

**Order of the
Inter-American Court of Human Rights*
of February 8, 2008
Request for Provisional Measures
Made by the Inter-American Commission of Human Rights
with regard to Venezuela
Matter of Capital El Rodeo I and El Rodeo II
Judicial Confinement Center**

HAVING SEEN:

1. The brief of December 17, 2007 and its exhibits, by which the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "Commission") lodged with the Inter-American Court of Human Rights (hereinafter, the "Court", the "Inter-American Court" or the "Tribunal") a request for provisional measures,¹ in accordance with Articles 63(2) of the American Convention on Human Rights (hereinafter, the "Convention" or the "American Convention"), 25 of the Rules of Procedure of the Court (hereinafter, the "Rules of Procedure") and 74 of the Rules of Procedure of the Commission, in order for the Bolivarian Republic of Venezuela (hereinafter, the "State" or "Venezuela") to protect those people deprived of freedom residing at Rodeo I and Rodeo II, Capital Judicial Penitentiary (hereinafter, the "Rodeo Penitentiary") as well as the visitors and personnel of such prison "from imminent serious risks of irreparable damage to their lives and physical integrity".

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

a) The Rodeo Prison is located in the Municipality of Zamora, Parish of Guatire, State of Miranda. It was built in two phases: The first phase was opened in 1983 (Rodeo I) and the second phase in 1996 (Rodeo II). Rodeo I has the capacity to house 750 inmates, whereas Rodeo II was built to house 684 inmates, that is to say, they can accommodate a total of 1.434 people. Nevertheless, there are 2.143 inmates;

b) The inmates control the administrative area, corridors and even the terrace. The gangs known as "Barrio Chino" (*Red Light District*) and "La Corte Negra" (*Black Court*) are the delegates who negotiate with the Ministry of Domestic Affairs;

c) During 2006, there were 86 inmates dead and 198 people got injured as a result of violent incidents. Furthermore, in 2007 there were 51 deaths and

* Judge Manuel E. Ventura Robles informed the Court that, due to reasons of force majeure, he could not participate in the deliberation and signing of this Order.

¹ The Commission appointed Paulo Sergio Pinheiro and Florentín Meléndez, Commissioners, as delegates and Santiago A. Canton as Executive Secretary; and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Débora Benchoam and Juan Pablo Albán, specialists, all as legal advisors. The initial request to forward the request for provisional measures to the Court was received by the Commission on October 11, 2007 and such request was submitted by Mr. Humberto Prado, Pedro Nikken, Carlos Ayala Corao and Wilmer Linero, acting on behalf of the non-governmental organization called "El Observatorio Venezolano de Prisioneros".

101 inmates got injured. In November, 2007, three violent incidents were registered, at least, in the premises and the most recent murder occurred on November 13, 2007;

d) There is a serious situation of insecurity and great violence inside the prison, which is fostered, among other factors, by the overcrowding; the lack of appropriate custody; the entering and possession of cutting and thrusting weapons and firearms by the inmates, trade which can involve the participation of several officers in charge of the surveillance of the prison; and the lack of immediate and effective measures and plans proposed by the prison authorities in charge of the penitentiary and its functioning in order to prevent and avoid such violent events and eliminate cruel punishments and ill-treatments;

e) Despite the seizures performed, the weapons- including the guns and grenades- still circulate within the prison and the violent events cannot be avoided;

f) As to the fights, the inmates are commonly fighting over the control of the territory and the fights are, sometimes, started by the guards themselves, when transferring the inmates to other prisons or other areas within the same prison. The authorities have not yet adopted any measures to avoid these incidents and,

g) The foregoing becomes more serious due to the lack of appropriate surveillance. There are only 20 guards in every shift for the surveillance of approximately 2.143 inmates. Furthermore, these officers have no access to some of the prison blocks where their physical integrity is in danger. Whenever the guards enter these blocks, the National Guard accompanies them.

3. The legal arguments of the Commission to base the request for provisional measures, namely:

a) The exposed facts show *prima facie* the structure of a situation of extreme seriousness and urgency for the life and physical integrity of the beneficiaries of this request for provisional measures, who have been suffering serious threats against their lives and physical integrity whilst being confined, visited or while working in a correctional institution under the custody of the State;

b) The urgency under the terms of Article 63(2) of the American Convention is evidenced by the death of tens of inmates and the serious injuries received by others between 2006 and 2007. These facts show a situation of imminent danger due to the inadequate safety conditions of the premises and the high levels of violence among the inmates and the guards against the inmates, all of which call for urgent intervention of the Court in order to avoid irreparable damage;

c) Due to the exceptional existing levels of violence and insecurity, it is necessary to take urgent and immediate measures apart from the medium or long-term general plans for the humanization of the Venezuelan prison system. The situation is serious and must be repaired by taking immediate measures;

d) The seriousness of the situation is evidenced in the multiple repetition of violent acts which have occurred continuously, along the passage of several years, specially in 2007.

e) It is enough that the beneficiaries can be "determined" in order to receive protective measures and,

f) The final solution to the problem in Venezuelan detention centers and, in particular, in the Rodeo Prison, also calls for full medium and long-term measures. Notwithstanding, the urgency and immediacy of the present situation requires from the State the adoption of high-impact measures for the risky situation in which the people requiring these protective measures are.

4. The request of the Inter-American Commission so that the Court, based on Article 63(2) of the American Convention, orders the State:

- a. to adopt without delay, all security and control measures that are necessary to preserve the life and personal integrity of the people who are deprived of freedom, visitors and personnel of Rodeo I and Rodeo II Capital Regional Judicial Confinement; and the people who could be admitted to the detention center at issue in the future;
- b. to adopt all measures necessary to prevent the inmates from receiving ill-treatment and excessive punishments by the personnel in charge of the premises;
- c. to provide the "Rodeo Prison" with sufficient, well-trained and equipped prison guards in order to avoid the repetition of violent acts;
- d. to adopt all measures necessary to substantially reduce the overcrowding in the "Rodeo Prison" and to divide the inmates by categories in order to avoid new violent acts;
- e. to adopt all measures necessary to confiscate the weapons from the hands of the inmates and to prevent the entering of weapons in the prison premises and the manufacturing of handcrafted arms, in order to avoid the repetition of violent acts;
- f. to report, as soon as possible, on the investigation carried out in relation to the violent acts occurred inside the premises of Rodeo I and Rodeo II Capital Regional Judicial Confinement in order to adopt the necessary measures to prevent its repetition;
- g. to guarantee the regular supervision of the detention conditions and the physical condition of the confined people through an independent body and that the reports issued by such body be sent to the Court, and
- h. to accept the participation of the representatives of the beneficiaries in the process of the design and implementation of the provisional measures.

5. The note of the Secretariat of the Court (hereinafter, the "Secretariat") of December 18, 2007, in which it was requested the Inter-American Commission to inform, no later than December 19, 2007, whether the present issue is related to some request or case in process before the Commission and if the Commission has adopted precautionary measures.

6. The communication of the Commission of December 19, 2007, in which it noted that the instant matter "is not related to any related request or case in process before the Commission; and [...] has neither issued precautionary measures before".

7. The note of the President of the Court (hereinafter, the "President") of December 21, 2007, in which it informed the parties that, considering that from the information provided by the Commission it was clear that the present matter was not in process before the Commission, has determined to bring the request for provisional measures to the attention to the full Court in order for the Tribunal to decide. Without prejudice to the foregoing, it was reminded to the State the general obligations under Article 1(1) of the Convention to respect the rights and freedoms therein established and to ensure to all persons subject to the jurisdiction the free and full exercise of those rights and freedoms and that, regardless of the existence of specific provisional measures, the State has the special obligation to guarantee the rights to every person who is confined. Furthermore, the Court requested the State to submit the observations it deems appropriate regarding the request for provisional measures.

8. The brief of the State of January 10, 2008, in which it pointed out that:

- a) It has adopted measures aimed at the amendment of the constitutional and legal framework in favor of the rights of confined people and the adoption of specific measures that would allow eliminating the situation of violent events in prison;
- b) The Ministry of the People Power for the Domestic Relations and Justice [*Ministerio del Poder Popular para las Relaciones Interiores y Justicia*] is developing the Prison Humanization Plan, which covers the different elements that directly impact on the prison area, among them, education, health, labor, sports, prison infrastructure and human resources;
- c) "The special role of guarantor of the State towards the confined people [...] cannot] held the State responsible for specific events, whenever there is clear evidence of the several and constant measures carried out in order to avoid the repetition of such events";
- d) Taking into account the figures provided by the Inter-American Commission regarding the people that got injured during 2006 and 2007 " it is clear that the number of injured people in 2007 has decreased by near 50%, since in 2006 there have been 198 injured people and in 2007, only 101". Likewise, "by comparing 34 deaths and 153 injured people [...] between October, 1998 and September, 1999 to 26 deaths and 50 injured [...] during 2007, there has been a clear progress of the State as to the control of violence".
- e) During 2007, a total of 1.207 inmates from Rodeo I and 720 inmates from Rodeo II participated in several cultural activities. As to the education section, 779 inmates from Rodeo I and 811 inmates from Rodeo II are actively receiving formal education;
- f) During 2007, 24 new prison guards have been employed in Rodeo I, in order to reach a total of 37 prison guards. As to Rodeo II, 11 new prison guards have been hired in order to have a total of 28 prison guards. The foregoing evidences a relation of 1 prison guard for every 38 inmates in Rodeo I and 1 prison guard for every 30 inmates in Rodeo II, which is contrary to the argument held by the Commission in the sense that there is 1 prison guard for every 100 inmates and,
- g) The State wonders "Is it really urgent the intervention of the Inter-American Court in 2008 to protect the life and integrity of the people confined in the Rodeo Prison and it was not urgent in 1998 when there was 30,76% of more deaths and 206% of more injured people? In this matter "there are no objective conditions that will make a provisional measure appropriate [...], taking into account the important effort done by the State in order to comply with the constitutional obligation to prevent the repetition of violent events in prison".
9. The communication of the Commission of February 1, 2008, in which it was noted that during January, 2008, several violent incidents have been registered in Rodeo, resulting in injured people and the deaths of two inmates. Furthermore, it pointed out that by the end of January, 2008, the prison authorities acknowledged that in the Rodeo Prison, known as the most violent prison in 2007, there are only 54 officers in charge of the custody of 2.380 inmates.

CONSIDERING:

1. That Venezuela has been a State Party to the American Convention since August 9, 1977 and, in accordance with Article 62 thereof, has accepted the binding jurisdiction of the Court on June 24, 1981.

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.

3. That in relation to this issue, Article 25 of the Rules of Procedure establishes that:

[...]

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

[...]

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 the Tribunal confirms that the violent events reported by the Commission in the instant matter are not being discussed in an adversarial proceeding before the Inter-American system (*supra* Having Seen clause six).

5. That his Court, in several occasions, has interpreted that the phrase "case not yet submitted to the Court" as contained in Article 63(2) *in fine* of the American Convention implies, at least, the possibility of bringing the issue, subject-matter of the provisional measures, to the adjudicatory jurisdiction of the Court. That in order for such minimum possibility to exist, the procedure established in Articles 44 and 46 to 48 of the American Convention should have been brought before the Commission.²

6. That, moreover, this Court has established that the provisional measures are not only precautionary but also protective.

7. That the Tribunal considers it is relevant to indicate that the precautionary nature of the provisional measures is connected to the framework of international adversarial cases. In such sense, these measures are intended to preserve those rights, which are at risk until the controversy is finally settled. Its purpose is to ensure the integrity and effectiveness of the decision on the merits and in this way, avoid the litigious rights being impaired, situation which may adversely affect the useful purpose

² *Matter of García Uribe et al.* Request for Provisional Measures regarding Mexico. Order of the Court of February 2, 2006, considering clauses three and four.

of the final decision. The provisional measures make it possible for the State in question, in this sense, to comply with the final decision and, if applicable, to go ahead with the reparations so ordered.

8. That as to the protective nature of the provisional measures, this Court has pointed out that, providing the basic requirements of extreme gravity and urgency as well as avoidance of irreparable damage of people are met, provisional measures are transformed in a true judicial guarantee of precautionary nature, since they protect human rights inasmuch as they are intended to avoid irreparable damage to persons.

9. That the Court considers it is necessary to clarify that, in view of the protective nature of the provisional measures, the Tribunal may order such measures even when there is not exactly an adversarial case in the Inter-American system, in situations that, *prima facie*, may result in a serious and urgent impairment of human rights. Therefore, the Court must make an assessment of the proposed problem, the effectiveness of the State measures regarding the described situation and the degree of lack of protection in which the people requesting the measures would be if such measures are not adopted. In order to achieve such goal it is essential that the Inter-American Commission submits a sufficient ground to comprise the already mentioned criteria and that the State fails to show, in a clear and sufficient way, the effectiveness of the specific measures adopted within the domestic jurisdiction.

10. That the Court cannot, before a request for provisional measures, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons. Such other issues are properly brought before the Court only through contentious cases.³

11. That it is appropriate to remember that Article 1(1) of the Convention establishes the general obligations of the State Parties to respect the rights and freedoms therein enshrined and to ensure the full and free exercise of those rights and freedoms to every person subject to such jurisdiction; such obligations are binding not only on States but also on third parties. This Court has considered that the State is in a special position of guarantor of the people deprived of their liberty in penitentiaries or detention centers, due to the fact that penitentiary authorities exercise total control over them⁴. Furthermore, "[o]ne of the obligations that the State must inevitably

³ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 20, 1998, Considering clause six; *Matter of Castañeda Gutman*. Request for Provisional Measures regarding Mexico. Order of the Court of November 25, 2005, considering clause eight; *Case of Juan Humberto Sánchez*. Provisional Measures regarding Honduras. Order of the Court of February 7, 2006, considering clause seven; *Matter of Luisiana Rios et al.* Provisional Measures regarding Venezuela. Order of the Court of July 3, 2007, considering clause nine; and *Matter of "Globovisión" Television Station*. Provisional Measures regarding Venezuela. Order of the Court of November 21, 2007, Considering clause four.

⁴ Cf. *Matter of Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Court of June 18, 2002, considering clause six and eight; *Matter of Children Deprived of Liberty in "Complexo do Tatuapé" of FEBEM*. Provisional Measures regarding Brazil. Order of the Court of July 3, 2007; considering clause six; *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures regarding Venezuela. Order of the Court of March 30, 2006, considering clause nine; and *Matter of the Mendoza Prisons*. Provisional Measures Regarding Argentina. Order of the Court of November 22, 2004, Considering clause six.

assume in its position as guarantor, and in order to protect and guarantee the right to life and physical integrity of those deprived of liberty, is that of [seeking] them the minimum conditions compatible with their dignity as they remain in detention centers.”⁵ Thus, regardless of the existence of specific provisional measures, the State is especially obliged to guarantee the rights of the people in circumstances of deprivation of liberty.⁶

12. That the Court, within its adjudicatory jurisdiction, tried the case of *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*,⁷ in which it held the State responsible for the prison conditions of such premises and ordered, *inter alia*, that:

145. [...] as a guarantee of non-repetition, the State [must], within a reasonable time, take all necessary actions to allow prison conditions to conform to international standards.

146. In particular, the State must guarantee that the living conditions of the inmates are the result of the respect due to their dignity as human beings; including, *inter alia*: a) bed space that meets minimum standards; b) accommodation which is ventilated and naturally lit; c) regular access to clean toilets and showers securing toilet privacy; d) adequate, timely and sufficient food and health care; and e) access to educational, employment and other opportunities to assist inmates towards a law abiding and self supporting life.

13. That, apart from the mentioned case, the situation of three Venezuelan prisons have been brought to the Court’s attention (*Yare I and Yare II Capital Region Penitentiary Center, Monagas Judicial Confinement Center “La Pica” and the Penitentiary Center of the Central Occidental Region “Uribana Prison”*), with regard to which the Tribunal has considered relevant to order provisional measures. These matters present situations similar to the one shown by the Commission in the Rodeo Prison.

14. That according to the information provided by the Commission in this matter, the assessment made by the Tribunal regarding the three Venezuelan prisons with regard to which it has ordered provisional measures and above all, the decision of the Court in the contentious case at issue (*supra* Considering clause twelve), the situation in the Rodeo Prison makes it necessary that, while the State makes the appropriate adjustments to deal with the structural problems, the persons confined in such premises who are being affected by such flaws, be protected by provisional measures if their condition is of extreme seriousness and urgency.

15. That in view of the principle of subsidiarity informed by the Inter-American System of human rights, an order for the adoption of provisional measures under Article 63(2) of the American Convention is justified in situations of extreme seriousness and urgency and before the possibility of causing irreparable damage to persons, with regard to whom the existing ordinary guarantees of the State turn out to

⁵ Cf. *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Preliminary Objections, Merits, Reparations and costs. Judgment of September 2, 2004. Series C No. 112, para. 159; *Matter of the Mendoza Prisons*, *supra* note 4; considering clause ten; *Matter of Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Court of September 21, 2005, considering clause six ; *Matter of Children Deprived of Liberty in “Complexo do Tatuapé” of FEBEM*. Provisional Measures regarding Brazil. Order of the Court of November 30, 2005, Considering clause seven.

⁶ Cf. *Matter of Mendoza Prisons* Provisional Measures Regarding Argentina. Order of the President of the Court of August 22, 2007, Considering clause six.

⁷ Cf. *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*. Merits, Reparations and Costs. Judgment of July 5, 2006. Series C N°. 150.

be insufficient or not effective, or in such situations where the domestic authorities can not or do not want to make them prevail.⁸

16. That even when the Court considers that the measures adopted by the State are relevant (*supra* Having Seen clause eight), it deems that, for the time being, such measures are not sufficient to prevent more people from dying or getting injured in the Rodeo Prison. That, furthermore, in view of the high volume of deaths and injuries in this prison, the Tribunal considers that the international protection is urgent and the protective nature of the provisional measures is gaining importance.

17. That, in matters similar to the instant case, the extreme seriousness of the threat should be assessed taking into account the specific context, since it is clear that if the fundamental rights such as the right to life and physical integrity are subjected to such type of threat, an order for provisional measures should be considered.

18. That the urgency refers to special and exceptional situations that deserve an immediate measure and response aimed at averting the threat. These are circumstances that because of their own nature imply an imminent risk. The nature of the response to repair the situation derives from the urgency of the threat. This should imply, above all, an immediate and, in principle, of short duration measure in order to face with such situation, since a lack of response would mean a danger *per se*.

19. As is evident in the instant case, the irreparable nature of the extremely serious and urgent threat has to do with the right to life and physical integrity that the Court has the obligation to protect whenever there are circumstances such as the ones described in Article 63(2).

20. That, based on the foregoing, it is necessary to protect the inmates of the Rodeo Prison through the immediate adoption of provisional measures by the State. The necessary measures to be adopted should efficiently prevent people from dying or getting physically injured.

21. That, despite the fact that the Court has deemed, in similar cases, it is essential to individually identify the people who are in danger of suffering an irreparable damage in order to issue protective measures,⁹ in other cases, the Tribunal has issued provisional measures in favor of people who have not been already individualized but can be determined and identified and are in danger of suffering an irreparable damage due to the fact that they belong to a group or community,¹⁰ such as the people who

⁸ Cf. *Matter of the Mendoza Prisons*, *supra* note six; considering clause fourteen.

⁹ Cf. *Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic*. Provisional Measures regarding the Dominican Republic. Order of the President of the Court of September 14, 2000; considering clause four; and *Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic*. Provisional Measures regarding the Dominican Republic. Order of the Court of August 18, 2000, Considering clause eight.

¹⁰ Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center*, *supra* note 4; considering clause eight; *Matter of Children Deprived of Liberty in "Complejo do Tatuapé" of FEBEM*; *supra* note 4; considering clause six; *Matter of Pueblo Indigena de Sarayaku*. Provisional Measures regarding Ecuador. Order of the

are confined in a detention center.¹¹ In the instant matter, the possible beneficiaries are identifiable since they are people who are confined or could be admitted as inmates in the future.

22. That the adoption of these provisional measures does not entail a decision on the merits of the controversy,¹² nor does it decide on the state responsibility for the events informed by the Commission.

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 order the State to adopt the provisional measures necessary to protect the life and physical integrity of all the people confined in Capital Judicial Confinement Center Rodeo I and Rodeo II, especially, in order to prevent injuries and violent deaths.

2. To request the State to submit, no later than April 1, 2008, to the Inter-American Court of Human Rights a first report on the provisional measures it has adopted pursuant to this Order and request the representatives of the beneficiaries and the Inter-American Commission on Human Rights to submit observations to such report within the term of four and six weeks, respectively, as from the notice of receipt of the State 's report.

3. To request the State to continue informing to the Inter-American Court of Human Rights, after submitting the report mentioned in the above paragraph, every two months, on the provisional measures adopted and to request the representatives of the beneficiaries and the Inter-American Commission on Human Rights to submit

Court of July 6, 2004; considering clause nine; *Matter of Pueblo Indígena de Kankuamo*. Provisional Measures Regarding Colombia Order of the Court of July 5, 2004, considering clause nine; and *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures Regarding Colombia Order of the Court of March 6, 2003; considering clause nine; *Matter of the Peace Community of San José de Apartadó*. Provisional Measures Regarding Colombia Order of the Court of June 18, 2002; considering clause eight; and *Matter of the Mendoza Prisons*, supra note 4; considering clause thirteen.

¹¹ Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center*, supra note 4; considering clause eight; *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Order of the Court of July 6, 2004; considering clause eight; *Matter of the Children Deprived of Liberty in "Complexo do Tatuapé" of FEBEM*; supra note 4; considering clause six and *Matter of the Mendoza Prisons*, supra note 2; considering clause thirteen.

¹² Cf. *Case of Guerrero Gallucci and Martinez Barrios*. Provisional Measures regarding Venezuela. Order of the Court of July 4, 2006, considering clause fourteen; and *Matter of "Globovisión" Television Station*. Provisional Measures regarding Venezuela. Order of the Court of January 29, 2008, Considering clause thirteen.

their comments within four and six weeks, respectively, as from notice of the State's report.

4. To require the Secretariat of the Court to notify this Order to the State of Venezuela, the Inter-American Commission on Human Rights and the representatives of the beneficiaries of these measures.

Judge Sergio García Ramírez informed the Court on his Separate Opinion, which is attached to this Order. Judge Cecilia Medina Quiroga informed the Court on her adherence to the Opinion of Judge Sergio García Ramírez.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

Separate Opinion of Judge Sergio García Ramírez
With regard to the
Order of The Inter-American Court of Human Rights
of February 8, 2008
Regarding the Matter of Rodeo I and Rodeo II Capital Judicial Confinement
Center

1. I concur with the adoption of provisional measures regarding the inmates of the judicial confinement centers of Rodeo I and Rodeo II, by means of Order of February 8, 2008, to which I add this *Opinion*. The Court analyzed, in the considering clauses of such Order, several issues concerning the provisional measures that the Court orders according to its conventional authority. The points of view that I now present include opinions that I have expressed, repeatedly, on numerous occasions.

2. The characteristics of the case (or matter) regarding these measures contribute to the analysis made by the Court and the exposition of criteria to which later on I shall refer. Thus,

a) It is about a group of inmates living at confinement centers, not isolated persons whose rights are at risk;

b) The Commission, party who requested these measures, has taken into account frequent violent acts committed against inmates of the Rodeo Prison concerning essential rights of the human being, such as the right to life and integrity, that must be protected by means of specific and direct measures.

c) The existence of acts of this nature and the adoption of measures intended to protect the corresponding rights do not exclude the possible commission of other type of violations (to a greater or lesser extent related to such) that needs to take care of by means of several public measures; and

d) The matter has still not been brought to, by means of the application (or presentation of the case), the (adversarial) attention of the Court.

3. The Order to which I add this Opinion recognizes that the Inter-American Court may adopt specific binding judicial decisions with regard to problems that are not adversarial (according to the general characterization adopted in that sense) and let alone, that constitute requests (consultation) for opinion.

4. The Court exercises, then, several judicial authorities other than the commonly called consultative and contentious authority. In the exercise of such authority, the Court delivers its opinion regarding issues that are still not following the formal road of the Inter-American judicial process (preventive authority) or orders certain acts regarding the compliance with the final decisions so ordered as completion of such procedure (executive or compliance authority) (cf. my assessment of these authorities in García Ramírez, Sergio, *The Inter-American Jurisdiction of Human Rights Studies*, Human Rights Commission of the Federal District, Mexico, 2006, sp. Pag. 87 and s., 136-137 and 246- 247).

5. If there is the need, noticed by the Inter-American Commission, of protecting the rights at risk, but the issue has still not been brought to the Court's attention,

initiating, in this way, the *procedural dispute* (the substantial *contentious case* is previous and underlying to such) it is not possible to hold that the Tribunal exercises a contentious competence identical to the one that shows when the Commission brings the controversy before the Court. This difference allows identifying the kind of precautionary judicial authority I have already mentioned.

6. The foregoing does not modify the radical identity in the design of the measures adopted by the Court in the several cases that it hears: To protect the rights of the people, by means of the preservation of the legally protected interest at risk. The precautionary measures the Inter-American Commission orders have, in effect, the same design.

7. In the Order corresponding to the inmates of the Rodeo Prison, to which this Opinion refers, the Court tries to determine the scope of its ideas regarding the cautionary and protective nature of the provisional measures. When doing so, the Court shows the delimitation (projected towards the entity and the specific purposes of the measures) that is possible to establish between the jurisdiction it has when an issue is being processed before the Commission and when the merits of the issue are being considered by the Court, within an adversarial procedure.

8. The Tribunal deems that the "precautionary nature of the provisional measures is related to the framework of international adversarial cases" and to the preservation of such and the execution of the Judgment delivered by the Court (Considering clause seven). Instead, the "protective nature" of the measures implies "a true judicial guarantee of preventive nature, inasmuch as they protect human rights, to the extent that they are intended to avoid irreparable damage to people" (considering clause eight).

9. In general terms, I share that effort of conceptual precision that contributes to making progress in the awareness of international judicial protection of human rights. My own analysis of the criteria invoked in the aforesaid paragraph leads me to consider that this is more an issue of emphasis than an essential matter. In effect, I believe that, in any case, there is a protective (protection of human rights) and cautionary (preservation of the suit at law) purpose.

10. When measures are ordered in contentious cases, the precautionary purpose becomes certain (according to the commonly known characterization of such), but there can be doubts when dealing with measures ordered in cases that are still being tried by the Commission. Nonetheless, such cases have- in my opinion- a precautionary purpose and result: to protect the suit at law that eventually will be brought before the Court, as well as the effect of the final decision resulting from such case; and even to protect the proceedings initiated before the own Inter-American Commission that would face with additional complications, or become unsuccessful (since the practical point of view that deeply interests the private parties) if such violations were committed.

11. The Court has emphasized the need, absolutely inherent to the matter, of carefully analyzing the extreme seriousness and urgency of the risk hanging over the right, as well as the possibility of causing irreparable damage to people, grounds on which the adoption of measures are based on. In terms of the Convention, these are advisable in "limit" situations whenever those circumstances arise. Clearly, the decision of the Court can be provided in *prima facie* weighing -- due to lack of conclusive evidence, as frequently occurs-- and can and should "assess (the extreme seriousness

of the threat and the characteristics and perspectives of such) taking into account the specific context".

12. It is evident that the "purpose of 'avoidance of irreparable damage' (and even – I add – extreme seriousness and urgency) is often related to the nature and content of the rights under threat". From this, it is naturally that the Court emphasizes on the protection of life and integrity. Nevertheless, it is not convenient to exclude the possibility of ordering measures (based on the same situations of extreme seriousness, urgency and possible irreparable damage, that would be analyzed in kind) in the hypothesis of other rights, whenever there are determining conditions. The Court has delivered an opinion regarding this issue on a previous occasion.

13. As a member of the Inter-American Court I have taken part of hearing an increasing number of cases concerning people deprived of liberty in situations of extreme seriousness which call for urgent assistance and which may result in irreparable damage for those people. In the last years, the number of requests for provisional measures related to prison problems in American countries has increased. This issue, so relevant and disturbing, has been subject-matter of special designation by the Court before political bodies of the OAS:

14. Every time I have taken part in this kind of issues, as member or as President of the Inter-American Court, in public hearings or through written opinions, I have made emphasis on the absolute need for the State to provide immediate and effective protection to the life and integrity of the inmates. These are the interests and rights that are at greater risk in confinement situations. From that the expression: "to prevent even one more death ..." (cf. my opinions corresponding to provisional measures ordered in favor of inmates, in *Provisional Measures regarding Urso Branco Prison (Brazil)* of July 4, 2004, in García Ramírez, *Issues of the Inter-American case-law on human rights*. Private Opinions, ITESO, Guadalajara/Universidad Iberoamericana, Puebla/Universidad Iberoamericana, Ciudad de Mexico/ Universidad Autónoma de Guanajuato, Guadalajara, México, 2005. p. 367 and subs.)

15. There is no and should be any reason for the State to elude from the urgent duty to protect the life and integrity of individuals who are subjected to its immediate, complete and constant control and lack, by themselves, for the effective ability of self-determination and defense.

16. In "total institutions" where a person's liberty is *de jure* and *de facto* abolished – or radically limited --, the role of guarantor of the State is particularly intense (role that comprises, in kind, recognition, respect and guarantee). From there that it is reasonable to require that the State must avoid, immediately and absolutely, losing human lives as a consequence of violent conditions ruling in prisons, as the result of a direct action by State's agents, or as actions of other people, that the State should avoid and prevent.

17. I consider it is appropriate that the Court has consolidated the judicial control over the provisional measures in the matter of *El Rodeo* precisely on those measures "that may be necessary to protect the life and integrity of all the people deprived of liberty" in whatever confinement premises, without mentioning this time -- as I have done on other occasions -- a large relation of provisions regarding the prison system. These measures have full justification, but it will be difficult to apply them in an immediate and radical manner, as it should be in order to protect the life and integrity of inmates, subjected to serious threats that call for urgent assistance.

18. Clearly, the preservation of the rights of those people deprived of liberty and the elimination of the intolerable violence that exists in many prisons, are related to a full, deep and effective reorganization -- not limited to legal reforms and official debates --, of the preventive custody and prison system that would require, besides, a profound consideration of its frequency and manner of application and substitution.

19. The protection of life and integrity constitutes one of the focusing centers of the protection of human rights in prisons that comprise, apart from the measures that strictly lead to the preservation of such interests, all those measures that are intended to guarantee the respect for the human dignity of the inmates and the achievement of the goals that are supposed to be achieved through the confinement of the convicts. But the issues related to the major pending amendment and its characteristics are typical of a Judgment of the Court and not of provisional measures, taking into account the nature and scope -- provisional and physical -- of one and the others.

20. All of this leads to reconsider the true matter of the provisional measures, taking into account its nature and its possible efficacy. They were designed to face urgent, immediate and imminent problems, through decisions and measures that cannot be postponed. These measures do not always seem to be the most suitable way to deal with structural and fundamental problems that offer several answers and call for multiple, complex and insisting measures in the short, medium and long- run. Therefore, it is essential to point out, as the Court has done it, that while the State makes the appropriate adjustments to deal with the structural problems (in the matter of prisons), the persons confined in such premises (Rodeo I and II) who are being affected by such flaws, be protected by provisional measures (...)” (Consid. cl. 14).

21. Clearly, I am not suggesting the adoption of strict and immutable criteria in relation to the issue I referred to in the above paragraph. The circumstances will tell what it is advisable according to the specific situation and the uniform project of providing effective --not just assertive -- protection to persons.

22. Obviously, the fact that the Court lay emphasis now on the protection of life and integrity does not forbids nor intends to question, of course, the entry into force or the efficacy of the measures previously adopted in other cases, according to their own circumstances and the development of the case-law of the Inter-American Tribunal.

Sergio García Ramírez
Judge

Pablo Saavedra Alessandri
Secretary

Judge Cecilia Medina Quiroga informed the Court on her adherence to the Opinion of Judge Sergio García Ramírez, in the following terms:

I concur with Considering Clauses 11, 12 and 15 to 22 of the Opinion of Judge García Ramírez. I have not yet fully considered the topic in order to concur with the argument raised with regard to the type of competence that the Court exercises when ordering provisional measures.

Cecilia Medina Quiroga
Judge

Pablo Saavedra Alessandri
Secretary