

**Order of the
Inter-American Court of Human Rights*
of November 25, 2009
Provisional Measures regarding Brazil
Matter of Urso Branco Prison**

HAVING SEEN:

1. The Orders of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), of June 18, 2002, August 29, 2002, April 22, 2004, July 7, 2004, September 21, 2005 and May 2, 2008. In the latter, the Court, *inter alia*, decided:

1. To request the State to immediately adopt all the measures necessary to efficiently protect the life and physical integrity of all the persons confined at the Urso Branco Prison, as well as the life and physical integrity of all the persons entering the premises, among which visitors and security agents who provide services thereat are included, in the terms of Considering Clauses No. 15 and 16 of the [...] Order.

2. To again request the State to take all the steps necessary so that the protection measures regarding the life and physical integrity are planned and implemented with the participation of the beneficiaries or their representatives, and that the State keeps them informed on the progress of the application of said measures.

3. To request the State to submit its next report on the compliance with the measures indicated in the first operative paragraph before the Court no later than July 15, 2008, particularly on the measures it may immediately adopt so that no deprivations of life or acts against the physical integrity of the persons confined at the prison and of those in any manner entering the premises are produced. The State shall submit, as an appendix to the above mentioned report, an updated list of all the persons who have died due to violent causes since the issue of the first Order rendered by the Inter-American Court of Human Rights in the instant case.

4. To request the State to continue to inform the Inter-American Court of Human Rights, every two months, on the compliance with the implementation of the measures indicated in the first operative paragraph of the [...] Order.

[...]

2. The 19th to 25th reports submitted on May 20, July 31, October 30, and December 30, 2008, as well as the respective appendixes thereto, whereby the Federal Republic of Brazil (hereinafter "the State" or "Brazil") provided information on the steps taken with respect to the provisional measures ordered by the Court in the instant case.

* Judges Cecilia Medina-Quiroga and Leonardo A. Franco informed the Court that, on grounds of force majeure, they could not participate in the deliberation and signature of this Order, reason for which Judge Medina-Quiroga relinquished the Presidency in the terms of Article 4(3) of the Court's Rules of Procedure to the Court Vice-President, Judge García-Sayán, President in office for the instant case.

3. The briefs of July 24, September 9 and December 12, 2008, and February 9, June 29 and September 8, 2009 and the appendixes thereto, whereby the beneficiaries representatives (hereinafter "the representatives") submitted their observations to the 19th and 24th reports of the State, as well as the briefs of October 13 and November 6, 2008, and of September 25, 2009 and the appendixes thereto, whereby the representatives submitted additional information on the instant case before the Court.

4. The briefs of July 18, September 16 and December 31, 2008, and of July 7 and September 24, 2009, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") forwarded its observations to the reports of the State and the briefs of the representatives.

5. The Order rendered by the President of the Court (hereinafter "the President") on August 17, 2009, in consultation with the other Judges of the Court, whereby she decided to call the parties for a public hearing to be held on September 30, 2009, "so that the Court hear[d] their arguments on the provisional measures ordered in the instant case."

6. The note of September 29, 2009, whereby the Court Secretariat (hereinafter "the Secretariat"), following instructions given by the President, referred to the brief of additional information forwarded by the representatives on September 25, 2009 (*supra* Having Seen clause No. 3) and, based on that, requested the State to submit accurate and updated information, during the above mentioned hearing, with respect to the situation of F.F.G., beneficiary of these measures.

7. The public hearing on the provisional measures held on September 30, 2009, during the LXXXIV Regular Session of the Inter-American Court¹, the oral arguments presented by the parties as well as the briefs submitted by the State and the representatives at that time.

8. The brief of October 9, 2009, whereby the State presented appendixes to the report delivered during the public hearing held on September 30, 2009.

9. The brief of November 9, 2009, whereby the representatives requested the Court an extension of fifteen days in order to submit their observations to the 25th report of the State.

10. The note of November 16, 2009, whereby the Secretariat informed the parties that the President had granted the representatives an extension until November 23, 2009, to present their observations to the 25th report of the State, as well as to the report submitted by the State at the public hearing (*supra* Having Seen clauses No. 2, 7 and 8).

11. The brief of November 23, 2009, whereby the representatives submitted their

¹ Parties attending to this hearing: a) for the Inter-American Commission: Florentín Meléndez, Commissioner, and Karla Quintana-Osuna, Lilly Ching-Soto and Silvia Serrano, legal advisors; b) for the representatives: James Cavallaro, Andressa Caldas, Tamara Melo, Fernando Delgado, Cíntia Bárbara Paganotto-Rodrigues, Estrela Dalva, Gustavo Dandolini, Alexia De Vicentis and Clara Long, and c) for the State: Ambassador Hildebrando Tadeu Nascimento-Valadares; Camila Serrano-Giunchetti, Juliana Corbacho Neves dos Santos, Sérgio William Domingues-Teixeira, Claudionor Soares-Muniz, Alexandre Cardoso da Fonseca, Marcos Valerio Tessila de Melo, André Luiz de Almeida e Cunha and Miguel Alejandro Gutiérrez.

observations to the 25th State report and to the brief of the State of September 30, 2009. The representatives provided additional information to that supplied at the public hearing with respect to alleged facts of violence reported by the inmates during their visit to the Urso Branco prison (hereinafter also referred to as “the Prison”, “the Penitentiary” or “Urso Branco”) in September, 2009.

12. The brief of November 23, 2009, whereby the Inter-American Commission submitted its observations to the 25th report of the State and to the brief of the State of September 30, 2009, presented at the public hearing.

CONSIDERING:

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

2. That Article 63(2) of the American Convention sets forth that “in 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 the terms of Article 26 of the Court Rules of Procedure,²

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.

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

[...]

4. That by virtue of its jurisdiction, in the scope of provisional measures, the Court must only consider those arguments strictly and directly related to the extreme gravity, urgency and the need to avoid irreparable damage to persons. Therefore, in order to decide whether it keeps the provisional measures in force, the Court must analyze if the situation of extreme gravity and urgency which led to their adoption still remains, or whether new equally serious and urgent circumstances deserve their maintenance. Any other matters can only be submitted to the Court through the corresponding adversarial cases.³

² Rules of Procedure approved by the Court during the XLIX Regular Session, held from November 16 to November 25, 2000, and partially amended during the LXXXII Regular Session, held from January 19 to January 31, 2009, in accordance with Articles 71 and 72 thereof.

³ 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, Considering clause No. six; *Case of A.J. et al.* Provisional Measures regarding Haiti. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering clause No. Four, and *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 12, 2009, Considering clause No. five.

5. That the facts which took place at the Urso Branco Prison since the last Order rendered on May 2, 2008, deserve an analysis on the status of implementation of the provisional measures and the adoption of this Order.

6. That the Court appreciates the usefulness of the public hearing held in order to become acquainted the status of implementation of these provisional measures.

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7. That regarding the detention conditions at Urso Branco, *inter alia*, the State pointed out that:

i) on September 30, 2009, there were 672 inmates in the Penitentiary, which has a capacity for 456 detainees. There was a significant reduction in the incarcerated population, considering that in December the prison housed 1300 persons. That was mainly due to the partial takeover of the Penitentiary ordered by the *Primer Juzgado de Ejecución y Contravención Penal de Porto Velho* [First Court of Penal Enforcement and Contravention of Porto Velho] (hereinafter the "Court of Penal Enforcement"). In compliance with said order, no new detainees were admitted to the prison since December 19, 2008;

ii) in order to face the problem of prison overcrowding in Rondônia, the federal government, among other investments and works, executed the following: a) boosting of Urso Branco capacity with the creation of 96 new places through the building of the so called "*celões*" [large cells], which were completed in 2006, and the subsequent reconstruction thereof -which is still in progress-, in order to improve the ventilation system; b) start-up of the construction of Ariquemes Penitentiary, with a capacity of 360 persons; in a near future, 120 places shall be available thereat; c) building of the *Centro de Triagem de Porto Velho* [Porto Velho Selection Center], with a capacity of 96 persons; d) project for the construction of the Penitentiary of the *Programa Nacional de Seguridad Pública con Ciudadanía* [Public Security and Citizenship National Program] with a capacity of 421 persons; and e) project for the construction of the Porto Velho Penitentiary, with a capacity of 470 persons. Furthermore, the government of Rondônia shall also execute works with its own resources in order to increase the capacity of its penitentiary system;

iii) the Penitentiary facilities were also improved through actions such as the reinforcement of the cells security, the construction of a place for the communication between inmates and their lawyers, a new area for medical and dentistry attention, and a new building for visitors; the completion of two external yards and the beginning of other two similar yards. Additionally, financial resources of the federal government were allocated for the purchase of security vehicles and ambulances, as well as for the implementation and restructuring of the Penitentiary School. On the other hand, cells built in 2006 are being restored in order to improve their ventilation;

iv) persons deprived of liberty have access to water five times a day, during thirty minutes in each period. Additional works shall begin in order to increase the water supply, which shall have to be finished in the term of six months. Personal hygiene products have been distributed fortnightly, but "there are

oscillations in the supply thereof." Not all the inmates have mattresses, as they are not distributed regularly, and the quality of the existing ones is poor. Therefore, 300 mattresses were changed in the last months and other 400 are expected to be changed soon. Beneficiaries also receive health services regularly through physicians, nurses, technicians and nursing assistants, and through the attention provided by psychologists and social workers. However, the State "admit[ted] that health and social working services have not been provided in a satisfactory manner at the Penitentiary[, but] it has committed to improve [them]";

v) persons deprived of liberty receive free legal advice from the *Defensoría Pública* [Public Defender Service], which has other two counselors available for the inmates. Furthermore, in March, 2009, three interns were hired in order to cooperate with the work of the *Defensoría Pública* [Public Defender Service]. Until June, 2009, about 1,200 inquiries had been processed. The State pointed out that in the next 45 days it shall call three other interns to become members of the above mentioned team of legal assistance;

vi) from September 22 to September 30, 2009 the *Juzgado de Ejecución Penal* [Court of Penal Enforcement] and the *Ministerio Público* [Office of the Public Prosecutor] of Rondônia organized a joint collective activity (in Portuguese, "*mutirão*") in which they reviewed the situation of each detainee. Five judges, five prosecutors and five defense counselors participated in said activity, apart from the back-up assistants, and

vii) The Ministry of Justice and State of Rondônia signed an agreement to implement several social integration projects, which include professional training activities. Rondônia is participating actively in the *Plano Diretor do Sistema Penitenciário* [Master Plan for the Penitentiary System] which seeks to restructure the present penitentiary model in order to guarantee a more humane and safer system, respectful of the persons deprived of liberty. In May, 2008, the Ministry of Justice launched an *in loco* monitoring of the goals of the penitentiary system Master Plan of the above mentioned state, emphasizing the actions adopted in order to promote the application of alternative punishments to the deprivation of liberty and the increase of the number of places available in prisons, among others.

8. That, with respect to the detention conditions at the Urso Branco Prison, the representatives, *inter alia*, pointed out that:

i) a report of July 19, 2008, presented by the *Juzgado de Ejecución Penal* [Court of Penal Enforcement] stated that among the main problems of Urso Branco, overcrowding and inadequate physical structure were included, factors which difficult the control on the part of agents and ease mutinies and rebellions. In December, 2008, said Court ordered the partial closure of Urso Branco and prohibited the admission of new inmates, as there were already 1,241 persons deprived of liberty in a penitentiary with a capacity of 456 persons. Said order further granted the state of Rondônia a term of 11 months in order to decrease the Penitentiary population in accordance with its capacity;

ii) as of August 15, 2009, Urso Branco housed 795 inmates. Furthermore, in a visit to the Prison in September, 2009, the representatives verified that over 200 detainees were in cells called "*celões*" (large cells), which, pursuant to

the partial takeover order of December, 2008, are not suitable for human permanence and, therefore, they should not house inmates;

iii) the construction of the Ariquemes Penitentiary shall not reduce the population of Urso Branco, as it shall only receive the population of the internal region of the state of Rondônia. As to the construction of other detention centers, they pointed out that the State failed to submit specific data on these projects, such as the term set forth for their operation startup;

iv) during the visit of August, 2009, the representatives could verify that the detainees had only one physician who attended twice a week; two dentists who exchanged shifts and only in the morning, one nurse and a nursing technician who worked on a daily basis. On the other hand, several problems have continued, such as the lack of access to water, inadequate feeding, precariousness of personal hygiene items and mattresses and lack of work-related and educational activities. Of the new yards mentioned by the State, only one was fit to be used. Furthermore, even though the construction of said yards has been completed, the frequency of exposure to sunlight shall continue to be limited due to the low number of security agents. As to visits, these take place regularly, from Friday to Sunday. Legal advice is provided by two interns and two legal advisors, but there is no counselor working at the prison;

v) a report of May, 2009 issued by the *Procuraduría General de la República* [State Attorney General] section in Rondônia regarding the situation of Urso Branco, among other aspects stated that: a) the structural problem of the penitentiary system remains unsolved; b) the steps taken by the State government after the request of federal takeover had no practical effects; and c) the decrease of the prison population at the Urso Branco Prison is transferring the overcrowding problem to other penitentiaries in Rondônia; and

vi) on September 22, 2009, the *Fiscalía de Ejecución Penal* [Penal Enforcement Public Prosecutor's Office] forwarded an official note to the government of the state of Rondônia denouncing the precariousness of the present situation at the Penitentiary.

9. That with respect to the reports of the State and the observations of the representatives, the Commission, among other considerations, emphasized that:

i) it assesses positively the overcrowding reduction at the Urso Branco Prison as a consequence of the judicial orders and other actions of the domestic legal system, such as the joint collective activity (in Portuguese, "*mutirão*") to review the judicial situation of the detainees. Despite the above mentioned reduction, the Penitentiary "continues to have a high degree of overcrowding", which constitutes a latent risk factor in violence situations. On the other hand, the State process of investment in the penitentiary infrastructure in order to decrease overcrowding is still in its first stages and the situation at the prison calls for urgent measures;

ii) the so called "*celôes*" (large cells) continue to operate despite of the judgment of December, 2008, which ordered their improvement and specifically set forth that they should not be used until their reconstruction was completed. The Commission stated that inmates must be immediately transferred to a place in better conditions while the above mentioned cells are redeveloped;

iii) it appreciates the efforts made by the State in order to provide medical attention to the detainees, but the proportion between physicians and detainees is still deficient, and

iv) it considers that the State actions to strengthen the judicial system are positive, but "it expects further information on the effects of the *mutirão* [...] so as to be able to ascertain the impact that such an [action] could entail to the specific provisional measures."

10. That the State has the general obligation to respect and guarantee the total enjoyment and exercise of the rights of all the persons under its jurisdiction, duties which are imposed not only with respect to the power of the State but also with respect to the actions of individual third parties. Special duties derive from these general obligations, ascertainable on the basis of the special needs of protection of the legal person, either by his/her personal situation or by the specific situation in which he/she may be⁴, as in the case of detention. The Court has pointed out the special position of guarantor that the State acquires with respect to the detainees, originated in the special subjection relation existing between the inmate and the State. In such a situation, the State general duty to respect and guarantee rights has a particular nuance which forces the State to provide inmates the minimum conditions compatible with their dignity while they are confined in detention centers, with the purpose to protect and guarantee their right to life and physical integrity.⁵

11. That the Court appreciates the efforts of the State with the purpose to improve the detention conditions at the Penitentiary, among which overcrowding reduction and redevelopment of the premises outstand. The Court further appreciates the fact that the State itself has declared the following at the public hearing: a) overcrowding at Urso Branco appears as the greatest problem of the unit, from which practically all the other problems derive; b) there are problems in the supply of personal hygiene items and mattresses; and c) it is necessary to adopt measures in order to improve social work and health services for the beneficiaries, as well as the adequacy of the structure of some of the cells (*supra* Considering clause No. 7.iii and iv).

12. That this Court again states that the improvement and correction of the Urso Branco Prison is a process which shall require the adoption of short, medium and long term measures on the part of the State in order to face the structural problems which affect those confined thereat. The duty to adopt such measures derives from the general obligation of respect and guarantee of rights, assumed by the State when it ratified the American Convention on Human Rights.⁶

⁴ Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, pars. 111 and 113; *Case of Anzualdo-Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, par. 37, and *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195, par. 298.

⁵ Cf. *Case of "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004*. Series C No. 112, par. 159; *Case of the children deprived of liberty in FEBEM*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of November 25, 2008, Considering clause No. twelve, and *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of May 2, 2008, Considering clause No. nineteen.

⁶ Cf. *Matter of the Urso Branco Prison*, *supra* note 5, Considering clause No. twenty.

13. That the thorough analysis of compatibility of the penitentiary conditions with the American Convention must be performed during the merits stage of the case. In that respect, the Court observes that case file No. 12,568 is under the consideration of the Inter-American Commission since June 5, time at which a complaint on the situation of the persons deprived of liberty at the Urso Branco Prison was filed with the Commission. As informed on August 28, 2007 to the Court by the Commission, "case No. 12,568, Persons Deprived of Liberty at Urso Branco Prison, Rondônia, is under proceedings, in the merits stage." On the other hand, the Court would consider the adequacy of the detention conditions at Urso Branco to the American Convention and international laws on the matter, in the corresponding stage of the proceedings, in the event the case is brought before it.⁷

14. That as long as this case is under the consideration of the Commission, the latter shall have to consider whether the alleged detention conditions are incompatible with the American Convention and take the measures it considers pertinent, in accordance with its powers.

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15. That with respect to the measures adopted in order to efficiently protect the life and physical integrity of all the persons confined at Urso Branco, as well as the life and physical integrity of those entering the premises, the State, *inter alia*, pointed out that:

i) it called for an open competitive examination in order to hire 900 correctional officers for the state of Rondônia. Once the selection process was finished, there was a basic training course which ended in December, 2008, in which the first 646 correctional officers were approved. On April 3, 2009, 60 correctional officers were appointed to work at Urso Branco, which at present has 34 security employees in each shift, among police officers, guards and correctional officers. Furthermore, other 290 officers who passed the open examination have already completed their training course and are expecting their appointment. Moreover, the Penitentiary external security has the support of the Military Police, the officers of which are trained in the areas of citizenship security and human rights;

ii) an internal CCTV is expected to be installed at the Prison in order to surveil inmates and for the monitoring of possible abuse against them. Furthermore, a new building for controlling the access of visitors and other persons entering the Penitentiary was built, in which new electronic security equipments were installed, such as X-ray tables and portable and walk-through metal detectors;

iii) the separation between convicted and temporary inmates still remains. Also, the 67 inmates who allegedly led the main mutinies which took place at Urso Branco were transferred to the federal penitentiary system, and

iv) The *Juez de Ejecución Penal* [Penal Enforcement Judge] visits the Prison, both periodically and without prior notice. The *Ministerio Público* [Office of the

⁷ Cf. *Matter of the Urso Branco Prison*, *supra* note 5, Considering clause No. 21.

Public Prosecutor] also visits the Penitentiary, which also has the daily presence of the *Defensoria Pública* [Public Defender Service].

16. That, with respect to the violence facts occurred since the issue of the last Order of the Court, Brazil, *inter alia*, pointed out that:

i) as a result of the actions effected by the State since December, 2007, there have not been other violent deaths, escapes or rebellions at the Penitentiary;

ii) contrary to the representatives statements, torture is not an institutionalized means of control at Urso Branco. Whenever acts of this nature take place, State authorities immediately adopt the measures necessary to investigate the facts, as in the case of the episodes of cells H4 and F6 (*infra* Considering clauses No. 16.iv and 18.iii);

iii) during the *mutirão* (joint collective activity), all the detainees were heard by a judge, a prosecutor and a defense counselor and none of them informed to have suffered sexual violence. Nonetheless, the State agreed to investigate the facts of that nature informed by the representatives during the public hearing, and

iv) with respect to the violence facts occurred in cell H4 on August, 8, 2009, that was "another consequence of a management problem of the [penitentiary] unit." The State informed that the prison guards found a chord connecting two cells and as punishment they decided to take away the television, which was in one of those cells from the detainees. As the guards did not leave any records of that fact, a member of the team of the subsequent shift returned the TV to the inmates, and that upset the prison guards who had removed it when they got back to work on the next day. When they tried to remove the TV again from the cell and before the detainees denial, "in an [...] out of control act, [and] which shows insufficient technical training", they initially shot non-lethal ammunition, thus generating a commotion in the Penitentiary and new gunshots from several points of the facilities. When the situation was again under control, a prison guard who was picking up the bullet cartridges was verbally provoked by a detainee and, "without control", shot with deadly ammunition in the direction of cell H4. Consequently, four inmates were injured, including detainee F.F.G., who suffered serious injuries to the right hand. This beneficiary was examined by a physician, who prescribed physical therapy and set a subsequent appointment date in order to again examine the patient.

17. That with respect to the implementation of these provisional measures, the representatives admitted certain progress in the Prison control, but they stated that the advance is specific and it "does not reflect the State policy" yet. Despite the open competitive examinations for the hiring of new correctional officers, the state government allegedly entered into new temporary agreements for the positions of escort and penitentiary surveillance agents, without the open competitive examinations or the due training. Consequently, on August 3, 2009, the *Ministerio Público* [Office of the Public Prosecutor] filed a public civil action against the State of Rondônia in order to prevent temporary hiring on the grounds that they constitute illegal acts and they try to benefit the officers who already have temporary contracts. On August 18, 2009, the Judicial Power granted a precautionary measure in the scope of the above

mentioned action, ordering the suspension of said contracts. Even though 60 new officers who passed the last competitive examination were appointed, 70 employees who had been temporarily hired left the prison. Consequently, there was not an increase in the real number of correctional officers, thus causing the deterioration of the security conditions. The representatives noticed that there are 11 buildings in the Penitentiary, which house an average of 60 inmates each. Therefore, taking into account the 34 security agents in each shift, there would be a maximum of three agents for the security of each building, and that would make it impossible to guarantee, for instance, the safety of the detainees involved in commotions inside the cells.

18. That with respect to the new facts of violence occurred since the Court Order of May 2, 2008, the representatives expressed that "the authorities inside the Penitentiary frequently treat detainees with extreme violence: they are beaten up, tortured and firearms are used, [, and] to maintain the normality disguise [...] they coerce the detainees, cover up acts of violence and exercise abuse of authority." Particularly, *inter alia*, the representatives stated that:

i) the report of July 19, 2008, of the *Juzgado de Ejecución Penal* [Penal Enforcement Court] (*supra* Considering clause No. 8.i) also stated that one of the main problems at Urso Branco was the climate of violence. Said report observed that in 2008 the physical aggressions against those deprived of liberty persisted, allegedly exercised by other inmates or public officials, fact which aggravates the climate of penitentiary instability;

ii) in August, 2008, detainee W.R.X. suffered acts of torture on the part of State agents;

iii) in the visit to the Penitentiary of September 8, 2008 by the *Juez de Ejecución Penal* [Judge of Penal Enforcement] and members of the *Ministerio Público* [Office of the Public Prosecutor], 16 detainees were found with serious signs of physical injuries in cell F6. The acts of physical and psychological torture were allegedly perpetrated by the former General Director of the Penitentiary and other four agents, who expected to obtain information on the ownership of a cellular phone. According to the criminal complaint filed by the *Ministerio Público* [Office of the Public Prosecutor], inmates were forced to kneel for hours on the hot ground and to bite their nails until they bled, while they were aimed with firearms and assaulted by the agents who kicked their bodies and feet. After the facts were denounced, detainees allegedly received threats of physical suffering and the placing of drugs in their cells, among other forms of retaliation, as well as promises of advantages by the guards so that they changed the content of their statements rendered in the context of the investigation. Additionally, the former General Director, accused of the facts, was removed from his office at the Urso Branco Prison, but he was transferred to exercise the position of Manager of the Penitentiary System of Rondônia, having control over all the penitentiary units of said state;

iv) the judicial order of December, 2008 which ordered the partial takeover of Urso Branco mentioned the risk of a new, dangerous and bloody rebellion at the Penitentiary. The judgment pointed out that on October 6, 2008, there was a new attempt of rebellion, during which there were more than 500 gunshots;

v) in accordance with the information available at the website of the National Penitentiary Department, detainee M.V.S. was an alleged victim of torture on the part of military policemen, on April 13, 2009;

vi) between August 7 and 8, 2009, four detainees were victims of gunshots effected by a prison guard, while Prison employees tried to remove a TV set from one of the cells. Pursuant to the conclusive report of the police investigation, the facts constituted attempted murder. That same document concluded that during the episode there were 75 firearm shots with both lethal and anti-mutiny shotgun ammunition. The shot victims were taken to hospital, but one of them, F.F.G., who suffered severe injuries to the right hand, did not receive the proper medical attention and is expecting surgery to date;

vii) in the visits to the Penitentiary of September 24 and 25, 2009, the representatives held conversations with more than 100 inmates, of which 27 informed to have been victims of physical abuse which was not documented by the State. For instance, the representatives mentioned at the public hearing, the case -not informed by the State- of a detainee who had been shot in the arm five months ago and still had lead remains in his body. In accordance with the conducted interviews, security agents belonging to the special penitentiary forces who work wearing hoods are the most frequently denounced;

viii) some detainees denounced that they allegedly suffered sexual violence on the part of other inmates, with the acquiescence of the security agents. During the visit to the Penitentiary in September 2009, the representatives verified that in the so called "safe" cell, which was supposed to be used only to house those charged with or convicted of sexual crimes, there were at least three inmates who were charged with or convicted of crimes of a different nature. One of the detainees told the representatives that he had been submitted to sexual abuse in the above mentioned cell by one of the three inmates who were not charged with or convicted of sexual crimes and, therefore, he should not be confined thereat, and

ix) the chaotic situation in the Penitentiary contributes to the non-denouncement of many facts of violence by the detainees because they are afraid of retaliations. The employees accused of violating the rights of the detainees are not removed from the Prison, reason for which the latter do not feel safe to denounce the acts of violence they are victims of. Despite the interviews conducted with the inmates during the *mutirão*, the presence of the hooded security agents carrying large-caliber weapons in that event did not create an environment of calm and trust so that the prisoners could denounce the violations they had suffered to the judicial authorities. Therefore, the fact that tortures and other acts of violence have not been informed to the State authorities does not mean that they have not existed.

19. That with respect to the State reports and the observations presented by the representatives, the Commission appreciated the improvement of the proportion between inmates and security agents, but it stated that this number continues to be insufficient, in accordance with the judgment of April 2009 (*infra* Considering clause No. 28). The lack of personnel together with the penitentiary overcrowding aggravates the risk situation. Additionally, the Commission expressed its concern for the persistence of the facts of violence perpetrated by the prison guards, who are not trained to deal with the inmates and, on the contrary, they use force in an excessive

manner, as well as for the unreasonable use of weapons and the chaos in the use of ammunition, facts which must be under the State supervision; the Commission further expressed its concern for the hiring of agents who would not be prepared for that position. On the other hand, it positively assessed the transfer of the main leaders of the mutinies to other prisons, a measure which decreases the possibility of violence with resulting deaths at the Penitentiary. It observes that it is important to take into account that in the searches effected by prison guards, they continue to find cutting and thrusting weapons at the penitentiary, fact which potentially propitiates a situation of constant risk. Consequently, apart from the installation of the above mentioned security electronic equipment, the State must continue to perform said searches in order to control the possession of weapons and other unauthorized objects in possession of the prisoners.

20. That the Commission stated not to have any information, among other aspects, about: a) the separation between convicted and indicted inmates; b) the participation of the Military Police in the custody of the external part of the Penitentiary; c) the appointment of shifts to guards, their training, the training frequency and the results thereof; d) the equipment available for prison guards in order to perform their tasks; e) the performance, in the last months, of searches for unauthorized objects; f) the removal of detainees from the *celões* (large cells) and g) the situation of the detainees who were shot in the episode of cell H4.

21. That the Court observes that the State adopted measures in order to improve the security and to reduce violence at the Penitentiary, among which the following can be mentioned: increase in the proportion between agents and detainees, installation of security equipment in order to control access to the Penitentiary and the visits -both periodic and without prior notice- by judicial authorities to the Urso Branco Prison. Likewise, the Court notices that since December, 2007, no violent deaths or mutinies have taken place at the Penitentiary.

22. That, on the other hand, since the issue of the last Court Order in the instant case on May 2, 2008, the Court has been informed on at least: a) two episodes of torture against inmate W.R.X. and to the detriment of the sixteen detainees in cell F6; b) one attempt of rebellion, and c) firearm shots against four detainees of cell H4. Additionally, inmates have informed alleged sexual abuses on the part of other inmates under the custody of the State, as well as other acts of physical aggression, intimidation and harassment on the part of security guards, which were allegedly not informed to the judicial authorities because the victims are afraid of the retaliations. From the information provided by the parties, it can be noticed that the security agents preparation would be deficient and, at some occasions, force was allegedly used in an excessive and unjustified manner (*supra* Considering clauses No. 16.iv and 18). In view of that, the Court again states that the State must provide the beneficiaries the corresponding protection to their physical integrity, in accordance with what has been ordered by means of these provisional measures.

23. That the alleged facts of violence occurred at the prison evidence the persistence of the situation of extreme gravity and urgency, and that the recent claims of torture and other aggressions attributed to State agents or to other inmates within the penitentiary represent a situation of imminent risk against the life and physical integrity of the persons confined at Urso Branco. In that sense, the Court has pointed out that the State is responsible for keeping the Prison in control with absolute respect for the human rights of those confined thereat, which includes the obligation to avoid risk against their life or physical integrity.

24. That Brazil is the guarantor of the life and physical integrity of the inmates of the Urso Branco Prison. Therefore, it has the duty to adopt all the measures necessary to protect them and it must refrain, under all circumstances, from acting in such a manner that the life and physical integrity of said persons are injured in an unjustified way.

25. That under the circumstances of the instant case, the measures that are adopted must include those directly oriented to protect the rights to life and physical integrity of the beneficiaries, both in their relationship among themselves and with the State agents. Particularly, it is indispensable that the State continues to immediately adopt the measures necessary to completely eradicate the risks of violent death and serious attempts against physical integrity, preventing its agents from committing unjustified acts against life and physical integrity.

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26. That with regard to the investigations and proceedings instituted due to the facts of violence and the detention conditions at the Penitentiary, the State pointed out that in November 2008, at the seat of the *Comisión Especial del Consejo de Defensa de los Derechos de la Persona Humana* (Special Commission of the Defense Council of the Rights of the Human Person, hereinafter the "CDDPH"), created in 2004 to supervise the implementation of these provisional measures, a Subcommittee was constituted in order to monitor the development of the police investigations and the judicial and administrative proceedings. Furthermore, a system of process verification was created through a webpage, so that any person interested could follow-up the development of the police and administrative investigations related with the Urso Branco Prison. Additionally, the State, *inter alia*, expressed that:

i) there are approximately 78 police investigations in progress before the *Delegacia Especializada em Delitos Cometidos no Sistema Penitenciário* (Police Department Specialized in Crimes Committed within the Penitentiary System, hereinafter "Penitentiary Crimes Department"). Of the 102 existing criminal processes, eighteen have been completed, ten of them with an acquittal and eight with a conviction. In the aggregate, eleven persons were convicted. Likewise, there are fifteen disciplinary administrative processes before the *Corregedoria-Geral da Secretaria de Justiça de Rondônia* (Judicial Administrative Department of the state of Rondônia) for alleged facts occurred within the premises of Urso Branco. From all of them, seven have been completed and three entailed the application of punishments to the investigated civil servants. Furthermore, there are approximately fifty civil actions for damages for facts which took place at Urso Branco;

ii) as to the facts occurred in January 2002 at the Penitentiary which ended with the death of 27 people, the State pointed out that seventeen defendants shall be prosecuted in a jury trial (in Portuguese, "*Tribunal do Júri*"), expected to take place in February, 2010, which shall be broadcasted live over the Internet. As to the other four defendants, the case file has been set aside and the proceedings thereof continue regardless of the former;

iii) as to the facts which took place in April, 2004, the *Ministerio Público* [Office of the Public Prosecutor] filed a criminal complaint against 42 defendants

on July 26, 2009. The process is at summons stage so that the defendants may present their defense;

iv) the death of inmate L.C.S., in December, 2007, is also being investigated by the *Jefatura de Crímenes Penitenciarios* (Penitentiary Crimes Department);

v) as to the alleged torture against W.R.X. in August, 2008, a criminal action was instituted and, after the preliminary hearing held on September 2, 2009, the file has been concluded and is awaiting judgment to be passed by the competent judge;

vi) a criminal action was instituted for the alleged torture of sixteen detainees in cell F6 and the case file is in the stage of preliminary proceedings, and

vii) as to the violence facts against four detainees of cell H4, the corresponding investigation is being processed before the *Jefatura de Crímenes Penitenciarios* (Penitentiary Crimes Department). Furthermore, the civil servant involved in said facts has been suspended and is undergoing a disciplinary administrative process.

27. That Brazil has further informed the publication of the judgment regarding Public Civil Action No. 001.2000.012739-7, filed by the *Ministerio Público* [Office of the Public Prosecutor] against the state of Rondônia. Among other provisions, the judgment ordered reforms at Urso Branco and the hiring -through an open competitive examination- of correctional officers within set forth terms. On the other hand, in response to what had been requested by the Court, the State added a list with the persons dead at the Prison since 1998 to its report elaborated by the CDDPH Subcommittee, based on the following documents: a) the first 23 counter-reports of the representatives in the scope of these measures; b) a report by the *Ministerio Público* [Office of the Public Prosecutor] of Rondônia of 2008; c) the Admissibility Report No. 81/06 approved by the Inter-American Commission with respect to case No. 12,568; d) the reports of the *Jefatura de Crímenes Penitenciarios* (Department of Penitentiary Crimes) dated March 23 and September 15, 2009; e) the order of May 7, 2008, regarding the facts occurred at the Penitentiary in January, 2002, and f) the criminal complaint dated June 30, 2009 filed by *Ministerio Público* [Office of the Public Prosecutor] of Rondônia regarding criminal investigation No. 057/2004. Finally, it informed that the Secretary of Justice elaborated an identification album of the employees who at present work at the Urso Branco Prison and it shall elaborate a similar album with pictures of the agents who worked at the Prison in the past in order to help in police investigations.

28. That the representatives pointed out that in the investigation for the death of beneficiary L.C.S., the police report concluded that said crime was allegedly committed by a public agent. As to the investigation of the torture suffered by W.R.X., there was no photographic recognition of the responsible party because the Secretary of Justice failed to provide the records of Urso Branco personnel, but the corresponding criminal action was filed against a correctional officer. As to the investigation for the alleged torture of the sixteen detainees of cell F6, the respective criminal action was filed, the first part of the preliminary hearing in the context of said proceedings was held on November 18 and 19, 2009, and the continuance thereof was postponed until March 18, 2010. Furthermore, an investigation is also being conducted with respect to the alleged coercion suffered by the abovementioned inmates, ascribed to some of the

defendants. Additionally, on April 13, 2009, the State was convicted in a civil action to reform the Penitentiary and hire more correctional officers in the term of 120 days. Furthermore, of the thirteen proceedings, which resulted in a conviction regarding the facts occurred at Urso Branco, only one was allegedly instituted against public agents.

29. That regarding the monitoring system of administrative and judicial proceedings and of police investigations through a webpage, the representatives stated that the information published thereat is not out of date and incomplete. The listed administrative proceedings relate to facts of 2008 and 2009 only; police investigations refer to facts occurred between October 17, 1998 and December 4, 2007, and judicial proceedings refer to crimes committed between October 17, 1998 and September 24, 2005.

30. That the representatives initially pointed out that the list of people killed at the Penitentiary submitted by the State (*supra* Considering clause No. 27) contains serious inaccuracies when compared with other lists earlier provided. In this sense, they expressed that there is no certainty as to the number of victims, their identity and the circumstances of their death. Particularly, there are divergences regarding 26 deaths and some of the deceased have been identified with more than one name.

31. That the Commission expressed its concern on the existing impunity regarding the continuous claims of torture occurred at the Prison. It stated that it expected the State to keep on improving its judicial apparatus in order not only to investigate, clarify and punish these facts, but also to eradicate any possibility which may allow the repetition of the violence originated by the State agents. It further pointed out that it did not have enough information regarding the investigation of the violence facts of cell H4, which took place in August 2009.

32. That the Court again states the duty of the State to investigate said facts as a guarantee measure of the fundamental rights to life and physical integrity. Notwithstanding the above, in the context of these provisional measures and as in other cases⁸, it shall not consider the effectiveness of the investigations performed, nor the alleged negligence on the part of the State in said investigations. Said analysis corresponds to the exam of the merits of case No. 12,568, at present submitted to the Inter-American Commission on Human Rights (*supra* Considering clause No. 13).

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33. That the State informed that on October 7, 2008, the *Procuraduría General de la República* [State Attorney General] considered the “veracity of the arguments of human rights violations [at] Urso Branco and submitted a request of federal takeover against the state of Rondônia before the *Supremo Tribunal Federa*” (Supreme Court or STF, according to the Portuguese acronym). In November, 2008, the State rejected the takeover request and supplied evidentiary documents on the measures implemented in the scope of the penitentiary system. Furthermore, the State

⁸ Cf. *Matter of the Children deprived of liberty in FEBEM*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering clause No. seventeen; *Matter of Carlos Nieto-Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering clause No. fifteen, and *Matter of Millacura-Llaipén et al.* Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering clause No. sixteen.

government declared the state of "emergency" in its penitentiary institutions and created a Task Force formed, among others, by representatives of the Secretary of Justice, Administration, Planning and General Coordination, Health and Finance, in order to take actions in the penitentiary system as a priority. On October 16, 2008, the abovementioned Task Force met for the first time in order to plan action strategies. On the other hand, Brazil informed that the CDDPH has periodically met every two months, despite the denial of the representatives to participate in those meetings. It considered that the representatives participation in said meetings to be of paramount importance for the work of the above mentioned commission and it hoped they reconsidered their position.

34. That the representatives informed that they have cooperated with the *Procurador General de la República* [State Attorney General] in the scope of the request of federal takeover, through the supply of information regarding the situation of the Penitentiary, including claims of torture. On December 9, 2008, they requested the STF to be included in such a proceeding as simple assistants of the *Procurador General de la República* [State Attorney General] as, in their opinion, they may contribute in a decisive manner to the analysis of the federal takeover proceedings. They considered that said request had positive effects, such as a greater visibility of the problem, the promotion of the dialogue between the national government and the government of the state of Rondônia, the impulse of the visit of the *Consejo Nacional de Justicia* [Justice National Council] to the Prison and the declaration of the state of emergency on the part of the government of Rondônia. However, they stated that there are still no concrete and effective measures to solve the Urso Branco situation, that they are afraid that the above mentioned measures do not entail real changes in the situation of the beneficiaries and that they only seek to avoid the federal takeover order. They further expressed that their order to withdraw from the CDDPH does not mean the abandonment of the monitoring of the compliance with the provisional measures and that they continue to monitor the observance of the Court orders and to claim the violations against human rights of those deprived of liberty at the Urso Branco Prison.

35. That the Commission took cognizance of the information forwarded by the State and the representatives with respect to the request of the *Procuraduría General de la República* [State Attorney General Office] of federal takeover in the penitentiary system of Rondônia. It pointed out that it expected information on the results of that measure and, despite the emergency declaration on the part of the state of Rondônia in 2008, it is not clear whether the initiatives have a real and effective impact in the provisional measures. Finally, the Commission expressed its concern on the withdrawal of the representatives from the CDDPH and on the lack of coordination between the State and the representatives in the process of design and supervision of the implementation of these provisional measures.

36. That the Court appreciates the actions of the State, among which the following can be mentioned: request of federal takeover of the penitentiary system of the state of Rondônia, joint work of both national and state institutions to protect the life and physical integrity of the beneficiaries and improvement of the detention conditions of the Penitentiary. The Court further appreciates the articulation of both the federal and the state government and the different State domestic institutions, in order to implement these provisional measures.

37. That, in that same sense, the Court appreciates the work of civil society organizations which have contributed with information and observations during the

enforcement of these provisional measures and enhances the importance that the State continues to guarantee the access of the representatives to Urso Branco. Likewise, the Court considers it important that the representatives also participate in a positive manner in the planning and design of these provisional measures.

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38. That in the State criterion, the initiatives informed show that -despite some bodies responsible for solving the problem may have acted in an improper manner at some point-, there is no omission on the part of the State as to the instant case, as its institutions are using all the available tools in order to obtain the cooperation of the competent bodies. Brazil has emphasized that as a consequence of said efforts, there have not been any violent deaths or mutinies at the Urso Branco Prison for almost two years.

39. That the representatives requested the Court: i) to keep these provisional measures in force, and ii) to request the State to adopt measures to: a) investigate and punish those responsible for the torture and other facts denounced which risked the life and physical integrity of the beneficiaries, and b) to guarantee the life and physical integrity of the victims of the denounced facts.

40. That the Commission argued that the facts of violence, together with the poor detention conditions, keep the beneficiaries in a situation of extreme gravity, urgency and imminent risk. Thus, the Commission requested the Court to maintain the provisional measures and to request the State to perform of the following actions, among others: i) effectively implement the measures at state level, with the assumption on the part of the federal government of direct responsibility in that process; ii) increase the number of guards at the Penitentiary; iii) train all the custody personnel; iv) improve the conditions in which the guards must fulfill their tasks; v) exchange surveillance patterns and control mechanisms; vi) implement effective searches; vii) prevent detainees from being subjected to mistreatment; viii) separate inmates by categories, and ix) improve detention conditions. The Commission further asked the Court to request the parties to provide information on the steps taken with respect to the planning and implementation of these measures and the representatives participation in said implementation.

41. That for all the above, this Court considers that the situation of extreme gravity, urgency and irreparable risk still persists at the Urso Branco Prison, reason for which it is admissible to maintain the provisional measures in force, by virtue of which the State has the obligation to protect the life and physical integrity of all the persons deprived of liberty thereat, as well as the life and physical integrity of the other persons within the premises.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the powers granted to it by Article 63(2) of the American Convention on Human Rights and Articles 26 and 30 of its Rules of Procedure,

DECIDES:

1. To again request the State to continue to immediately adopt all the measures that may be necessary to efficiently protect the life and physical integrity of all the persons deprived of liberty at the Urso Branco Prison, as well as the life and physical integrity of all the persons entering the premises, among which visitors and security agents who provide services thereat are included.
2. To again request the State to take all the steps necessary so that the protection measures regarding the life and physical integrity are planned and implemented with the participation of the representatives, and that, in general, the State keeps them informed on the progress of the execution thereof.
3. To request the State to submit before the Inter-American Court of Human Rights its next report on the compliance with the measures stated in the first operative paragraph no later than March 1, 2010.
4. To request the State to continue to inform the Inter-American Court of Human Rights, every three months, on the implementation measures set forth in the first operative paragraph herein.
5. To request the representatives of the beneficiaries and the Inter-American Commission on Human Rights to submit their observations to the trimestral State reports within the term of four and six weeks, respectively, from the moment they receive them.
6. To request the Secretariat to serve notice of this Order upon the State, the representatives and the Inter-American Commission on Human Rights.

Diego García-Sayán
President in exercise

Sergio García Ramírez

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President in exercise

Pablo Saavedra Alessandri
Secretary