
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION OF PRECAUTIONARY MEASURES 53/2022**

Precautionary Measure No. 888-19
Persons Deprived of Liberty in the Alfredo Tranjan Penitentiary
October 11, 2022
(Extension)
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I. INTRODUCTION

1. On May 28, 2020, the Inter-American Commission on Human Rights (IACHR) received a request for the extension of precautionary measures PM-888-19 (Persons Deprived of Liberty in Jorge Santana Public Penitentiary) on behalf of persons deprived of liberty at the Alfredo Tranjan Penitentiary (“the proposed beneficiaries”), urging the IACHR to require that the State of Brazil (“Brazil” or “the State”) adopt the necessary measures to protect their rights to life, personal integrity, and health. According to information received, the penitentiary is receiving prisoners transferred from the Jorge Santana Public Penitentiary and they are being held in the Alfredo Tranjan Penitentiary under inadequate conditions of detention and without adequate and timely access to medical attention.
2. In accordance with Article 25 of its Rules of Procedure, the Commission requested information from the State on May 1, June 6, and October 28, 2020. In the same way, the IACHR, again, requested information regarding the extension request on July 18, 2022. The State replied on March 13, May 15, and July 8, 2020; as well as on May 14, 2021, and August 12, 2022. The representatives sent information on a regular basis, most recently on August 10, 2022.
3. Additionally, the Commission held working meetings on June 9, 2020, and July 14, 2022, during its 176th and 184th sessions, respectively, at which the parties provided information on the situation of the proposed beneficiaries.
4. Upon analyzing the submissions of fact and law provided by the parties, the Commission considers that the information presented shows *prima facie* that the persons deprived of their liberty in the Alfredo Tranjan Penitentiary are in a serious and urgent situation, given that their rights to life, personal integrity, and health are at serious risk. Consequently, in accordance with Article 25 of the Rules of Procedure, the Commission requests that the State of Brazil: a) adopt the necessary measures to protect the life, personal integrity, and health of persons deprived of liberty in Alfredo Tranjan Penitentiary; particularly, guaranteeing adequate and timely medical care, in accordance with the recommendations of the corresponding experts; b) adopt the necessary measures to ensure that the conditions of detention of the beneficiaries conform to applicable international standards; in particular, ensuring that the structure of Alfredo Tranjan Penitentiary meets the necessary security conditions, taking into account the situation of beneficiaries with disabilities or injured, mutilated, fractured or otherwise wounded, in order to prevent further harm to the entire prison population; taking immediate action to substantially reduce overcrowding; and providing adequate sanitation and hygiene; c) take measures with a view to reassessing the compatibility of deprivation of liberty in view of the individual situation presenting a risk to the life and personal integrity of beneficiaries with disabilities –temporary or permanent– and others with particular health needs in light of applicable international standards; d) consult and agree upon the measures to be taken with the beneficiaries and their representatives; and e) report on the actions taken in order to investigate the facts that led to the adoption of this precautionary measure, so as to prevent such incidents from reoccurring.

II. BACKGROUND INFORMATION

5. The Inter-American Commission granted precautionary measures in favor of the persons deprived of liberty in the Jorge Santana Public Penitentiary, through Resolution No. 6/2020, on February 5, 2020,¹ requesting that Brazil adopt the necessary measures to protect the life, personal integrity, and health of the persons deprived of liberty in the Jorge Santana Public Penitentiary; in particular, ensuring adequate and timely medical care, in accordance with the recommendations of the corresponding experts; adopt the necessary measures to ensure that the conditions of detention of the beneficiaries conform to the applicable international standards; in particular, ensuring that the structure of the Jorge Santana Public Penitentiary meet the necessary security conditions, taking into account the situation of the beneficiaries with disabilities or injured, mutilated, fractured, or otherwise wounded, in order to prevent further harm to the entire prison population; taking immediate actions to substantially reduce overcrowding; and providing adequate sanitation and hygiene; consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and report on the actions taken to investigate the alleged events that led to the adoption of this precautionary measure, so as to prevent such incidents from reoccurring.
6. The Commission has been monitoring compliance with the precautionary measure through various means, such as requests for information between the parties and working meetings. As noted above, the last working meeting was held on July 14, 2022.

III. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE PARTIES

I. Information provided by the representatives

7. On May 28, 2020, the representatives requested an extension of PM-888-19 in favor of the persons deprived of liberty in Alfredo Tranjan Penitentiary (PAT). According to the representatives, the State used the strategy of transferring the persons deprived of liberty from the Jorge Santana Public Penitentiary (PPJS) –where the beneficiaries of precautionary measures were held– to the PAT. This did not imply a significant improvement in their health care situation. The representatives indicated that between November 2019 and September 2020, 255 people were transferred from the PPJS to the PAT, 82 during the pandemic. According to the representatives, this request for extension shares a factual framework with PM-888-19, “not only because [the proposed beneficiaries] have exactly the same profile, but also because of the transfer itself, which brought many of the beneficiaries who were in a more serious condition to the [PAT],” which was used with the same functions that were carried out in the PPJS.
8. The representatives alleged that the transfer decision reportedly sought to improve the medical care available to the proposed beneficiaries, since the PAT had a physician and an outpatient clinic that were better than in the PPJS. Nonetheless, this was reportedly ineffective, and the inadequate conditions of detention allegedly continued, with the PAT receiving an “uncontrolled flow” of prisoners with disabilities.

¹ IACHR. Resolution 6/2020. PM 888-19. Persons Deprived of Liberty in the Jorge Santana Prison regarding Brazil. February 5, 2020.

9. In the PAT, the proposed beneficiaries reportedly remain “with very serious injuries, without access to health care process and mobility structure, also with purulent wounds and inadequate hygienic conditions, finding themselves in an even more overcrowded environment.” In December 2019, under this situation, the representatives noted that a putrid odor had been produced in the gallery (photographs were provided). Many of the proposed beneficiaries indicated they reuse bandages and those with colostomy bags alleged that they have their maintenance hindered by lack of access to the external health network. The proposed beneficiaries in the most vulnerable situation would be those who had survived gunshot wounds, presenting sequelae such as: poorly cared colostomy, infected external fixators, need to place plates to stabilize limbs, need for surgeries, prisoners with plates in a situation of rejection by the body; and people with severe weakness without being able to communicate.
10. In an *on-site visit* in June 2022, the representatives reportedly observed again inmates with shots in the arms, back and head; with a plate placed in the hips, loosened without being corrected; inmates requesting a fixator removal since seven months ago; inmates whose fixator was removed without analgesia and without being given a follow-up appointment; an inmate with a swollen amputation; an inmate with two stents following two heart attacks without being accompanied by a specialist; a prisoner who fell and had a fracture and who has been waiting three months for a consultation; an inmate waiting since 2020 for a hernia repair due to a gunshot wound; an inmate who was shot in the knee and can no longer bend it but only received stitches; a prisoner without a jaw that fails to feed properly; a prisoner who has been waiting for surgery since 2019 and recently missed his appointment because the inspectorate did not have his documents in the right place and did not allow him to leave; among others.
11. According to the representatives, the assessment of those who would be transferred from the PPJS to the PAT was made without a medical evaluation, taking to the PAT those who appeared to be in poorer health conditions, with greater mobility difficulties and the use of a colostomy bag. Despite the above, health services at the Alfredo Tranjan Penitentiary reportedly have not been improved. Initially, there would be a doctor who would attend once a week and two nursing assistants would keep the outpatient clinic running from Monday to Friday. During the pandemic, the physician had been withdrawn to compose a rotating team, which circulated in the penal units according to the demand. For the representatives, these conditions would be “far from adequate for the type of problems that these prisoners present,” since these would require attention at a more complex level, such as physiotherapy and surgery, for which they would depend on access to the external health network. The lack of access to physiotherapy, for example, would be so serious that prisoners improvise exercises to try to mitigate the situation, “a significant number of people have no chance of recovery in the unit.”
12. The representatives acknowledged that the implementation of the team of the National Policy of Comprehensive Health Care for Persons Deprived of Liberty in the Prison System (*Política Nacional de Atención Integral a la Salud de las Personas Privadas de Libertas en el Sistema Penitenciario*, PNAISP) has contributed positively to health care in the PAT. However, while recognizing the relevance of the PNAISP, they reiterate that it is also not sufficient for the needs of the proposed beneficiaries, since it provides basic health care, in contrast to the aforementioned demand of the proposed beneficiaries for more complex medical care. In this context, the representatives alleged that the serious health problems that are left untreated at the outpatient level, “are exacerbated, causing great damage to the health and integrity of the persons deprived of liberty in the PAT,” with bedsores, atrophy, creation of permanent disabilities, leading to death in some cases.

13. As an example, they indicated the situation of a proposed beneficiary who had developed a giant inguinal-scrotal hernia, which would be a rare case resulting from the delay in health care. Similarly, the representatives reported on the case of a proposed beneficiary who is said to permanently depend on the collaboration of his cellmates to survive. As a paraplegic, he needs to be repositioned in bed, changed diapers, to have his personal hygiene and urinary catheter support every three hours. The representatives stated:

Clearly, these cases are not primary care cases, and at times they demonstrate glaringly how the justice system does not take into account a prisoner's health status and chances of survival when determining whether to keep them in prison.

14. To meet the health demands, the proposed beneficiaries would be sent to the Hamilton Agostinho Emergency Unit (UPAHA), designed to assist penitentiary units. However, access thereto is said to be difficult, delayed and "often useless". The representatives clarified that UPAHA has no infrastructure to perform surgeries or procedures of greater complexity, and these must be performed in the external health network. However, the process to obtain a space, scheduling and transfer to the external network would be failing.
15. For the transfer of beneficiaries to external medical care, the representatives informed in January 2022 that for the entire state of Rio de Janeiro only 45 vehicles would be available, where the PAT is located, with capacity for 8-18 people, although none of them is exclusively for health care, and only one team would be responsible for all transfers to the hospital in the Gericinó Complex, where the PAT is located. Subsequently, in August 2022, the representatives indicated that given the lack of vehicles, there would be only 8 to make the transfers in the state of Rio de Janeiro. In such a scenario, the patient would often be scheduled and ready for transport, but no vehicle would be available. In this regard, it was indicated that the non-attendance rates in the system that regulates spaces in the external network for persons deprived of liberty had been, respectively, 84% in 2018; 70% in 2019; and 77% in 2020.
16. Due to the above, when a proposed beneficiary has upcoming appointments, the responsible team would not return them to the unit of origin, but would keep them in an area known as "Maracanã", an area that would not be suitable for people with illnesses, for example, there are no mattresses and hygiene supplies. Likewise, it was unanimous among the proposed beneficiaries that they would be "massacred" in the transfer, in overcrowded cars and, when there are four or more people, they would be forced to go in the "crab position," according to the representatives, considered a form of torture. Furthermore, it was indicated that the transferring group would have the autonomy to establish priorities, although they do not have the technical capacity to establish what constitutes a medical emergency. For these reasons, the proposed beneficiaries would lose the scheduled appointments.
17. Regarding the medical appointments scheduling process, the representatives indicated that it takes too long to achieve it at UPAHA, even weeks or months. This is especially important, considering the fact that one of the means to obtain external appointment scheduling for specialized treatment is through the UPAHA. Likewise, the visits to UPAHA would not be effective; several of the proposed beneficiaries have already been taken 5 to 10 times without access to the necessary services or, even, without receiving information if an appointment had been made in the external network on their behalf. A proposed beneficiary awaiting an appointment with an orthopedist, who already had muscular atrophy, was cited as an example. The representatives stressed that the process is particularly problematic for patients in need of biopsy or dialysis. In that sense, "[t]he vast majority could, with proper treatments, fully recover, but the absence of movement, surgery and physiotherapy leads them down an irreversible path [...]." Thus, the representatives indicated that:

“In the cell, it is unanimous: the vast majority have only seen a doctor once since entering the system, received no care since entering the unit, suffer severe pain with no palliation, receive no information about when and what procedures they need to perform to improve their situation.”

18. Moreover, the representatives added that, initially, at the time of transferring the proposed beneficiaries of the PPJS to the PAT, only one cellblock had concluded the work on improving the accessibility infrastructure for wheelchair-using inmates, who were placed in that cellblock. In addition, many of the proposed beneficiaries reported that they spend most of their time inside the cells, as there are no wheelchairs for everyone and there is only one access ramp. As a result, some proposed beneficiaries have to be carried by others. There is also a hole between the two sides of the cellblock, hindering the mobility of people with disabilities. They add that the bathrooms were not adapted, making it impossible to enter with a wheelchair. Plastic chairs with a hole made in the center, at risk of breaking, are used in an improvised way. Also, considering that most of the inmates in that cellblock would be disabled and would use external fixators - which are devices for bone fixation, that require care and take up extracorporeal space - they would not be able to share a bed, leading to the other inmates in the PAT being confined to the other cellblocks.
19. The representatives also added the existence of an unhealthy situation in the PAT, alleging that, beyond their cells, the proposed beneficiaries would only have access to a corridor with sewage. In this regard, there would not be enough hygiene supplies for the proposed beneficiaries, nor for cleaning the cells, and there would be garbage in the cellblocks. The toilets inside the dormitory cells are squat toilets, which are often blocked and, when it rains, sewage runs up through the pipes, plus there are leaks. The proposed beneficiaries indicated that they cover the exit of the squat toilet with plastic bottles to block pests and odor. They are said to depend on family contributions for hygiene, clothing, sheets and cleaning products. There would also be no light in the cells, the proposed beneficiaries having improvised, with metallic material from food containers, an extension of the corridor light.
20. According to the August 2022 report, this scenario would be aggravated by overcrowding with occupancy reaching 1,741 for 913 beds. Persons with disabilities would be concentrated in three cellblocks with 92, 94 and 102 persons respectively, all overcrowded. As an example, the representatives sent photographs of a two-person cell in which there is only one bed. They also reported another cell with a bunk bed with seven people, two of whom were reportedly bedridden and three others are amputees. Considering the number of bedridden people, the lack of adequate mattresses was highlighted, potentially increasing the risk of infections and bedsores. In this situation, it was indicated that the check of the persons deprived of liberty would take place at 4 p.m. and the cell doors would only be opened again at 7 a.m., which would force them to 15 hours of uninterrupted confinement under those circumstances. Additionally, in cellblock no. 3 there is no ramp, the separation between both sides with cells is very high and with no handrail, which would lead them to fall, along with the holes.
21. Particularly with regard to food and water, the representatives indicated that the proposed beneficiaries would be fasting for 17 hours, given the excessive time between meals, as well as the poor quality of the food. Likewise, the proposed beneficiaries reported that the water supply, intended for consumption, personal hygiene and cleaning, is provided three times a day for 15 to 30 minutes, which is insufficient for the entire cellblock. The water is stored in dirty barrels and plastic bottles. People with disabilities would have a lot of difficulty with storage as the barrels are heavy and the water point is at the end of the cellblock.

22. In view of the alleged context, the representatives informed that the PAT presented in 2021 an “exponential” number of deaths, with a three-fold increase compared to 2020, going from two deaths per year to seven. They indicated that they did not receive the documentation corresponding to most of the deaths, however, from the ones they had access to, it can be observed that they were related to health situations such as tuberculosis, asthma, infection, “tuberculosis or pneumonia” with malnutrition and dehydration, or “undetermined” causes. It was noted that in several cases the deceased had already had several previous visits to the Hamilton Agostinho Emergency Unit (UPAHA), and/or arrived dead at the Unit. In view of this, the representatives indicated that by 2022, there had already been three deaths, one of which was due to drug intoxication, highlighting problems related to mental health, the absence of professionals in the area and medications, as well as the inadequate use of isolation and the disorderly distribution of medication.

This becomes even more troubling once it becomes understood that there is a back cell in [the PAT] filled with psychiatric patients. At the time of the visit, one of them was in isolation because the medicine would not improve his condition, which is also not the right solution, since in the case of psychiatric patients, isolation also adds up to torture, cruel, inhuman, and degrading treatment.

23. The representatives added information on the death of a person after their release from the PAT, presumably due to the worsening of their health conditions, alleging that imprisonment in that unit would cause “not only intramural death, but also cause such severe sequelae for people with physical disabilities that sometimes they are impossible to reverse.”

24. Therefore, the representatives added that the state of Rio de Janeiro is not adequately performing the expert reports in case of death, allowing the cause of death to be determined by prison physicians, instead of a process that includes the expert reports from the Forensic Medical Institute. This would hinder investigations, the process of finding the truth and the possible determination of State responsibility.

25. In addition, the representatives indicated the lack of transparency and access to information required by the Rio de Janeiro State Mechanism to Prevent and Combat Torture. In this regard, the representatives indicated that during the visit to the PAT on September 15, 2020, “the unit’s management did everything possible to prevent full communication with the inmates, culminating in verbal retaliation against an inmate who complained of pain and was carried by the other cell inmates, after informing the team of what he was feeling.”

26. In addition, they added that there is administrative and bureaucratic obstacles in the preparation of a card allowing family members of the proposed beneficiaries to visit them, leading to considerable delays. This would have a particular impact on the proposed beneficiaries considering that they are largely dependent on medicine supplies and other health products from their families. Finally, the representatives added that the proposed beneficiaries who had been hospitalized after their detention would still not have access to a custody hearing. This implies that they are not being evaluated as to whether imprisonment in itself represents a risk to their life and/or personal integrity. Nor does it assess whether they were tortured at the time of arrest.

II. Information provided by the State

27. In March 2020, the State reported that after the adoption of Resolution No. 6/2020 (PM-888-19) in favor of the persons deprived of liberty in the PPJS, the prisoners with health complaints were transferred to the PAT, in their own cellblock. The PAT is in the same complex as the PPJS. In the context of the COVID-19 pandemic, the State indicated that people in that complex who needed emergency medical care were cared for by a traveling team and urgent cases were taken to UPAHA.

28. In response to the request for extension of precautionary measures MC-888-19, in July 2020, the State argued that Article 25 of the IACHR Rules of Procedure does not provide for this possibility. The State indicated that the PAT has a “different factual context” and should be considered under its own procedure for requesting precautionary measures. Despite the foregoing, the State added that “administrative, regulatory and enforcement measures have been adopted in the Alfredo Tranjan Penitentiary to guarantee the rights of its inmates, even with the limitations caused by the COVID-19 pandemic.” Likewise, the fumigation and pest control, cleaning and painting of the pavilions have been reportedly carried out. In April 2020, a training on cleaning and disinfection of common areas in penitentiaries was reportedly carried out.
29. The State reported that beneficiaries with comorbidities and motor disabilities have been separated in the PAT, to exclude them from living with others in the context of the pandemic. Also, COVID-19 tests have reportedly been carried out on officials and by sample in the proposed beneficiaries. Additionally, all proposed beneficiaries have reportedly their patient history individualized and monitored by the technical health team. There would be sufficient personal hygiene material and cleaning of the facilities.
30. Regarding the infrastructure, even in its report of July 2020, the State reported that it had contacted the State Water and Wastewater Company of the Rio de Janeiro in order to regularize the situation in the PAT. Videoconferencing procedures had also been adopted to enable the judiciary to follow up on procedural acts. Likewise, the State alleged that it is reportedly developing a partial reform process in favor of the PAT. Considering the foregoing, the State argued, on that occasion, that the request for extension would not meet the procedural requirements for the granting of a precautionary measure, “in the absence of seriousness, urgency, or risk of irreparable harm.”

The State has been promoting the human rights of persons deprived of their liberty in the Jorge Santana Public Prison, as well as in the Alfredo Tranjan Penitentiary, through the multidisciplinary and integrated action of several of its agencies, on several fronts, as noted above.
31. In its May 2021 report, the State indicated that the transfer of prisoners from the PPJS to PAT sought “to improve routine outpatient care for prisoners, according to the most appropriate physical space offered by the [PAT] unit,” in which there is a PNAISP team, composed of a physician, a nurse, a pharmacist, two social workers, a psychologist, a dentist, and an oral health technician. The team would perform basic health care weekly, with active search for comorbidities. The State also reported that by concentrating people with comorbidities and motor disabilities in two wards, it would allow fewer people in the other wards. Those entering the PAT or those suspected of respiratory disease were assigned to a specific ward for 14 days.
32. The State also reported on the construction of two ramps in the cells to improve access for wheelchair users. The proposed beneficiaries would have the right to receive, weekly, food, medicine, hygiene material and clothing. The food would be satisfactory and supplied in a timely manner, while the water supply is “daily and without interruption.”
33. More recently, on August 12, 2022, the State reported that a joint working group had been set up between the organs of justice and public administration, with the aim of “improving, within the state public administration, the actions necessary to comply with the decisions of the inter-American human rights bodies” and on April 4, 2022, the Group visited the penitentiary units of Rio de Janeiro.

III. ANALYSIS OF THE REQUIREMENTS OF URGENCY, SERIOUSNESS, AND IRREPARABLE HARM

40. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with the human rights obligations set forth in the Charter of the Organization of American States, and in the case of the Member States that have not yet ratified the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Commission's Rules of Procedure. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid irreparable harm to persons.
41. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "I/A Court H.R.") have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding their protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are under consideration by the IACHR. In the process of reaching a decision, according to Article 25(2) of the Rules of Procedure, the Commission considers that:
- a) "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system;
 - b) "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
 - c) "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.
42. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine prima facie if a serious and urgent situation exists. As a preliminary point, the Commission recalls that Article 25(7) of its Rules of Procedure refers to extension decisions in precautionary measures: "[t]he decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions [...].² Likewise, the granting of extensions of precautionary and provisional measures has been a constant practice in the inter-American system.³ Considering the foregoing, the Commission also recalls that a requirement for the extension of precautionary measures is that the facts alleged in the request for extension have a "factual connection" with the events that called for the initial adoption of the precautionary measures.⁴
43. In the instant matter, the IACHR observes that the "factual connection" requirement has been met to the extent that some of the beneficiaries of precautionary measures in the Jorge Santana Public

² IACHR. Rules of Procedure. 2013, Art. 25(7)

³ See, for example: IACHR. Resolution No. 94/21.PM 600-15 - Ángel Omar Vivas Perdomo and his family, Venezuela. November 27, 2021; IACHR. Resolution No. 1/16. PM 388/12 - Edgar Ismael Solorio Solís et al, Mexico January 13, 2016; I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of May 25, 2022. I/A Court H.R. Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua. Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 22, 2017.

⁴ See in this regard: IACHR. Resolution 10/17. Precautionary Measure No. 393-15 - Detainees in "Punta Coco" regarding Panama. March 22, 2017, para. 28; and I/A Court H.R. Case of Fernández Ortega et al. v. Mexico. Provisional Measures. Order of the Inter-American Court of Human Rights of November 23, 2010, considerandum 11.

Penitentiary (PPJS) were transferred to the Alfredo Tranjan Penitentiary (PAT). Even, according to the State itself, this transfer had been justified following the granting of PM-888-19, which is sought to be extended in the instant proceeding (see *supra* paras. 33 and 37). According to the representatives, between November 2019 and September 2020, 255 people were transferred from the PPJS to the PAT. Such a transfer decision impacted on the change in the profile of the prisoners in the PAT, which was used in the same function as the PPJS, receiving “provisional prisoners who were shot or are in a serious state of health due to the circumstances of their detentions, requiring specific and/or ongoing medical attention.”⁵

44. Similarly, although the State indicated that the request for extension should be treated as a new request for precautionary measures, the Commission recalls that whatever the case, the three requirements of Article 25 of its Rules of Procedure must be assessed. In the case of a request for extension, as indicated above, the Commission also assesses the fulfillment of a “factual connection,” which it considers to be fulfilled in the matter at hand.
45. Upon analyzing the procedural requirements, the IACHR recalls that, when assessing the situation of persons deprived of liberty in Jorge Santana Penitentiary, it pointed out to the State that:

as stated by the I/A Court H.R. the State is in a special position of guarantor with respect to persons deprived of liberty, inasmuch as the prison authorities exercise a strong control or dominion over the persons who are subject to their custody. This is the result of the special relationship and interaction of subjection between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate their rights and obligations, and by the very circumstances of imprisonment. In these circumstances, prisoners are prevented from satisfying on their own a series of basic needs that are essential for the development of a dignified life. Positive obligations to keep the detainee in the enjoyment of his or her rights include: i) measures to protect against possible attacks or threats by public authorities or even by other inmates; ii) separation of detainees by category; iii) measures to prevent the presence of weapons in prisons; and iv) improvements in detention conditions.⁶

46. It was also recalled that “[...] the duty of the State to provide adequate and appropriate medical care to persons in its custody is even greater in those cases where the injuries or damage to the health of prisoners is the result of the direct action of the authorities.”⁷ Likewise, the Commission considered that in the PPJS, persons deprived of liberty are in a situation of serious and urgent risk of irreparable harm by observing that they face “a multiplicity of risk factors,” including detention conditions and lack of timely access to health care, aggravated by an alleged lack of adequate judicial supervision of the beneficiaries due to the circumstances in which they are deprived of liberty.⁸ The IACHR notes the similarities of the instant matter with that of the persons deprived of liberty in the aforementioned PPJS.
47. In analyzing the requirement of *seriousness*, the IACHR considers that this has been fulfilled. The representatives provided detailed information reporting a serious and inadequate situation of detention in the PAT, exposing the proposed beneficiaries to a serious and urgent risk of irreparable harm. In this regard, the Commission notes that it was alleged *i.* the presence of wastewater in the pavilions; *ii.* blocked and smelly toilets, from which wastewater would escape; *iii.* leaks in the cells; *iv.* presence of pests and garbage; *v.* lack of lighting; *vi.* inadequate food and long periods of fasting; *vii.*

⁵ IACHR. Resolution 6/2020. PM 888-19. Persons Deprived of Liberty in the Jorge Santana Prison regarding Brazil. February 5, 2020, para. 4.

⁶ *Ibid.*, para. 26.

⁷ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, Chap. V, para. 530.

⁸ IACHR. Resolution 6/2020. PM 888-19. Persons Deprived of Liberty in the Jorge Santana Prison regarding Brazil. February 5, 2020.

insufficient supply of drinking water, as well as for hygiene and cleaning of the premises; *viii.* lack of mattresses; *ix.* long periods of imprisonment in the cells; *x.* added to the lack of personal hygiene and cleaning material of the premises. To the above is added the alleged situation of overcrowding identified in the PAT, which had 1741 people for 913 places in June 2022, which reflects an occupation for approximately double its capacity.

48. In this regard, the IACHR warns that such conditions involve risks to the health, personal integrity and life of the beneficiaries by exposing them to possible diseases, depriving them of food and drinking water in quantity, quality and availability, as well as preventing or hindering them from carrying out essential activities, such as sleeping and performing personal hygiene in an appropriate manner. All this is aggravated considering that the conditions of confinement oblige them to remain continuously under such circumstances.
49. Furthermore, according to the representatives, the proposed beneficiaries of the PAT would not have access to timely health care. This particularly affects a number of persons deprived of their liberty - concentrated in three wards, with 92, 94 and 102 persons respectively - who have been shot or are in a serious state of health, often because of the circumstances of their detention. Such people would require specialized, continuous and/or “complex” medical treatment, that is, physiotherapy, surgery, removal of external fixators, among others, which could not be performed at the nursing level or even in the Hamilton Agostinho Emergency Unit (UPAHA). It is noted that the information provided by the State confirms that the PNAISP team in the PAT provides basic health care (*see supra* para. 37). According to the representatives, in June 2022, it was observed:
- inmates with shots in the arms, back and head; with a plate placed in the hips, loosened without being corrected; inmates requesting a fixator removal since seven months ago; inmates whose fixator was removed without analgesia and without being given a follow-up appointment; an inmate with a swollen amputation; an inmate with two stents following two heart attacks without being accompanied by a specialist; a prisoner who fell and had a fracture and who has been waiting three months for a consultation; an inmate waiting since 2020 for a hernia repair due to a gunshot wound; an inmate who was shot in the knee and can no longer bend it but only received stitches; a prisoner without a jaw that fails to feed properly; a prisoner who has been waiting for surgery since 2019 and recently missed his appointment because the inspectorate did not have his documents in the right place and allowed them to leave; among others.
50. The Commission observes, in assessing the seriousness of the situation, that the alleged scenario of lack of timely medical care occurs in the context of unhealthy conditions, lack of food and water, lack of basic supplies, and overcrowding referred to above, which ultimately aggravates the health conditions of the proposed beneficiaries. In this regard, the representatives indicated that irreparable harm, such as permanent disability, health sequelae and death, has already materialized for some proposed beneficiaries.
51. In these circumstances, the IACHR notes with particular concern the conditions of detention to which persons with disabilities would be subjected, who would not have sufficient wheelchairs, whose cells are not accessible to wheelchairs, would not have adapted toilets and would often remain bedridden, with the risk of bedsores, totally dependent on their cellmates to carry out essential activities. While the State alleged that two ramps were built in the cells to improve access for wheelchair users, this would not be sufficient to protect the life, integrity and health of the proposed beneficiaries in such conditions. In this regard, it is recalled that, in accordance with Article 14(2) of the Convention on the Rights of Persons with Disabilities:

States Parties shall ensure that persons with disabilities who are deprived of their liberty through any process are, on an equal basis with others, entitled to guarantees in accordance with international human

rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.⁹

52. In the same vein, the Inter-American Court has affirmed, in the case of *Chinchilla Sandoval v. Guatemala*, with regard to the situation of persons with physical disabilities deprived of their liberty:

The right to accessibility from a disability perspective includes the duty to adjust an environment in which a subject with any limitation can function and enjoy the greatest possible independence, in order to fully participate in all aspects of life on an equal basis with others. In the case of persons with physical mobility difficulties, the content of the right to freedom of movement implies the duty of States to identify obstacles and barriers to access and, consequently, to remove or adapt them, thereby ensuring the accessibility of facilities or services for persons with disabilities to enjoy personal mobility as independently as possible.¹⁰

53. Under the conditions described above, in light of some examples provided by the representatives (*see supra* paras. 9; 12; 16), the Commission expresses its concern that the proposed beneficiaries who were hospitalized after their detention did not have access to a custody hearing, which, *inter alia*, deprives them of an assessment of the risks to their lives and personal integrity in prison conditions. In this sense, it follows that there are potentially proposed beneficiaries whose stay in the Alfredo Tranjan Penitentiary *per se* presents a serious risk to their life and personal integrity.

54. The Commission appreciates the information provided by the State in August 2022 regarding the establishment of a joint Working Group between the organs of justice and public administration, with the objective of “improving, within the state public administration, the actions necessary for the fulfillment of the decisions of the inter-American human rights bodies.” However, it notes that the State did not provide detailed information on the situation of the proposed beneficiaries that would allow to distort what was raised by the representatives, whose reports have also been accompanied by documentary support, such as photographic records.

55. Beyond questioning the extension process (*see supra* para. 34), the State reported that “they have adopted administrative, regulatory and enforcement measures to guarantee the rights of their inmates”; and in a report of July 2020, it indicated that fumigation and rat extermination, cleaning, and painting of the cellblocks are being carried out, as well as that there is sufficient material for personal hygiene and cleaning of the facilities. On that occasion, the State also indicated that it had contacted the State Water and Wastewater Company of Rio de Janeiro in order to regularize the situation in the PAT and that it would be developing a partial reform process in favor of the PAT. However, after two years, the problem of water supply and wastewater control was not identified as having been solved, nor was any subsequent information received on the above-mentioned partial reform process.

56. In this regard, in view of the arguments of both parties, the Commission concludes that, from a *prima facie* standard, the rights to life, personal integrity, and health of the persons deprived of liberty in the PAT are at serious risk.

57. Regarding the urgency requirement, the Commission considers that it is met, in view of the ongoing, threatening events indicated and the materialization of harm to the rights of the proposed beneficiaries, as illustrated by the health sequelae observed and the reported deaths. In this context, the information is sufficient to determine that further harm is likely to continue to occur at any time,

⁹ United Nations. Convention on the Rights of Persons with Disabilities. 2006.

¹⁰ I/A Court H.R. Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations, and costs. Judgment of February 29, 2016. Series C No. 312, para. 214.

either due to the lack of medical attention or because of the conditions of detention described, thus requiring imminent intervention.

58. As regards the requirement of irreparable harm, the Commission considers that it is met, since the possible impact on the rights to life and personal integrity, by their very nature, constitutes the maximum situation of irreparability.
59. Moreover, the Commission recalls that the State, in addition to its position as guarantor in relation to persons deprived of liberty (*vid supra* para. 45), has a particular duty to protect those in vulnerable situations, such as sick persons or with disabilities.¹¹ Likewise, according to the Inter-American Court, “States must provide the necessary health services to prevent possible disabilities, as well as prevent and minimize the appearance of new disabilities.”¹²
60. Finally, given that the IACHR conducted a previous visit to prisons in Brazil in 2018, including the Jorge Santana Public Penitentiary, and considering that the instant resolution is an extension of precautionary measures, the IACHR considers it necessary to assess the situation of the persons deprived of liberty at the Jorge Santana Public Penitentiary, as well as that of those held at the Alfredo Tranjan Penitentiary. In this regard, the IACHR requests the State’s consent to visit both penitentiaries and evaluate the implementation of these precautionary measures. To this end, the IACHR is available to hold both a working meeting and bilateral meetings with the parties.

IV. BENEFICIARIES

61. The Commission declares the persons deprived of liberty in Alfredo Tranjan Penitentiary to be beneficiaries for whom these precautionary measures are being extended and who are identifiable in accordance with Article 25.6.b of the IACHR Rules of Procedure.

V. DECISION

62. The Inter-American Commission on Human Rights considers that the matter at hand meets *prima facie* the requirements of seriousness, urgency, and irreparable harm set forth in Article 25 of its Rules of Procedure in the terms indicated throughout this resolution. Consequently, the IACHR requests that Brazil:
 - a) adopt the necessary measures to protect the life, personal integrity, and health of the persons deprived of liberty in Alfredo Tranjan Penitentiary; particularly, guaranteeing adequate and timely medical care, in accordance with the recommendations of the corresponding experts;
 - b) adopt the necessary measures to ensure that the conditions of detention of the beneficiaries conform to applicable international standards; in particular, ensuring that the structure of Alfredo Tranjan Penitentiary meets the necessary security conditions, taking into account the situation of beneficiaries with disabilities or injured, mutilated, fractured or otherwise injured, and in order to prevent further harm to the entire prison population; taking immediate action to substantially reduce overcrowding; and providing adequate sanitation and hygiene;

¹¹ IACHR. [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#). 2011, para. 628.

¹² I/A Court H.R. [Case of Guachalá Chimbo et al. v. Ecuador](#). Merits, Reparations, and Costs. Judgment of March 26, 2021. Series C No. 423., para. 143. See also: I/A Court H.R. [Case of Ximenes Lopes v. Brazil](#). Judgment of July 4, 2006. Series C No. 149, para. 104.

- c) take measures with a view to reassessing the compatibility of deprivation of liberty in the individual situation of risk to the life and personal integrity of beneficiaries with disabilities – temporary or permanent– and others with particular health needs in the light of applicable international standards;
 - d) consult and agree upon the measures to be taken with the beneficiaries and their representatives; and
 - e) report on the actions taken in order to investigate the facts that led to the adoption of this precautionary measure, so as to prevent such incidents from reoccurring.
63. The Commission requests that the Government of Brazil inform the Commission, within 20 days from the date of this communication, on the adoption of the precautionary measures that have been agreed upon and to periodically update such information.
64. The Commission requests Brazil’s consent to visit the Jorge Santana Public Penitentiary and the Alfredo Tranjan Penitentiary. In this regard, the IACHR is available to coordinate actions with both parties to evaluate the implementation of these precautionary measures.
65. The Commission emphasizes that, pursuant to Article 25(8) of the Commission’s Rules of Procedure, the granting of precautionary measures and their adoption by the State shall not constitute a prejudgment on the possible violation of any right protected by the American Convention or other applicable instruments.
66. The Commission instructs the Executive Secretariat to notify this Extension Resolution to the State of Brazil and to the representatives.
67. Approved on October 11, 2022, by Julissa Mantilla Falcón, President; Esmeralda Arosemena de Troitiño; Joel Hernández García; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary