

**Order of the
Inter-American Court of Human Rights
of November 25, 2008**

**Provisional Measures
With regard to Brazil**

**Matter of the Persons Imprisoned
in the “Dr. Sebastião Martins Silveira” Penitentiary
in Araraquara, São Paulo**

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter, “the Inter-American Court” or “the Court”) of July 28, 2006, and the Order of the Court of September 30, 2006, whereby it decided:

1. To ratify in all its terms the Order of the President of the Inter-American Court of Human Rights, and therefore, to request the State to keep the measures that have already been adopted, and to adopt immediately those measures that may be necessary in order to protect the lives and personal integrity of those persons for whose benefit the adoption of protective measures was ordered on July 28, 2006 while they were detained in the Araraquara Penitentiary.

2. To request the State to adopt any measures that may be necessary to secure that the management and treatment of the beneficiaries of the instant measures be carried out with a strict respect for human rights, and preventing unduly violent acts by state officers, pursuant to Considering clause No. 16.

3. To request the State to keep and adopt any measures that may be necessary in order to provide decent detention conditions in the penitentiary centers where the beneficiaries of the instant measures are detained. The said measures must include: a) necessary medical assistance, particularly to those who suffer from contagious diseases or those who suffer a serious medical condition; b) provision of sufficient amounts of food, clothes and products for personal hygiene; c) detention avoiding overcrowding; d) division of inmates into different categories according to international standards; e) visits of the next of kin for the beneficiaries of the instant measures; f) access and communication of the defense attorneys to the detainees, and g) access of the representatives to the beneficiaries of the instant provisional measures.

4. To request the State to immediately and officially inform next of kin about the referrals and relocation in other penitentiary centers of those persons deprived of their liberty that are beneficiaries of the instant measures, pursuant to Considering clause No. 22.

5. To request the State to specifically inform the Court about the current situation of the beneficiaries of the instant measures who were detained at the Araraquara Penitentiary on July 28, 2006.

6. To request the State to investigate the facts that have given rise to the adoption of the provisional measures, identify those responsible therefor, and as the case may be, impose the pertinent sanctions.

[...]

2. The first to fifth reports and the appendixes thereto, filed between December 14, 2006 and April 23, 2008, whereby the Federative Republic of Brazil (hereinafter, "the State" or "Brazil") reported on the actions taken thus far in connection with the provisional measures the Court ordered in this matter.

3. The briefs submitted by the representatives of the beneficiaries of these provisional measures (hereinafter, "the representatives") between November 22, 2006, and April 22, 2008, whereby they expressed their comments on the State's reports.

4. The briefs submitted by the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission") between May 15, 2007 and May 13, 2008, whereby the Commission expressed its comments on the State's reports, as well as on the comments submitted by the representatives.

5. The Order issued by the President of the Court on June 10, 2008, in consultation with the other members of the Court, whereby it was decided to call the parties to a public hearing to be held on August 13, 2008 in the city of Montevideo, in the Oriental Republic of Uruguay, during the XXXV Special Session, in order for the Court to hear their arguments on the provisional measures ordered in this matter.

6. The Order of the Inter-American Court of August 8, 2008, whereby a decision was made to commission Judges Diego García-Sayán, acting President of the Court, Sergio García-Ramírez, Manuel E. Ventura-Robles, Leonardo A. Franco, Margarete May Macaulay and Rhadys Abreu-Blondet to attend the public hearing on this matter. Pursuant to Considering clause No. 3 of said Order, "the Judges of the Inter-American Court seating in this [matter] shall continue to hear the case through its resolution, notwithstanding their participation in the hearing."

7. The public hearing on these provisional measures, which was held on August 13, 2008;¹ the oral arguments delivered by the parties at said hearing, and the August 13, 2008 brief and appendixes 1 and 2 thereto, submitted by the State at the hearing.

8. The brief of September 4, 2008, by means of which the State submitted appendixes 3 to 7 to the August 13, 2008 report (*supra* Having Seen clause No. 7), which had not yet been filed with the Secretariat of the Court.

9. The brief of September 12, 2008, and the appendixes thereto, whereby the representatives expressed their comments on the written information submitted by the State at the public hearing, and provided additional information in response to the request made by the acting President of the Court at the public hearing (*supra* Having Seen clause No. 7).

¹ This hearing was attended by: a) For the Inter-American Commission: Juan Pablo Albán-Alencastro and Lilly Ching-Soto; b) for the State of Brazil: Paulo Vannucci, Marcia Ulstra, Cristina Timponi-Cambiaghi, Bartira Meira Ramos-Nagado, Ana Lucy Gentil-Cabral-Peterson, Nathanael de Souza e Silva, Marcos Fábio de Oliveira-Nusdeo, Berenice Maria Giannella and Antonio Ferreira-Pinto; and, c) for the representatives of the beneficiaries: Tiane Gaspar Temoteo and Adriane Loche.

10. The brief of September 16, 2008, and the appendixes thereto, whereby the State provided additional information in response to the request made by the acting President of the Court at the public hearing (*supra* Having Seen clause No. 7).

11. The brief of September 30, 2008, and the appendixes thereto, whereby the representatives provided information regarding their request to the Inter-American Commission for provisional measures, in connection with the persons detained at the "Orlando Brando Filinto" Penitentiary in Iaras, São Paulo, including twenty beneficiaries of these measures.

12. The brief of October 17, 2008, whereby the representatives provided their comments on the additional information submitted by the State on September 16, 2008 (*supra* Having Seen clause No. 10).

13. The brief of November 24, 2008, submitted after the deadline extension granted by the President of the Court through November 1, 2008, whereby the Inter-American Commission provided its comments on the State's report of September 16, 2008, and the representatives' comments on compliance with said measures (*supra* Having Seen clauses Nos. 10 and 12).

CONSIDERING:

1. That Brazil has been a State Party to the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") since September 25, 1992, and it recognized the contentious jurisdiction of the Court on December 10, 1998, in accordance with Article 62 of the Convention.

2. That Article 63(2) of the American Convention provides that, in "cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may, in matters not yet submitted to it, adopt such provisional measures as it deems pertinent at the Commission's request.

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

1. At any stage of the proceeding 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 whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. That the American Convention allows the Court to order States to adopt provisional measures, provided, however, that there is a situation of extreme gravity and urgency creating a risk of irreparable damage to persons. The jurisdiction of the Court as far as provisional measures are concerned is not necessarily restricted to a case concerning measures before the Inter-American Commission –since, under certain circumstances, the Court has acknowledged the protective, rather than merely

preventive, nature of said measures—² nor is it limited by the type of rights that are at stake.³ The Court's jurisdiction is, however, necessarily dependent on the existence of a situation of gravity and urgency that creates a risk of irreparable damage to human rights.

5. That, considering its jurisdiction, when ruling on provisional measures the Court is to consider only arguments which relate strictly and directly to the extreme gravity and urgency and the need to avoid irreparable damage to persons. Accordingly, in deciding whether to maintain provisional measures in force, the Court is required to analyze whether the situation of extreme gravity and urgency that led to their adoption in the first place still exists, or whether there are new circumstances that are equally grave and urgent which require that the measures remain in full force and effect. Any other matter may only be brought before the Court via the relevant contentious proceedings.⁴

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6. That, in its Order of July 28, 2006, the President of the Court stated that “the background information provided by the Commission in this [matter] show[ed], *prima facie*, that [...] a situation of extreme gravity and urgency prevail[ed] at the Araraquara Penitentiary, such that the inmates' life and integrity were vulnerable and at serious risk,” which caused him to order that their life and personal integrity be urgently protected.⁵ Given that the above-described situation persisted, through the order of September 30, 2006 the Court insisted on its order that the State adopt measures for the protection of the beneficiaries (*supra* Having Seen clause No. 1).

7. That the events that have taken place since the issue of the Order of the President of the Court in this matter on July 28, 2006 warrant an analysis of the current situation of the beneficiaries and the issue of this Order.

² Cf. *Matter of the Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, seventh to ninth considering clauses; and *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of May 2, 2008, fourth considering clause.

³ Cf. *Matter of Luisiana Rios et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of September 12, 2005, first and second operative paragraphs; and *Matter of the Urso Branco Prison*, *supra* note 2, fourth considering clause.

⁴ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 20, 1998, sixth considering clause; *Matter of the Urso Branco Prison*, *supra* note 2, fifth considering clause; and *Matter of the Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* nota 2, tenth considering clause.

⁵ Cf. *Matter of the persons imprisoned in the "Dr. Sebastião Martins de Oliveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures regarding Brazil. Decision of the President of the Inter-American Court of Human Rights of July 28, 2006, thirteenth considering clause.

8. That the State reported that the events that took place at the “Dr. Sebastião Martins Oliveira” Penitentiary (hereinafter, “the Araraquara Penitentiary”, “the Penitentiary” or “Araraquara”) on July 16, 2006 came about in a context of violence that first struck the previous month in the state of São Paulo. On May 12, 2006, a criminal organization coordinated riots in 74 penitentiaries, 19 of which were virtually destroyed; also, outside of the detention centers, attacks were perpetrated on police stations and other state buildings, and buses were set on fire. Among other consequences, such actions caused the destruction of housing for 25,000 prison inmates in the state of São Paulo. The Military Police took effective action to control the riots, with no fatal casualties to report. The riot of June 16, 2006 left the Araraquara Penitentiary virtually destroyed. The Penitentiary housed 1,200 inmates, who the State was already attempting to transfer to other prison facilities as a consequence of the May 12, 2006 riot. Given the crisis in the Sao Paulo prison system, it was impossible to transfer the inmates to other establishments right away; therefore, a decision was made to initially keep the beneficiaries at the annex of the Araraquara Penitentiary, as all cell doors and locks had been destroyed.

9. That, in order to start the reform at the Araraquara Penitentiary, the State transferred the beneficiaries to other prisons in a responsible, gradual manner, in groups of one hundred inmates each week, giving priority to inmates who were undergoing medical treatment, as per a schedule approved by the Judiciary of São Paulo and widely publicized by the Brazilian press. For the transfers, the State considered those detention centers which offered the best conditions for the inmates to serve their sentences; personal relocation requests, and proximity to the inmates’ families. On September 20, 2006, the transfer of all inmates was completed without any death or attack on the personal integrity of the beneficiaries.

10. That the Araraquara Penitentiary’s reconstruction and reform process was completed less than one year after the riot, and demanded an investment of USD 10 million. Currently, the Penitentiary operates within its capacity, housing 1,500 people. Of the 1,200 original beneficiaries, 732 are still detained in prisons in the State of São Paulo;⁶ 54 remain in Araraquara, and the rest are housed in 72 other prisons. Brazil argued that it has ensured the protection of the life and physical integrity of the beneficiaries, even in the face of the extreme situation created by the riots in May and June of 2006, and that the situation which led to the adoption of these provisional measures has already ended. Lastly, the State provided the Court with lists containing the names of the beneficiaries, the facilities where they are currently detained, individual medical reports, and records of visitations to the beneficiaries, among other information.

11. That, lastly, as regards the beneficiaries’ current situation, the State expressed, *inter alia*, that all correctional facilities administrated by the Secretariat of Penitentiary Administration of the State of São Paulo (hereinafter, the “Secretariat of Penitentiary Administration”, or “SAP”) have a Social Reintegration and Health Care Center; that visitations by family members, attorneys and representatives were not suspended, but merely restricted as a result of the riot. As regards the investigation of

⁶ The State noted that 279 beneficiaries were released by a court order; 117 were placed in home confinement to serve the remainder of their sentences; 65 broke out of the centers where they were imprisoned; 1 was relocated to a different state in the Federation, and 6 passed away.

the facts, a proceeding was initiated to look into the possible involvement of penitentiary officers in the riot. Such investigation found no conclusive evidence of officers being involved, and identified 67 inmates who took part in the events; these inmates were subjected to a preliminary proceeding that led to the transfer of the movement's leaders and the application of the appropriate legal penalties. As regards the issue of prison overcrowding, Brazil stated that this is a problem that calls for medium- and long-term action on the part of the State, and that the situation became much worse after the riots of May and June 2006. However, it pointed out that, in less than one year, almost all prison beds were recovered and the Araraquara Penitentiary was completely rebuilt. Moreover, "the [SAP] is implementing a plan for the construction of 44 new correctional facilities between 2008 and 2011", to create the capacity to house 41,000 new inmates, which "will help put an end to prison overcrowding in the state [of São Paulo];"

12. That the representatives noted that, in spite of the improvements at the Araraquara Penitentiary, which has become a model facility, the information provided by the State is not sufficiently clear to allow an analysis of the current situation of the beneficiaries at the detention centers to which they were transferred. They expressed that the State merely transferred the inmates to other penitentiaries, and that the provisional measures at issue here were ordered to protect certain persons, which is why they should continue to do so irrespective of the facility they are detained at, as long as they remain in the State's custody. The information provided by the State regarding the number of detention centers and which specific detention centers some of the beneficiaries were transferred to is inconsistent and outdated, as verified through the representatives' visits to some prisons. Also, they are unaware of whether such new transfers were notified to the beneficiaries' next of kin.

13. In addition, the representatives provided specific information regarding some of the prisons to which certain beneficiaries were transferred,⁷ and noted that the number of health professionals in some of them is insufficient, that there are problems with family visitations, food-quality problems, and problems with the supply of clothes and hygiene products, among other issues. As to the subject of overcrowding, they noted that the State failed to indicate the capacity of the prisons to which the beneficiaries were transferred and the number of inmates currently housed at said prisons. They pointed out that the number of inmates housed in São Paulo prisons increases on a daily basis, and the State's sole response has been to promise to have new detention facilities built. In this regard, the representatives provided information which apparently points to overcrowding in certain prisons. Lastly, as regards the investigation of the facts, they noted that the State was aware of the inhumane detention conditions at the Penitentiary prior to the 2006 riots. Accordingly, arguing that an administrative investigation concluded that the corrections officials were not responsible for the events that took place at the Penitentiary is not an admissible justification. Moreover, no investigation was conducted either into the responsibility of state officers for the inhumane and degrading conditions to which the beneficiaries were subjected while locked in the Araraquara yard. Lastly, the representatives

⁷ The representatives provided information regarding the *Pacaembu*, *Araraquara*, *Lucélia*, *Avaré*, *Itirapina*, *Riolândia*, *Junqueirópolis* and *São José do Rio Preto* prisons; such information was obtained by way of visits to said facilities and/or from the files of cases No. 008/2007 and No. 23/2007 of the corrections authority, pending before the Court of Criminal Enforcement of Tupã, São Paulo.

requested that the provisional measures be maintained as regards those beneficiaries who are housed at overcrowded units.

14. That the Commission stated that it is not unaware of the context in which the events that led to the adoption of these measures took place, but it does not consider that the State acted appropriately in promoting the confinement of inmates in a reduced section of the Penitentiary where they were held in complete isolation. It also argued that “there is no question that the [Araraquara Penitentiary] has become a very modern penitentiary, [and] that inmates currently housed in said institution live in much better conditions” than those endured by the beneficiaries at the time the measures were ordered. However, the Commission expressed its concern over the unavailability of accurate data sufficient for an analysis of the actions taken to protect the life and integrity of the beneficiaries at the centers to which they were transferred, and to avoid the undue use of force on the part of security officers. In this regard, even though Brazil identified the facilities to which the beneficiaries were transferred, no specific information has been made available regarding the conditions of detention at said prisons. In the Commission’s opinion, it is necessary to carefully examine the situation of those inmates who are still subject to the measures of protection in order to determine whether the order of the Court has been effectively complied with; accordingly, accurate information regarding the current situation of the beneficiaries is necessary in order to analyze the State’s request to lift the measures. Lastly, the Commission argued that no information has been provided on the progress made in the investigations of the facts that led to the adoption of these measures.

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15. That, towards all persons subject to its jurisdiction, the State has the general obligation to respect and guarantee the full enjoyment and exercise of their rights; such obligations apply not only in connection with the State’s authority but also relative to the actions of private third-parties. Special duties derive from these general obligations which are ascertainable on the basis of the protection needed by the individual who is the subject of the right, either on account of his personal situation or of the specific circumstances pertinent thereto,⁸ as is the case with detention. The Court has emphasized the special role of the State as a guarantor of the rights of detained persons, considering the special relationship of subjection between inmate and State. In said situation, the general state duty to respect and guarantee human rights takes on a special connotation that requires that the State provide inmates, “in order to protect and ensure [their] right to life and [...] to humane treatment, [...], with the minimum conditions befitting their dignity as human beings, for as long as they are interned in a detention facility.”⁹

⁸ Cf. *Case of the Pueblo Bello Massacre v. Colombia Merits, Reparations and Costs*. Judgment of the Inter-American Court of Human Rights of January 31, 2006, Series C No. 140, para. 111; *Matter of the Urso Branco Prison*, *supra* note 2, nineteenth considering clause; and *Case of Albán-Conejo et al. Merits, Reparations and Costs*. Judgment of the Inter-American Court of Human Rights of November 22, 2007, Series C No. 171, para. 120.

⁹ Cf. *Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of the Inter-American Court of Human Rights of September 2, 2004,

16. That, when faced with a request for provisional measures, the Court cannot consider the merits of any argument other than those strictly related to the extreme gravity, urgency and need to avoid irreparable damage to persons. Any other matter may be brought before the Court only through contentious proceedings or via requests for advisory opinions.¹⁰

17. That provisional measures are exceptional in nature, are ordered based on the need for protection and, once ordered, must be maintained in force if the Court considers that the basic requirements of the situation of extreme gravity and urgency, and the need to avoid irreparable damage to the rights of the persons protected by said measures still exist.¹¹

18. That this Court has taken note of the fact that the improvement and rectification of the situation at the Araraquara Penitentiary following the June 2006 riot demanded that the State adopt several measures to deal with the problems that affected said penitentiary's inmates.

19. That the Court notes that, over the past two years, among other actions the State has transferred the 1,200 beneficiaries to several penitentiaries without incident, in order to be able to proceed with the reform works at the facility; among other factors, proximity to the inmates' families was taken into consideration for the relocation of the beneficiaries.

20. That the State carried out the reconstruction of the entire Araraquara Penitentiary, which is now operating within its intended capacity.

21. That, in addition and among other measures, the State adopted a plan for the construction of new penitentiaries with a view to curbing the problem of prison overcrowding in the state of Sao Paulo; on the other hand, it guaranteed the representatives' access to the detention centers, and communications with and visitations by the beneficiaries' family members and attorneys.

22. That, in addition, the State has complied with its duty to periodically report to the Court on the steps taken to implement these measures, submitting the list of

Series C No. 112, para. 159; *Matter of the Urso Branco Prison*, *supra* note 2, nineteenth considering clause; and *Matter of the Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 2, eleventh considering clause.

¹⁰ Cf. *Matter of James et al*, *supra* note 4, sixth considering clause; *Matter of the Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 2, tenth considering clause, and *Matter of the "Globovisión" Television Station*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 21, 2007, fourteenth considering clause.

¹¹ Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of March 14, 2001, third considering clause; *Case of Carlos Nieto-Palma et al*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 5, 2008, sixteenth considering paragraph; and *Case of the Mapiripán Massacre*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of May 3, 2008, seventh considering clause.

beneficiaries who were still detained, individual health reports and information regarding the detention centers to which they were transferred.

23. That the Court appreciates the effort made by the State and considers that the facts that led to the adoption of these measures for the benefit of certain persons who were then detained at the Araraquara Penitentiary have already come to an end. This conclusion remains unaffected by the elements provided in this proceeding on provisional measures, regarding those beneficiaries who were transferred and are detained at other prison facilities.

24. That the Court values the work carried out by the civil organizations which provided information and comments while these provisional measures were in force, and emphasizes how important it is for the State to continue to guarantee access to the detention centers by the representatives of said organizations.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

based on Article 63(2) of the American Convention on Human Rights and in use of the attributions conferred upon it by Article 25 of its Rules of Procedure,

DECIDES:

1. To rescind the provisional measures ordered by the Inter-American Court of Human Rights through its Orders of July 28, 2006 and September 30, 2006, with respect to the persons detained at the "Dr. Sebastião Martins de Oliveira" Penitentiary in Araraquara, São Paulo.
2. To request that the Secretariat of the Court serve notice of this Order upon the State of Brazil, the Inter-American Commission on Human Rights and the representatives of the beneficiaries.
3. To close the file of this matter.

Done in Spanish, Portuguese and English, the Spanish text being authentic, in San José, Costa, Rica, on November 25, 2008.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary