

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF AUGUST 25, 2011**

**PROVISIONAL MEASURES REGARDING
THE FEDERAL REPUBLIC OF BRAZIL**

MATTER OF THE 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, May 2, 2008, and November 25, 2009. In the latter the Court decided, *inter alia*:

1. To reiterate to the State that it immediately continue adopting all measures necessary to effectively protect the life and integrity of all the detainees at the Urso Branco Prison, as well as of all the persons that enter the latter, among them visitors and security agents that offer their services at the same.

2. To reiterate to the State that it carry out the appropriate processes so that the measures for the protection of life and personal integrity be planned and implemented with the participation of the representatives of the beneficiaries and that, in general, it maintain them informed of the progress of their execution.

[...]

2. The Order of the President of the Court of July 26, 2011, in which it decided to summon the Federal Republic of Brazil (hereinafter "the State" or "Brazil"), the representatives of the beneficiaries (hereinafter "the representatives"), and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to a public hearing on August 25, 2011, "with the objective of having the Court receive their arguments on the provisional measures ordered in the present matter [and] evaluate the need to maintain them in force."

* Judge Leonardo A. Franco informed the Court that, for reasons of *force majeure*, he would not be present at the deliberation and signing of this Order.

3. The brief of June 17, 2011 and its annexes, in which the State provided the thirty-first report on compliance with the present provisional measures and several documents.

4. The brief of July 27, 2011 and its annexes, through which the representatives of the beneficiaries forwarded their observations to said State report.

5. The brief of August 17, 2011, whereby the Inter-American Court submitted its observations on the State's report and the representatives' observations.

6. The public hearing on the present provisional measures held on August 25, 2011 during the ninety-second regular session of the Inter-American Court, held in Bogota, Colombia¹; the oral arguments presented by the parties; as well as the documents filed by the State and the representatives on said opportunity, especially the "Agreement for the Improvement of the Penitentiary System of the State of Rondônia and Lifting of the Provisional measures Granted by the Inter-American Court of Human Rights" (*Pacto para Melhoria do Sistema Prisional do Estado de Rondônia e Levantamento das Medidas Provisórias Outorgadas pela Corte Interamericana de Derechos Humanos*, hereinafter "the Agreement") signed by the State and the representatives.

CONSIDERING THAT:

1. 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 that, pursuant with Article 62 of the same, it acknowledged the Court's binding jurisdiction on December 10, 1998.

2. Article 63(2) of the American Convention states that, in "cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may, in matters not yet before it, adopt such provisional measures as it deems pertinent. This stipulation is also governed by Article 27 of the Rules of Procedure of the Court.²

3. Article 63(2) of the Convention demands that for the Court to be able to order provisional measures three conditions must be present: i) "extreme gravity";

¹ The following appeared at this hearing: a) for the Inter-American Commission: Karla Quintana Osuna and Silvia Serrano, legal advisors; b) for the representatives: Fernando Delgado, Sandra Carvalho, Deborah Popowski, Clara Long, David Attanasio, and Frances Dales, and c) for the State: Hildebrando Tadeu Nascimento Valadares, Camila Serrano Giunchetti, Guilherme Fitzgibbon Alves Pereira, Fabio Balestro Floriano, Christiana Galvão Ferreira de Freitas, Alexandre Cabana de Queiroz Andrade, Pedro Casemiro, Miriam Spreáfico, Mayra Magalhães, Hélio Gomes Ferreira, Rafael Andrade Catunda, Valdecir da Silva Maciel, Alexandre Cardoso da Fonseca, Sergio William Domingues Teixeira, Sandra Aparecida Silvestre de Frias Torres, Alessandra Apolinário Garcia, Andréa Walesca Nucini Bogo, Héverton Alves de Aguiar, and Euclides Maciel.

² Rules of Procedure approved by the Court in its eighty-fifth regular session held November 16-28, 2009.

ii) “urgency”, and iii) the need to “avoid irreparable damage to persons.” These three conditions must coexist and be present in any situation in which the Court’s intervention is requested. Likewise, the three conditions described must persist in order for the Court to maintain the protection ordered. If one of them is no longer valid, the Court must assess the appropriateness of continuing with the protection ordered.³

4. By virtue of its jurisdiction, within the framework of provisional measures the Court must only consider those arguments that refer strictly and directly to the extreme gravity, urgency, and need to avoid irreparable damage to persons. Thus, with the purpose of deciding if it shall continue to certify the validity of the provisional measures, the Tribunal must analyze if the situation of extreme gravity and urgency that led to their adoption still exists, or in any case, if new circumstances that are equally grave and urgent call for their maintenance. Any other matter may only be brought before the Court through the corresponding contentious case.⁴

a) Agreement on the Improvement of the Penitentiary System and the Lifting of Provisional Measures

5. Brazil reported to the Court that certain federal authorities and authorities from the state of Rondônia as well as the representatives of the beneficiaries signed the “Agreement for the Improvement of the Penitentiary System of the State of Rondônia and the Lifting of Provisional Measures Granted by the Inter-American Court of Human Rights”⁵ on August 24, 2011. This Agreement identified the main problems that exist at the Urso Branco Prison and proposed five courses of action for the authorities:

- a) Infrastructure: expansion of the capacity and improvement of the physical structure of the penitentiary centers;

³ Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fourteenth considering paragraph; *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of February 22, 2011, second considering paragraph, and *Matter of Certain Penitentiary Centers of Venezuela*, Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 6, 2011, fourth considering paragraph.

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 paragraph; *Matter of the Indigenous People of Kankuamo*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of June 7, 2011, sixth considering paragraph, and *Case of Rosendo Cantú et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of July 1, 2011, tenth considering paragraph.

⁵ The bodies that signed the Agreement are: Ministry of Justice, National Penitentiary Department, Secretariat of Human Rights of the Presidency of the Republic, Council for the Defense of the Rights of Human Beings, Ministry of Foreign Affairs, the Governor of the State of Rondônia, State Secretariat for Justice of Rondônia, Secretariat of Public Safety and Defense of the Citizens, Civil Police Force, Department of State Works, Attorney General of the State, Public Prosecutors’ Office of Rondônia, Public Defenders’ Office of Rondônia, and Judicial Power of the State of Rondônia.

- b) Qualified personnel: measures for the hiring and training of agents and administrative officials, including actions to offer a better services to detainees;
- c) Inquiry into the facts and determination of responsibilities: definition of terms for the conclusion of inquiries and proceedings regarding people investigated in reference to the case of the Urso Branco Prison; implementation of the Support Center for Criminal Executions by the Public Prosecutors' Office, among other actions;
- d) Perfecting services, mobilization, and social inclusion: actions regarding the swiftness of the responses to claims filed by the detainee population and their next of kin, as well as an increase in re-socialization measures, and
- e) Measures for fighting a culture of violence: specific actions for the creation and consolidation of mechanisms to fight and prevent violence, mistreatment, and torture within the penitentiary system.

6. Likewise, Brazil reported that the Agreement establishes short, medium, and long-term actions to be implemented by federal authorities and state authorities from Rondônia, it identifies the body responsible for implementing each measure, the starting and possible conclusion dates, as well as the specific budgetary entry for each action. Regarding the supervision of the implementation of the Agreement, the parties agreed to: a) maintain in operation the Special Commission of the Defense Council for the Rights of Human Beings; b) send half-yearly reports to the Inter-American Commission regarding compliance with the Agreement, and c) request an annual work meeting before the Inter-American Commission to evaluate its compliance. Based on the Agreement signed between the parties and the measures to be implemented, the State requested the lifting of the present provisional measures.

7. The representatives of the beneficiaries pointed out the unprecedented nature of the signing of the agreement and expressed their "agreement with the lifting of the [present] provisional measures." Likewise, they indicated that even though they don't think the problems have been solved, they do believe "in the effectiveness of the Agreements and in the commitments assumed by the [...] State." Finally, they pointed out the request for collaboration addressed jointly to the Inter-American Commission to supervise the implementation of the Agreement.

8. The Inter-American Commission recounted the main facts that had occurred since the adoption of the present measures and indicated that "there has been a qualitative improvement in the situation at the Urso Branco Prison," and "it value[d] that the parties had reached an Agreement." Additionally, regarding the request filed by both parties to have the Commission supervise compliance with the Agreement, it stated that said duty is consistent with its conventional and regulatory powers. Finally, it recalled the state's obligation to protect and guarantee the rights to life and personal integrity of detainees and observed that there would still be situations where follow-up at the Urso Branco Prison was necessary.

9. The Inter-American Court values positively the Agreement presented by Brazil and the representatives of the beneficiaries at the public hearing, as well as the

constructive attitudes of both parties, which is reflected in the adoption of the same. The Tribunal takes note that both the State and the representatives agreed on the lifting of the provisional measures and that the Commission indicated that there has been a qualitative improvement at the Urso Branco Prison.

10. On the other hand, the Court observes that since December 2007 no violent deaths or riots have been recorded at the Urso Branco Prison. Likewise, the prison population decreased to approximately 700 inmates in 2009, and since then the number of inmates has remained practically the same without greater variations. Additionally, the State is investigating the claims of violence or mistreatments presented by the representatives, in fact some criminal proceedings have been resolved in lower courts, such as those regarding the facts that occurred in January 2002, which resulted in the present provisional measures.

11. Therefore, taking into consideration the aforementioned Agreement and the request for the lifting of provisional measures filed by the State along with the consent of the representatives and the information presented by the parties, the Inter-American Court considers that the requirements of extreme gravity, urgency, and need to prevent irreparable damage to the beneficiaries are no longer present, for which it hereby proceeds to lift the present provisional measures.

12. Without prejudice for the foregoing, it is appropriate to recall that Article 1(1) of the Convention states the general obligations the States Parties have to respect the rights and freedoms enshrined in it and to guarantee their free and full exercise to all persons subject to its jurisdiction. Specifically, the Court points out the position of guarantor the State has regarding detainees,⁶ since the penitentiary authorities exercise complete control over them, in which case those general obligations acquire a specific tone that compels the State to provide for the inmates, with the objective of protecting and guaranteeing their rights to life and personal integrity, with the minimum conditions compatible with their dignity while they remain at the detention centers.⁷ Therefore, regardless of the existence of specific provisional measures, the State is especially compelled to guarantee the rights of the persons who have been imprisoned.⁸

THEREFORE:

⁶ Cf. *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of May 2, 2008, nineteenth considering paragraph; *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 26, 2010, fifty-second considering paragraph, and *Matter of the Socio-Educational Internment Unit*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 25, 2011, fourteenth considering paragraph.

⁷ Cf. *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 159; *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 22, 2004, tenth considering paragraph; *Matter of the Urso Branco Prison*, *supra* note 6, nineteenth considering paragraph, and *Matter of the Mendoza Prisons*, *supra* note 6, fifty-second considering paragraph.

⁸ Cf. *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the President of the Inter-American Court of Human Rights of August 22, 2007, sixteenth considering paragraph; *Matter of the Mendoza Prisons*, *supra* note 6, fifty-second considering paragraph, and *Matter of the Socio-Educational Internment Unit*, *supra* note 6, fourteenth considering paragraph.

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 27 of its Rules of Procedure,

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights on June 18, 2002 and subsequently ratified, which were adopted to protect the life and integrity of all detainees at the Urso Branco Prison, as well as all persons located inside it.
2. To recall that, in the terms of Article 1(1) of the American Convention, the lifting of provisional measures does not imply that the State is freed from its conventional obligations of protection.
3. To order that the Secretariat of the Tribunal serve notice of the present Order on the Federal Republic of Brazil, the Inter-American Commission of Human Rights, and the representatives of the beneficiaries of the present measures.
4. To order the archival of the case files pertaining to this matter.

Diego García-Sayán
President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary