

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

**PROVISIONAL MEASURES
WITH REGARD TO VENEZUELA**

**MATTERS OF CERTAIN VENEZUELAN PRISONS
EL RODEO I AND EL RODEO II CAPITAL JUDICIAL CONFINEMENT CENTER**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court" or the "Court") of February 8, 2008, on the matter of El Rodeo I and El Rodeo II Capital Judicial Confinement Center, in which it was decided, *inter alia*:

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

[...]

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 Order of the Inter-American Court of July 6, 2011, in the matters of certain

Venezuelan prisons, related to Rodeo I and Rodeo II Capital Judicial Confinement Center, whereby it was decided, *inter alia*:

1. To require that the State maintain and adopt the measures necessary to continue protecting the life and right to humane treatment of the beneficiaries of El Rodeo I and El Rodeo II Capital Judicial Confinement Center [...].

4. The brief of January 12, 2012, in which the Bolivarian Republic of Venezuela (hereinafter, the "State" or "Venezuela"), among other matters, forwarded information on the implementation of the provisional measures in El Rodeo II Capital Judicial Confinement Center.

5. The brief of August 3, 2012, in which the representatives of the beneficiaries (hereinafter, the "representatives") requested an expansion of the provisional measures ordered with respect to El Rodeo II Capital Judicial Confinement Center, in order to safeguard the prison population at El Rodeo II Capital Judicial Confinement Center and avoid irreparable damage to the life and personal integrity of these inmates.

6. The note of the Secretariat of August 6, 2012, in which on the instructions of the President of the Court and in accordance with Article 27(5) of the Rules of Procedure of the Court,¹ the State was requested to forward the observations it deemed pertinent regarding the specified request, as well as an updated list of the current inmates at El Rodeo III, indicating which inmates were relocated from El Rodeo II Capital Judicial Confinement Center from June 2011 onwards, as well as any other piece of information they deemed pertinent.

7. The brief of August 8, 2012, in which Venezuela forwarded lists of the inmates who were transferred from El Rodeo I and El Rodeo II Capital Judicial Confinement Centers to other prisons as well as of inmates detained in El Rodeo I Capital Judicial Confinement Center. Additionally, in this brief, it requested a reasonable extension in order to forward the updated list of inmates transferred to El Rodeo III and the current condition of the inmates who were temporarily transferred to other prisons, according to the requirements of the Secretariat's note of August 6, 2012.

8. The Secretariat's note of August 10, 2012, in which, on the instructions of the President of the Court, the Court granted the extension requested by the State until August 22, 2012.

9. The communication of August 22, 2012, in which the State requested "an extension to the extension granted" by means of the Secretariat's note of August 10, 2012.

10. The Secretariat's note of August 24, 2012, in which the Court informed, on the instructions of the Court's President, that the State was granted a new non-renewable deadline until August 30, 2012, to forward the updated list of people incarcerated at El

¹ Rules of Procedure of the Court approved during its eighty-fifth regular session, held from November 16 to 28, 2009.

Rodeo III, indicating which of them were transferred from El Rodeo II Capital Judicial Confinement Center since June 2011, according to the requirements in the Secretariat's note of August 6, 2012 (*supra* having seen paragraph 6). Since the date of the issuing of this Order, the Court has not received said information.

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 of the Convention, 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*).² 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.³

4. According to Article 63(2) of the Convention, three conditions must be met in order for the Court to be able to order provisional measures, namely: (i) "extreme gravity"; (ii) "urgency" and (iii) when necessary to avoid "irreparable damage to people". These three conditions must coexist and be present in any situation in which the Court's intervention is requested.⁴ Similarly, these three conditions must persist for the Court to maintain the protection ordered. If one of the conditions is no longer valid, the Court must assess the pertinence of maintaining the protection ordered.⁵

² 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.

³ 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, paras. 196 to 200, and *Case of the 19 Tradesmen*, second considering paragraph.

⁴ Cf. *Case of Carpio Nicolle.* Provisional Measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fourteenth considering paragraph, and *Case of the 19 Tradesmen*; twenty-second considering paragraph.

⁵ Cf. *Case of Carpio Nicolle*, fourteenth considering paragraph, and *Matter of Wong Ho Wing.* Provisional Measures with regard to Peru. Order of the Inter-American Court of Human Rights of June 26, 2012, third considering paragraph.

5. The representatives sustained that the relatives had filed different complaints regarding the treatment given to those incarcerated at El Rodeo III Capital Judicial Confinement Center. In fact, they reported that, during a search conducted on July 5, 2012, State's officials had fired pellets at inmates and injured them using wooden batons, sticks and machetes; additionally, the inmates also suffered abuse whilst being transferred to the courts. In a complaint reported to the Ministry of the Popular Power for the Prison Service, the relatives stated that "[o]n each one of the inmates, it is possible to observe marks on different parts of their bodies, as a result of beatings, which did not stop that day, but that continued until Monday July 9, 2012, and was not only limited to physical abuse, but was also psychological." In addition, they requested the removal of the Prison Director and the Captain in charge of the Bolivarian National Guard, among other measures. The information recently provided by the representatives also refers to the events which occurred at El Rodeo III Capital Judicial Confinement Center on July 18 and 19, 2012, during which six inmates were shot with pellets and more than 600 inmates sewed their mouths shut to initiate a hunger strike "to protest against the abuse inflicted by the Prison Director and during the transfer attempts".

6. In the present case, and in view of the facts mentioned, the representatives requested the expansion of the provisional measures ordered in favor of El Rodeo III Capital Judicial Confinement Center in order to protect those incarcerated and avoid irreparable damage to the life and personal integrity of these inmates. In this respect, the representatives explained that "El Rodeo" Capital Judicial Confinement Center is made up of: Rodeo I, Rodeo II and Rodeo III. They expressed that, even though it is true that El Rodeo III is not formally protected by the provisional measures of this Court, according to information directly obtained from conversations with the relatives of the inmates, approximately ninety percent (90%) of the inmates who are currently confined at El Rodeo III Judicial Confinement Center, come from El Rodeo II Capital Judicial Confinement Center and that their relocations took place as a result of the events that occurred in June 2011, when the population of El Rodeo II was vacated.

7. In fact, on July 6, 2011, the Court issued an Order as a result of the prevailing situation at El Rodeo I and El Rodeo II Capital Judicial Confinement Center since June 12, 2011, the date a riot was recorded, allegedly provoked by a change of power amongst the imprisoned population, which caused the death of inmates and people present therein, as well as injured parties. In this Order, the Court determined, *inter alia*, that:

11. Regarding the beneficiaries of the present measures, it is appropriate to clarify that they are identifiable and represent those people who on June 12, 2011, at the time the facts started, were detained at El Rodeo I and El Rodeo II, regardless of the change in location of their imprisonment, as their custody continues to be the State's responsibility. In this vein, the Court points out that some beneficiaries are at penitentiary centers whose population is also subject to protective measures.

12. Concerning those people who have been transferred to penitentiary centers that are not the subject of the present provisional measures or to health centers, in the understanding that these transfers are temporary, as indicated by the State –approximately 15 days until "a series of modifications" are made "to the physical structure of the [J]udicial [C]onfinement [C]enter" - the latter must immediately and effectively adopt all the measures necessary to guarantee said people their rights to life and humane treatment, until they are relocated to the El Rodeo I and El Rodeo II Capital Judicial Confinement Center or the State reports that their transfer is final.

8. Thus, in a report presented after said Order (*supra* having seen paragraph 4), the State communicated that "on July 13, 2011, the military intervention at two Confinement Centers [Rodeo I and Rodeo II] terminated and the authorities proceeded to transfer most of the inmates from El Rodeo II Capital Judicial Confinement Center to El Rodeo III Confinement Center", other inmates were sent to other prisons on the grounds of "disciplinary transfers". These transfers took place, according to the State, in order to vacate El Rodeo II Capital Judicial Confinement Center so it could be renovated. Furthermore, the State forwarded a list of 760 people who were transferred to El Rodeo III Capital Judicial Confinement Center, as well as the people transferred to other prisons. Moreover, despite the request made and the granting of two extensions (*supra* having seen paragraphs 6 to 10), the Court has not received, to date, an updated list of the people currently incarcerated at El Rodeo III, with an indication of those inmates who have been transferred from El Rodeo II Capital Judicial Confinement Center since June 2011, given that the State has not provided this information.

9. Consequently, according to the Order of July 6, 2011, and given the lack of updated and specific information provided by the State, this Court deems that, at least 760 people included in the list previously provided by the State, as well as any other person interned at El Rodeo II Capital Judicial Confinement Center since June 12, 2011, and who was later transferred to El Rodeo III Capital Judicial Confinement Center, remain under the protection of the provisional measures ordered in the matter of El Rodeo I and El Rodeo II Capital Judicial Confinement Center in the year 2008 (*supra* having seen paragraph 1). Namely, the State is obliged to protect the life and personal integrity of detainees, and secure them the minimum conditions compatible with their dignity while they remain under the responsibility of the State.⁶

10. Regarding the possible inmates, for which the request for expansion of the measures would correspond, the representatives indicated that approximately 10% of the population would not come from El Rodeo II Capital Judicial Confinement Center. Due to the lack of specific information, the Court is unable to make a precise decision. Without prejudice to the foregoing, the Court deems it appropriate to recall that Article 1(1) of the Convention embodies the general duty of States Parties to respect the rights and liberties recognized in said treaty and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms, under any circumstance. Thus, regardless of the existence of specific provisional measures, the State is especially obliged to guarantee the rights of the people in circumstances of deprivation of liberty.⁷

11. In conclusion, Venezuela is the guarantor of the life and the physical safety of the inmates at El Rodeo I, II and III, as well as of the other prisons in the country. 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 the life and physical safety of said persons is threatened in an unjustified manner. Given the

⁶ Cf. *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, para. 159, and *Matters 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.

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-second considering paragraph.

circumstances of this present case and while the State adapts the detention conditions affecting the inmates, the Court must demand, for the purposes of these provisional measures, that the State effectively eliminates 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 beneficiaries, as much as in the relationship between the inmates, as that with the penitentiary and governmental authorities. It is paramount that the priority measures aforementioned are reflected in the State's reports describing the means, actions and goals set by the State in agreement with the specific needs of protection of these same beneficiaries.

12. Therefore, the Court awaits the updated list of all the people currently incarcerated at El Rodeo III Capital Judicial Confinement Center, indicating which of these inmates were transferred from El Rodeo II Capital Judicial Confinement Center from June 2011 onwards, as well as the information regarding the measures adopted to protect the life and integrity of the beneficiaries of these measures.

13. Finally, the Court reminds 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,

DECIDES:

1. To require that the State must maintain and adopt the measures necessary to continue protecting the right to life and personal integrity of the beneficiaries at El Rodeo I and El Rodeo II Capital Judicial Confinement Center, including those inmates who were transferred after June 12, 2011, from El Rodeo II Capital Judicial Confinement Center to El Rodeo III Capital Judicial Confinement Center.

2. That the State must continue reporting to the Inter-American Court of Human Rights, no later than October 15, 2012, on the provisions set forth in considering paragraph 12 of this Order.

3. To order that the State must continue forwarding quarterly, as from notice of this Order, a single report in which it shall make specific reference to the measures it adopts to protect the life and integrity of the beneficiaries of the matters of certain Venezuelan prisons. The beneficiaries of the measures or their representatives must present observations to said reports together 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