

**Order of the
Inter-American Court of Human Rights
of November 27, 2007
Provisional Measures regarding Argentina

Matter of the Mendoza Prisons**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter, the "Court" or the "Inter-American Court") of November 22, 2004, whereby it was decided, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter, the "Convention" or the "American Convention") and 25 of the Court's Rules of Procedure (hereinafter, the "Rules of Procedure"), to request the State of Argentina (hereinafter, the "State" or "Argentina") to adopt, immediately, all the measures necessary to protect the life and personal integrity of the persons held in custody in the Mendoza Provincial Prison and in the Gustavo André Unit, located at *Lavalle*, as well as the employees and officials rendering services on the said premises."
2. The public hearing on the facts and circumstances related to the implementation of the provisional measures, held in Asunción, Paraguay, on May 11, 2005.
3. The record signed by the representatives of the Inter-American Commission on Human Rights, the representatives of the beneficiaries of the provisional measures and the State, submitted on May 11, 2005, to the Court during said public hearing (*supra* note 2), in which they expressed their agreement on keeping the provisional measures in full force, and further agreed to "remit to the consideration of the [...] Inter-American Court [...] a] set of measures so that [the] Court could evaluate the possibility of specifying the content of the Order dated November 22, 2004, with a view to safeguarding the life and physical integrity of the beneficiaries to said order."
4. The Order of the Court of June 18, 2005.
5. The public hearing on the provisional measures, held in Brasilia, Brazil, on March 30, 2006.
6. The Order of the Court of March 30, 2006, whereby it decided:
 1. To request the State to adopt, immediately and inexcusable, the necessary and effective provisional measures to protect the life and integrity of all the people held in custody at the Provincial Prison in Mendoza and in the Gustavo André Unit, located at *Lavalle*, as well as of all those employees and officers rendering services on said premises, specially, to eradicate the risks of violent deaths and the deficient conditions of security and internal control, according to Considering Clauses 11 and 12 of the [...] Order.

2. To request the State to implement the provisional measures, in order to secure its useful purpose, in effective and clear coordination with the provincial and federal authorities, in the terms of Considering Clauses 11 and 13 of the [...] Order.
 3. To request the State to submit a detailed and specified report to the Inter-American Court, every two months as from the submission of the last report, on the measures adopted to comply with the decision of this Tribunal. Specially, it is paramount that the adoption of the priority measures established in the [...] Order gets reflected in the State's reports describing the specific results obtained in agreement with the specific needs of protection of the beneficiaries thereof, according to the terms of Considering Clause 14 of the [...] Order. In this regard, the oversight role of the Inter-American Commission is radical for an adequate and effective follow-up on the implementation of the measures so ordered.
 4. To order the representatives of the beneficiaries and the Inter-American Commission to submit their observations to the State's reports within a term of four and six weeks, respectively, next following receipt of the referenced State's reports.
7. The reports XVIII and XII submitted by the State between April, 2006 and January, 2007, the briefs submitted by the State on July 14 and 18 and December 12, 2006, the observations of the Commission and the representatives to some of such reports and the briefs and notes submitted by the representatives between April, 2006 and March, 2007.
8. The communication of March 24, 2007, whereby the representatives of the beneficiaries of the provisional measures submitted to the Court, based on Articles 63(2) of the Convention and 25 of the Rules of Procedure, a petition for "the extension of the provisional measures in favor of [all people held in custody in the] penitentiary center of ['Almafuerte', ...]."
9. The Order delivered by the President on August 22, 2007, whereby, by virtue of the authority established in Article 63(2) of the American Convention and Articles 25 and 29 of the Rules of Procedure and prior consultation with the other Judges of the Court, it was decided:
1. To deny the petition for the extension of the provisional measures so ordered in the Matter of Mendoza Prisons, submitted by the representatives of the beneficiaries and supported by the Inter-American Commission on Human Rights, according to the Considering Clauses 10 to 16 of this Order.
 2. To request the State to keep in full force the provisional measures ordered by the Inter-American Court of Human Rights in its Orders of November 22, 2004, June 18, 2005 and March 30, 2006.
 3. No notify this Order to the Inter-American Commission, the representatives and the State.
10. The Reports XIII to XV submitted by the State between April and October, 2007, the briefs of the State of April 18, May 15 and 16, October 17 and November 16, 2006; the observations of the Commission to such reports; the briefs of the Commission of April 10 and July 19, 2007 and the briefs and

CONSIDERING:

1. That Argentina has been a State Party to the American Convention since September 5, 1984 and in accordance with Article 62 thereof, and Argentina has accepted the binding jurisdiction of the Court upon ratifying said instrument.

2. That Article 63(2) of the American 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 relation to this issue, Article 25 of the Rules of Procedure establishes that:

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

3. In contentious cases already submitted to the Court, the victims or alleged victims, their next of kin, or their duly accredited representatives, may present a request for provisional measures directly to the Court.
[...]

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

4. That, in the terms of Article 74(1) of the Rules of Procedure of the Inter-American Commission on Human Rights:

[T]he Commission may request that the Court adopt provisional measures in cases of extreme gravity and urgency, and when it becomes necessary to avoid irreparable damage to persons in a matter that has not yet been submitted to the Court for consideration.

5. That the provisional measures contained in the Orders of the Court of November 22, 2004, June 18, 2005 and March 30, 2006 (*supra* Having Seen clauses 1, 4 and 6) are in full force:

6. That, on March 24, 2007, the representatives filed with the Court, based on Articles 63(2) of the Convention and 25 of the Rules of Procedure, a "petition for the extension" of the provisional measures ordered in favor of the people held in custody in the Prison Center III (Almafuerte) located at Cacheuta "taking into account that the people held in custody in the Mendoza Prison are being transferred to this new detention center" (*supra* Having Seen 8). The representatives pointed out, *inter alia*, that in Sector I and II, the inmates are being subjected to 21 hours extended confinement in the cellblocks; with respect to health conditions, many inmates have denounced the lack of medical treatment and that they have asked for help and received no answer; treatment with the employees of the prison is almost inexistent and they do not process the petitions for hearings and *habeas corpus*; several inmates conduct hunger strikes since they allege to be isolated from their families; they are not allowed to have radios, clocks or televisions; and they conduct searches

"by striping the visitors and inmates and performing rectal examinations" as a prerequisite for visitors.

7. That, after receiving the corresponding observations of the State and the fact that the Commission supported the petition for the extension of the provisional measures, such petition was brought to the attention of the Court in its XXX Period of Extraordinary Sessions, as well as the observations and the notes addressed to the President of the Court and the Commission on May, 2007, whereby the State invited "the President [of the Commission...] to personally visit [the Penitentiary Center III (Almafuerte)]." In such opportunity, before adopting any decision with respect to the petition for the extension of the provisional measures, the Tribunal deemed appropriate that the Inter-American Commission inform on the decision related to the invitation made by the State, as well as its up-dated opinion regarding the need to extend the provisional measure so ordered. The Commission answered, after the Period of Regular Sessions, to the Court that "...should there are the necessary resources, it will prepare a visit at the end of the year ..." Afterwards, the President of the Court decided to deny the petition already mentioned (*supra* Having Seen clause 9).

8. That, as the President considered it in the Order, the representatives filed, within the domestic level, an *Habeas Corpus* remedy based on the same grounds which were alleged in the petition for the extension of these orders (*supra* Having Seen Clause 9). A Provincial Criminal Enforcement Court admitted the Habeas Corpus remedy filed with by means of resolution dated March 23, 2007, which "it is beneficial not only to Molina Ponce but to 40 inmates who are held in custody there, after having been interviewed, having ordered reports and having conducted a visit to the Detention Center." After the resolution delivered by the Criminal Enforcement Court, the Director of the Penitentiary Center III has drawn up several memorandums in which a series of measures and guidelines are ordered, addressed to heal the factual situations as a result of the petition for extension of the provisional measures so ordered. Furthermore, before the existence of said petition, the domestic courts, including the Argentine Supreme Court of Justice, have delivered several resolutions in relation to the facts that generated it; such resolutions ordered the protection of the people held in custody in the Province of Mendoza, in general.

9. That the President of the Court considered, with respect to the people held in custody in the Mendoza Provincial Prison and then transferred to the Penitentiary Center III "Almafuerte" at Cacheuta, that the construction of this Center and the transfer of the people are the means implemented by the State to deal with the issue of overcrowding in other penitentiary centers, which is precisely one of the factual situations that generated the provisional measures so ordered. Furthermore, that no facts have been brought to the attention of the Court that reveal or imply a situation of extreme gravity and urgency for the life and integrity of the people held in custody in said Penitentiary Center.

10. That, as decided by the President, the petition for the extension of the provisional measures so ordered is no admitted. Notwithstanding, it deems appropriate to remember the general obligations undertook by States Parties according to Article 1(1) of the Convention in order to respect the rights and freedoms therein enshrined and to ensure to all persons subject to the jurisdiction of the Court the free and full exercise of those rights and freedoms. Regardless of the

existence of specific provisional measures, the State is especially obliged to ensure to all persons their rights within situations of deprivation of liberty.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To fully ratify the Order of the President of the Court of August 22, 2007.
2. To order the State to continue adopting the effective and necessary provisional measures to efficiently protect the life and integrity of all the persons held in custody in the Mendoza Provincial Prison and those in the Gustavo André Unit of Lavalle, as well as every person found within those facilities, especially to eradicate the risk of violent death and the deficient conditions of security and internal control in confinement centers, pursuant to the provisions set out in the Order of the Court of March 30, 2006.
3. To order the State to report to the Inter-American Court every two months next following its latest report, specifically on the actions taken in compliance with the orders of this Court. In particular, it is paramount that the adoption of the priority measures established in the this Order gets reflected in the State's reports describing the specific results obtained in agreement with the specific needs of protection of the beneficiaries thereof. In this sense, the role of the Inter-American Commission is particularly important so as to adequately and effectively follow up the implementation of the measures so ordered.
4. To request the representatives of the beneficiaries and the Inter-American Commission to submit their observations to the State's reports within a term of four and six weeks, respectively, next following receipt of the referred State's reports.
5. No notify this Order to the Inter-American Commission, the representatives and the State.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary