

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF SEPTEMBER 6, 2012**

**PROVISIONAL MEASURES
WITH REGARD TO VENEZUELA**

**MATTERS OF CERTAIN VENEZUELAN PRISONS
YARE I AND YARE II CAPITAL REGION PENITENTIARY CENTER**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) of March 30, 2006, in the matter of Yare I and Yare II Capital Region Penitentiary Center (“Yare Prison”), in which it was decided, *inter alia*:

1. To call upon the State to immediately adopt such measures as may be required to efficiently and conclusively prevent violence at Yare Prison, so that no inmate or any other person at this facility is killed or their personal integrity impaired.

2. To call upon the State, notwithstanding the measures ordered in the preceding operative paragraph for immediate implementation, to adopt such measures as may be necessary to: (a) confiscate weapons in the possession of inmates, (b) separate indicted inmates from convicted inmates, and (c) bring the conditions of confinement at the prison in line with the international standards on this matter. In this regard, the State is required to periodically supervise the conditions of confinement and the physical condition and emotional state of the inmates, with the representatives of the beneficiaries of these provisional measures involved in such supervision;

[...]

2. The Orders of the Inter-American Court of November 24, 2009, in the matters of Monagas Detention Center (“La Pica”); the Capital Region Penitentiary Center Yare I and Yare II (“Yare Prison”); the Occidental Region Penitentiary Center (“Uribana Prison”) and El Rodeo I and El Rodeo II Capital Judicial Confinement Center; of May 15, 2011, in the matter of Aragua Detention Center (“Tocorón Prison”) and of May 15, 2011, in the matter of Ciudad Bolívar Judicial Detention Center (“Vista Hermosa Prison”), in which it was

decided to join the processing of these matters and that these provisional measures be known as "Matters of certain Venezuelan Prisons".

3. The briefs of August 20, 2012, in which the Venezuelan Prisons Observatory and "Una Ventana a la Libertad", a non-governmental organization (hereinafter "the representatives") respectively reported on the facts which occurred on August 19, 2012, at Yare I Capital Region Penitentiary Center, where according to the authorities of different media channels, at that time, more than 20 inmates died in a confrontation at this prison between inmates of "Los talleres" area and inmates from "La Torre" area.

4. The brief of August 20, 2012, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") brought before the Court's attention a press release which indicated that between August 19 and 20, 2012, more than twenty people died, as a result of confrontations in Yare prison.

5. The note of the Secretariat of the Court of August 20, 2012, in which the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela"), on the instructions of the President of the Court, was requested to present information about the events that occurred on August 19, 2012, at Yare I Capital Region Penitentiary Center, which were reported by the Commission and the representatives (*supra* having seen paragraphs 3 and 4), no later than August 30, 2012.

6. The brief of August 23, 2012, in which the State presented a "preliminary report", corresponding to the facts mentioned by the Inter-American Commission and the representatives (*supra* having seen paragraphs 3 and 4).

7. The brief of August 29, 2012, in which Mr. Humberto Prado, in his capacity as representative, presented observations to the preliminary report presented by the State related to the violent facts occurring at Yare I Capital Region Penitentiary Center.

8. The communication of August 29, 2012, in which the Inter-American Commission requested an extension until September 1, 2012, to forward its observations to the aforementioned preliminary report presented by the State, as well as the note of the Secretariat of August 30, 2012, in which, on the instructions of the President of the Court, the Court granted the extension requested until September 3, 2012. Since the issuance of this Order, the Court has not received these observations.

9. The communication of August 31, 2012, in which the State requested a reasonable extension until September 10, 2012, in order to present a complete report.

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") since August 9, 1977 and,

in accordance with Article 62 thereof, has accepted the binding jurisdiction of the Court on June 24, 1981.

2. Article 63(2) of the American Convention establishes that, “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission”.

3. Pursuant to Article 63(2) of the Convention, the State’s adoption of the provisional measures ordered by the Court is mandatory, given that the basic principle of international law, supported by international case law, has indicated that States must comply with their obligations under the Convention in good faith (*pacta sunt servanda*).¹ These orders imply a special duty to protect the beneficiaries of the measures, insofar as they are in force, and any breach thereof may result in international responsibility of the State.²

4. According to the International Human Rights Law, provisional measures are not only precautionary in the sense that they protect legal status, but they are also mainly protective since they protect human rights, insofar as they avoid irreparable damage to persons. Provisional measures are adopted provided the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met. In this sense, provisional measures become a real jurisdictional guarantee of a preventive nature.³ To that end, it is essential that the provisional measures are maintained in full force and effect until the Court orders their discontinuance and serves notice thereof upon the State.⁴

5. The Court notes that the information recently provided by the Inter-American Commission, the representatives and the State specifically refers to the prevailing situation at Yare I Capital Region Penitentiary Center since August 19, 2012, date when a confrontation between groups of inmates for the control of this center was recorded, resulting in the death of inmates and people present there, as well as people injured. In view of the relevance and urgency of the information presented, the Court deems it is pertinent to refer, in this Order, only to the current situation at said penitentiary center.

¹ Cf. *Matter of James et al.* Provisional Measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, sixth considering paragraph, and *Case of the 19 Tradesmen*. Provisional Measures with regard to Colombia. Order of the Inter-American Court of Human Rights of June 26, 2012, second considering paragraph.

² Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 196 to 200, and *Case of the 19 Tradesmen*, second considering paragraph.

³ Cf. *Case of “La Nación” Newspaper*. Provisional Measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph, and *Case of the 19 Tradesmen*, fourth considering paragraph.

⁴ Cf. *Matter of Liliana Ortega et al.* Provisional Measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of March 1, 2005, tenth considering paragraph, and *Matter of Monagas Judicial Confinement Center (“La Pica”); Yare I and Yare II Capital Region Penitentiary Center (Yare Prison); Penitentiary Center of the Central Occidental Region (Uribana Prison) and El Rodeo I and El Rodeo II Capital Judicial Confinement Center*. Provisional Measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, fifth considering paragraph.

6. According to the information provided by the State (*supra* having seen paragraph 6), regarding the intervention and actions taken to confront this situation, the following can be deduced:

a) The situation was produced by a conflict during family visiting hours, between the 'negative leaders' of the area known as "Las Torres" and the 'negative leaders' of the area known as "Los Talleres", who were armed;

b) The morning of August 20, 2012, the Ministry of the Popular Power of Penitentiary Services informed that, at that time, they had registered a total of 43 injured people, including 29 inmates and 14 relatives, who received treatment at *Hospital General de los Valles del Tuy* and *Centro de Diagnostico Integral Las Flores de Santa Teresa*; 26 people died, of which 18 people were identified by the Scientific, Criminal and Forensic Investigations Force, by means of *post-mortem* finger prints, dentistry and forensic anthropology studies. Among the deceased one was a relative of an inmate, who had been there visiting.

c) Most of the inmates who received medical care would have returned to the prison, however, nine of the injured inmates were kept under observation. The relatives were provided with the necessary medical care and nobody was seriously injured. The governmental authorities were alert to the needs of the inmates and their relatives;

d) At the time of the event, there were approximately 984 women inside the premises. On August 22, it was estimated that around 600 relatives were inside the premises. Some women remained inside the prison, talking to each other and with the prison authorities;

e) Even though the option of staying overnight for the inmates' relatives has been implemented since 2008, the Ministry of the Popular Power of Penitentiary Service would be focused on coordinating the actions necessary to fully eliminate this option;

f) The relatives, who were inside the premises, gradually came out and approximately seven people were waiting outside the premises for news on the corpses that had still not been identified. Moreover, outside the Yare prison, there were relatives of the ten inmates who were waiting for discharges granted by the courts;

g) Analysis equipment was installed on the morning of August 20, 2012, to study the facts that occurred at Yare I and to continue the analysis of the facts;

h) All the personnel of the Ministry were providing the necessary support to inmates and relatives. The relatives presented a statement of petitions that was forwarded to two officials of this Ministry;

i) The courts had ordered measures releasing approximately five inmates on August 22, 2012, in an attempt to expedite the proceedings with regard to what happened at the prison;

j) The State sustained that it would not intervene in the prison, however, it anticipated the transfer of inmates who had previously been transferred from "La Planta";

k) 17 full-body scanners were installed at different prisons, as part of the controls to solve the prison crisis;

l) On August 23, 2012, the authorities did not have total control over the prison, therefore they called for a dialogue, but the inmates and their relatives refused the required search. By August 23, 2012, several agreements between inmates and the relatives who remained in the prison were reached; and

m) The authorities investigated the events "in order to determine those responsible for these crimes, to condemn the deplorable events, to implement a contingency plan and apply the necessary disciplinary actions to avoid the repetition of such facts[,] for which it called upon the inmates to carefully consider laying down their weapons, whilst emphasizing the need for a dialogue with the authorities" and announced that there would be no impunity when convicting the responsible, for which it would initiate an investigation into the inmates and the possible prison mafias that smuggle weapons into the prison.

7. This Court regards that the State is in a special position of guarantor for inmates in penitentiaries or detention centers, due to the fact that penitentiary authorities exercise total control over them. Furthermore, "[o]ne of the obligations that the State must inevitably assume in its position as guarantor, and in order to protect and guarantee the right to life and physical integrity of those deprived of liberty, is that of [seeking] to provide them with the minimum conditions compatible with their dignity whilst they remain in detention centers."⁵

8. Primarily, the Court notes that Yare I Capital Region Penitentiary Center is subject to the protection of the provisional measures ordered by this Court in 2006 (*supra* having seen paragraph 1), given that at the time of the adoption of these measures, there were 520 inmates, and the prison had the capacity to house 750 inmates. After six years of enforcement of the measures, the Court notes that the prison population now amounts to 2,372 inmates, and that by March 2012, there was an overcrowding situation in this prison of approximately 316%, which evidently causes a climate of tension and violence between prisoners and prison staff.⁶

9. The information forwarded indicates that, during the events of August 19 and 20, 2012, at least, 26 persons died and approximately, 43 people, including inmates and relatives, were injured (*supra* considering paragraph 6(b)). In addition to the recent violent events, the Court notes that, according to the report of the Venezuelan Prisons Observatory of February 17, 2012, during 2011 there were a total 41 deaths and 91 injured inmates at Yare I Capital Region Penitentiary Center. According to the Court, these facts are incomprehensible within the framework of protection that the State must

⁵ *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 2, 2004. Series C No. 112, para. 159, and *Matter of Certain Venezuelan Prisons.* Provisional Measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of July 6, 2011, seventh considering paragraph.

⁶ As this Court has already noted, due to overcrowding, the regular implementation of essential services in centers are impaired, such as health care, rest, hygiene, food, security, visitation schedule, education, employment, recreational activities and intimate visits; deterioration of the building facilities occurs; severe problems of coexistence are incited and inter-prison violence is fostered. All this is to the detriment of prisoners and prison staff alike, due to the hard and dangerous conditions in which they carry out their daily tasks. *Cf. Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 5, 2006. Series C No. 150, para. 90, and *Case of Velez Loor v. Panama.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 204.

ensure to all persons subject to its jurisdiction, and they are incompatible with the order of provisional measures issued by this Court.

10. Regarding the relatives who were at the prison on August 19, 2012, and those who remained there, the Court emphasizes that they are also under the protection of the provisional measures ordered by this Court (*supra* having seen paragraph 1), which refer to any person who is at said facility. In this respect, it is appropriate to remember that Article 1(1) of the Convention establishes the general obligations of State Parties to respect the rights and freedoms therein enshrined and to ensure the full and free exercise of those rights and freedoms to every person subject to such jurisdiction; such obligations are binding not only on States but also on third parties.⁷ Therefore, it is responsible for adopting all such measures as are necessary to protect them and it must refrain, under any circumstances, from acting in such a way that violates the life and physical safety of these persons.

11. In summary, during the enforcement of these provisional measures, according to information forwarded by the Commission, the representatives and the State, inmates and other people inside the Yare I Capital Region Penitentiary Center continue being subjected to situations of risk or have directly endured violations against their rights to life and personal integrity. Evidence of this are the severe episodes of violence that occurred under State custody since the confrontation of August 19, 2012, which resulted in high human costs, and prove the persistence of the situation of extreme gravity and urgency. In addition, the Court has verified that the level of overcrowding has worsened; the internal safety conditions and control are still deficient and that the smuggling and possession of weapons at the prison is still in force.

12. It is appropriate to recall that Venezuela is the guarantor of the life and physical safety of the inmates and any other person inside Yare I Capital Region Penitentiary Center, as well as in the other prisons of the country. In addition, given the nature of the detention centers, the State must protect the inmates from the violence that, in the absence of state control, may occur among the detainees,⁸ for which the State must adopt the necessary measures that may favor a climate of respect for the human rights of prisoners; avoid the possession of weapons inside the detention centers by the inmates; reduce overcrowding; improve detention conditions and provide adequate trained staff to assure appropriate and effective control, custody and surveillance of the prison.

13. With regard to the circumstances of this matter and while the State modifies the detention conditions affecting the inmates, the Court must demand, for the purposes of these provisional measures, that the State effectively eliminate the risk of violent death and threat to physical safety. To that end, the measures to be adopted by the State must include those directly designed to protect the right to life and integrity of the

⁷ Cf. *Matter of the Mendoza Prisons*. Provisional Measures with regard to Argentina. Order of the President of the Inter-American Court of Human Rights of August 22, 2007, sixteenth considering paragraph, and *Matter of the Socio-Educational Internment Facility*. Provisional Measures with regard to Brazil. Order of the Inter-American Court of Human Rights of April 26, 2012, twenty-third considering paragraph.

⁸ Cf. *Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo*. Provisional Measures with regard to Brazil. Order of the Inter-American Court of Human Rights of September 30, 2006, sixteenth considering paragraph, and *Matter of certain Venezuelan Prisons*, fifteenth considering paragraph.

beneficiaries, insofar as to the relations between the inmates as well as to those with penitentiary authorities, in order to eliminate such risks, especially in relation to the deficient conditions of security and internal control at Yare I Capital Region Penitentiary Center.

14. Lastly, the Court awaits the final report of the State regarding the facts that occurred at Yare I Capital Region Penitentiary Center as from August 19, 2012 (*supra* having seen paragraph 9). The Court emphasizes that it is essential to guarantee the representatives' access to the penitentiary centers under protection and the active participation of the State and of the representatives in the implementation of these provisional measures.

15. Based on the foregoing, it is appropriate to maintain the provisional measures in force, on the grounds that the State has the duty to protect the life and physical integrity of all persons at Yare I Capital Region Penitentiary Center, whether this be the inmates, guards or visitors.

16. Finally, the Court recalls that the measures adopted in the matters of the Monagas Detention Center ("La Pica"); the Capital Region Penitentiary Center Yare I and Yare II ("Yare Prison"); the Occidental Region Penitentiary Center ("Uribana Prison"); the Capital Detention Center El Rodeo I and El Rodeo II; the Aragua Detention Center ("Tocoron Prison"); the Ciudad Bolivar Judicial Detention Center ("Vista Hermosa Prison") and the Andina Region Penitentiary Center, are still in force as well as those measures adopted in favor of Mr. Humberto Prado and Ms. Marianela Sanchez Ortiz, her husband Hernan Antonio Bolivar and her children, Anthony Alberto Bolivar Sanchez and Andrea Antonela Bolivar Sanchez, and that the joinder of the processing of the provisional measures ordered in the matters of certain Venezuelan Prisons persists. Therefore, according to the operative paragraph of this Order, the State must present a single report in which it shall make a reference to the joint implementation of the provisional measures ordered by this Court in the matters of the Venezuelan prisons, as well as regarding Mr. Humberto Prado and Ms. Marianela Sánchez Ortiz, her husband Hernan Antonio Bolivar, and their children Anthony Alberto Bolivar Sanchez and Andrea Antonela Bolivar Sánchez. Moreover, the beneficiaries of the measures or their representatives, together, must present observations to said reports in a single report within the term of four weeks, as from receipt thereof. Likewise, the Inter-American Commission on Human Rights must present observations in a single brief within the term of six weeks, as from receipt of the State reports.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31(2) of the Rules of Procedure of the Court,⁹

⁹ Rules of Procedure of the Court approved during its eighty-fifth regular session, held from November 16 to 28, 2009.

DECIDES:

1. To order the State to maintain and adopt the measures necessary to continue protecting the life and personal integrity of the beneficiaries of Yare I Capital Region Penitentiary Center.
2. To require that the State must report to the Inter-American Court of Human Rights, no later than October 15, 2012, on the provisions set forth in considering paragraph 14 of this Order.
3. To order that the State must continue forwarding, every three months, as from notice of this Order, a single report in which it shall make specific reference to the measures it has adopted to protect the life and integrity of the beneficiaries of the matters of certain Venezuelan prisons. The beneficiaries of the measures or their representatives, together, must present observations to these reports in a single brief within the term of four weeks, as from receipt thereof. Likewise, the Inter-American Commission on Human Rights must present observations in a single brief within the term of six weeks, as from receipt of the State reports.
4. To order that the Secretariat of the Inter-American Court of Human Rights must notify this Order to the Venezuelan State, the Inter-American Commission on Human Rights and the representatives of the beneficiaries.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

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