positive obligation), in compliance with its general duty established in Article 1(1) of the American Convention.¹²

18. That, in order to prevent the recurrence of those events described, the State's adoption of protective measures is not sufficient; those measures and their implementation must also be effective.

19. That the State should take all relevant steps to ensure that the measures ordered by the Court are planned and implemented with the participation of the beneficiaries.

20. That it is the duty of the State to protect and to respect the function served by the non-governmental organizations and other groups or individuals that defend human rights and fundamental freedoms of those deprived of liberty, because these entities constitute a positive and complementary contribution to the efforts made by the State in its role as guarantor of rights of those under its custody.¹³

21. That it is essential that the provisional measures are maintained in full force and effect until the Court orders their discontinuance and serves notice thereof upon the State.¹⁴

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22. That the representatives and the Inter-American Commission indicated that the State has not sent information regarding the investigations on the events that prompted the adoption of the provisional measures, the identification of those responsible, and the imposition of the corresponding sanctions, including the administrative and disciplinary ones (*supra* Having Seen paragraphs 4.e.i, 5.e.i and 5.e.ii).

23. That the assessment of the effectiveness of the investigations and proceedings concerning the events that prompted the adoption of the present provisional measures corresponds to the analysis of the merits of the case, which is currently before the Inter-American Commission.

THEREFORE:

¹² Cf. *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 139; *Case of the Plan de Sánchez Massacre*. Provisional Measures. Order of the Inter-American Court of November 25, 2006, Considering paragraph thirteenth, and *Matter of the Forensic Anthropology Foundation*. Provisional Measures. Order of the Inter-American Court of July 4, 2006, Considering paragraph thirteenth.

¹³ Cf. *Matter of Lysias Fleury*. Provisional Measures. Order of the Inter-American Court of December 2, 2003, Considering paragraph tenth; *Matter of Giraldo Cardona*. Provisional Measures. Order of the Inter-American Court of November 29, 2006, Considering paragraph nineteenth, and *Case of the Plan de Sánchez Massacre*. Provisional Measures, *supra* note 12, Considering paragraph twelfth.

¹⁴ Cf. *Matter of Liliana Ortega et al.* Provisional Measures. Order of the Inter-American Court of March 1, 2005, Considering paragraph tenth; *Matter of the Pueblo indígena Kankuamo*. Provisional Measures, *supra* note 5, Considering paragraph fourteenth, and *Matter of Giraldo Cardona*. Provisional Measures, *supra* note 13, Considering paragraph twentieth first.

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 Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To reiterate that the State must maintain 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 Confinement Center ("La Pica"), so that no inmate or person in the Confinement Center is killed or treated inhumanely.
2. To reiterate that the State must, without prejudice to the measures for immediate implementation ordered in the preceding operative paragraph, adopt those measures necessary to: a) substantially reduce overcrowding in the Monagas Confinement Center ("La Pica"), b) confiscate any weapons found in the possession of inmates, c) separate the accused inmates from the convicted inmates, d) conform the existing detention conditions in the Monagas Confinement Center ("La Pica") to the applicable international standards and e) provide any necessary health care to the inmates so that their right to humane treatment is guaranteed. In this manner, the State shall, together with the participation of the representatives of the beneficiaries of these provisional measures, conduct a periodic inspection of detention conditions and of the physical and emotional state of the detainees.
3. To reiterate that the State must carry out all actions necessary in order that the protective measures in favor of the detainees at the Monagas Confinement Center ("La Pica") are planned and implemented with the participation of the representatives of the beneficiaries of these measures, and so that, generally, the representatives remain informed in regards to any progress in the adoption of such measures.
4. To reiterate that the State must submit to the Court up-to-date lists of all persons currently detained at the prison and, furthermore, precisely indicate the detainee's status of detention.
5. To declare that in the present provisional measures proceedings the Court will not assess the effectiveness of the investigations of the events that originated these measures, because it corresponds to the analysis of the merits of the matter, which will be addressed by the Inter-American Commission on Human Rights at the proper stage of the proceedings of "petition P-1487/05".
6. To require that the State present its seventh report in regard to the implementation of the adopted measures on no later than September 28, 2007.
7. To require that the State continue informing the Inter-American Court of Human Rights every two months, as from the date of the report required in the prior operative paragraph, and to require that the Inter-American Commission on Human Rights and the beneficiaries of these measures, or their representatives, present their observations to the State's report required in the prior operative paragraph, just as is the case with the State's bi-monthly reports, within the period of six and four weeks, respectively, as of their receipt of the State's report.

8. To request that the Secretariat notify the State, the Inter-American Commission on Human Rights, and the beneficiaries of these measures and their representatives, of the present Order.