

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 11/2013**

PRECAUTIONARY MEASURE No. 367-13

Matter of Persons Deprived of Liberty at the Penitentiary Complex of Pedrinhas regarding Brazil
December 16, 2013

I. INTRODUCTION

1. On October 22, 2013, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission") received a request for precautionary measures submitted by the "Maranhão Human Rights Society" and the "Brazilian Bar Association" (hereinafter "the petitioners"), seeking that the Federal Republic of Brazil (hereinafter "Brazil" or "the State") protect the life and physical integrity of the persons deprived of liberty at the "Penitentiary Complex of Pedrinhas ("CPP)", (hereinafter "the proposed beneficiaries"). According to the request, the proposed beneficiaries are at risk, due to a series of violent acts taking place in previous weeks.

2. On October 25, 2013, the Commission requested information from the State. The petitioners sent additional information on October 29, 2013. On October 30, 2013, the State requested an extension, which was granted. On November 6 and 12, 2013, the State presented its observations.

3. After analyzing the factual and legal arguments presented by both parties, the Commission considers that the information presented shows *prima facie* that the persons deprived of their liberty at the CPP are in a serious and urgent situation, as their lives and physical integrity are threatened and at severe risk. Consequently, in accordance with Article 25 of its Rules of Procedure, the Commission requests that Brazil: a) adopt the necessary and effective measures to prevent the loss of lives and damage to the physical integrity of all persons deprived of liberty in the Penitentiary Complex of Pedrinhas; b) immediately reduce levels of overcrowding; c) investigate the facts that gave rise to the adoption of these precautionary measures in order to avoid their repetition.

II. SUMMARY OF ALLEGATIONS BY THE PETITIONERS

4. According to the communications sent by the petitioners, the CPP is located in the city of São Luís, State of Maranhão, and consists of six combined detention units. These units are known as: i) "Penitentiary of São Luís"; ii) "Provisional Detention Center"; iii) "House of Detention"; iv) "Central Custody Area for Trial Prisoners"; v) "Penitentiary of Pedrinhas"; vi) "Penitentiary of São Luís II". According to the request, the Parliamentary Commission of Inquiry on the Prison System of 2009, and the National Council of Justice (hereinafter "the CNJ") of 2011, verified a serious situation in the penitentiary system of the State of Maranhão, and provided various recommendations. In particular, the CNJ indicated as an ideal measure, intervention into the unit known as the House of Detention, within the CPP. The petitioners allege that the CPP has appalling detention conditions, extreme overcrowding and a lack of effective internal control by State authorities.

5. On October 1, 2013, three inmates were killed in the unit known as Penitentiary of São Luís, as a result of a confrontation between rival gangs. That same day, two other inmates were killed at the unit known as the Provisional Detention Center, in similar circumstances. On October 9, 2013, a riot took place at the unit known as the House of Detention, in which ten inmates were killed. In October 25, 2013, an inmate was killed at the Provisional Detention House and on October 27, 2013, another inmate was killed at the unit known as the Central Custody Area for Trial Prisoners. In total, it is alleged that in 2013, at 41 inmates died and several others were injured in the different units of the CPP. According to the petitioners "the State has lost control of the situation" within the CPP.

III. SUMMARY OF ALLEGATIONS BY THE STATE

6. On November 6 and 12, 2013, the State submitted its observations, and alleged that:

a) It has made a series of investments in the prison system in the State of Maranhão, including the construction of new prisons and the acquisition of equipment. At present, the current prison system has an estimated capacity to accommodate 3,300 persons in detention. However, it currently houses 4,700 inmates. Furthermore, there are approximately 1,500 inmates held in police stations, allegedly "because of the lack of appropriate facilities to house them, therefore generating a deficit of about 2,900 [...] places." The State claims to have taken action "to contain the riots, prison escapes, and to restrain inappropriate behavior by public officials [in the entire Penitentiary System of the State of Maranhão] as well as to investigate the casualties occurring in the prison system."

b) In particular with respect to the CPP, it is indicated that from January to September 2013, the number of inmates killed rose to 47, presumably due to "clashes between criminal gangs." According to the State, the situation is exacerbated by the "countless prison escape attempts, severe structural damage to the [CPP], from [...] tunnels built by prisoners, besides the destruction of cells, spaces, mattresses, gurneys, chairs, and several items of equipment." The State asserts that this situation has "produced a state of tension between detainees and the rest of the public servants who perform their work activities in that environment."

c) Due to these events, on October 10, 2013, State Decree No. 29,443 was issued, declaring "a situation of emergency in the Penitentiary System of the state of Maranhão" for 180 days. In this regard, members of the "National Security Force" were sent to strengthen the security of the CPP. Additionally, other measures were taken, such as: a process for the construction of eleven new detention units, the immediate reform of the building of the House of Detention of the CPP, among other measures. On October 23, 2013, the "National Commission of the Office of Public Prosecutions" (hereinafter "the CNMP") visited the CPP. The report issued by this institution verified "the total destruction" of the House of Detention, due to the riot of October 9, 2013.

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

7. The mechanism of precautionary measures is a part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are set forth in Article 41 (b) of the American Convention on Human Rights, and Article 18 of the Commission's Statute. The mechanism of precautionary measures is set out in Article 25 of the Commission's Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

8. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their precautionary nature aims to preserve those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its 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.

9. In light of the current situation, the Commission considers that the requirement of seriousness is met, in view of the situation faced by the CPP inmates, due to the increase in violent acts that led to 17 inmate murders in October, 2013 alone, in the context of clashes between rival gangs and the lack of effective control by the State authorities. The information provided by both parties suggests that during 2013, around 40 inmates died inside the complex. Such a situation is exacerbated by deficiencies in the structure of the CPP, including, *inter alia*, tunnels built by the inmates and destroyed cells. In this regard, taking into consideration the information provided by both the petitioners as well as the State, evaluated as a whole, in the light of the *prima facie* evaluation criteria of the precautionary measures mechanism, the Commission considers that the rights to life and physical integrity of the inmates at the Penitentiary Complex of Pedrinhas are at serious risk.

10. Regarding the requirement of urgency, the Commission believes that it is met, to the extent that the information provided does not allow the inference that State authorities are taking effective measures to protect the life and physical integrity of the inmates at the CPP. In this regard, the Commission takes note of the State Decree declaring a situation of emergency, and other measures adopted by the State to ameliorate the situation. However, the Commission observes that, despite such measures, new acts of violence occurred on October 25 and 27, 2013. In this regard, the Commission considers that it has not received substantial information from the State authorities on specific efforts to gain effective control of the CPP, in strict compliance with the human rights of the persons deprived of their liberty: in particular, regarding the adoption of positive measures to overcome the climate of instability and conflict within the prison, beyond sending in members of the National Security Force.

11. Likewise, despite the fact that the State’s report confirms that one of the units was destroyed during the events of October, 2013, the report lacks substantial information on the conditions of detention of the inmates held at the unit and their current conditions of detention. In this regard, given the particular circumstances at the CPP, the Commission considers it necessary to adopt sufficient and effective measures to face the risk inside the facility.

12. Regarding the requirement of irreparability, the Commission believes that it has been met, to the extent that the possible risk to the right to life and physical integrity embodies the highest situation of irreparability.

13. Both the Inter-American Court and the IACHR have consistently pointed out that Article 1.1 of the Convention establishes the general obligation of States Parties to respect the rights and freedoms recognized therein and to ensure the free and full exercise to all persons subject to their jurisdiction. Specifically, the Court has held that States have a role as guarantor of the rights of persons deprived of their liberty since prison authorities exercise total control over them. The Inter-American System has emphasized the relevance and necessity of protecting the life and physical integrity of persons deprived of their liberty and that prison conditions are consistent with applicable international standards for the protection of human rights.

IV. BENEFICIARIES

14. The request was submitted on behalf of the persons deprived of liberty at the CPP, who are determinable under the terms of Article 25.6.b of the IACHR Rules of Procedure.

V. DECISION

15. In view of the above-mentioned information, the Commission considers that this matter *prima facie* meets the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the Government of Brazil:

- a) adopt the necessary and effective measures to prevent the loss of lives and damage to the physical integrity of all persons deprived of liberty in the Penitentiary Complex of Pedrinhas;
- b) immediately reduce levels of overcrowding;
- c) investigate the events that gave rise to the adoption of these precautionary measures in order to avoid their repetition.

16. The Commission also requests the Government of Brazil to inform the IACHR, within 15 days from the date of this resolution, on the adoption of the precautionary measures requested and update such information regularly.

17. The Commission emphasizes that, according to Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State shall not constitute a prejudgment on any possible violation of the rights protected in the American Convention on Human Rights or other applicable instruments.

18. The Commission orders the Executive Secretariat of the Inter-American Commission on Human Rights to notify the Government of Brazil and the applicants of this resolution.

19. Approved on December 16, 2013, by: José de Jesús Orozco, President; Tracy Robinson, First Vice President; Rosa Maria Ortiz, Second Vice President; Commissioners Felipe González, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Belle Antoine.