

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 14/2013**

PRECAUTIONARY MEASURE No. 8-13

Matter of Persons Deprived of Liberty at the Central Penitentiary of Porto Alegre regarding Brasil  
December 30, 2013

**INTRODUCTION**

1. On January 11, 2013, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "IACHR") received a request for precautionary measures submitted by several organizations<sup>1</sup> (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 their liberty at the "Central Penitentiary of Porto Alegre", (hereinafter "the PCPA"), of Rio Grande do Sul State (hereinafter "the proposed beneficiaries). According to the request, the proposed beneficiaries are at risk due to, *inter alia*, the hazardous conditions of detention, extreme overcrowding, and a lack of control from the State in several areas of the facility that could affect their right to life and physical integrity.

2. On February 11, 2013, the Commission requested information from the State, which responded by requesting an extension, that was granted. On March 21, May 9, and October 18, 2013, the State presented its communications. The petitioners provided additional information on May 31 and September 18, 2013.

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 PCPA 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 measures to ensure the life and physical integrity of the persons deprived of liberty at the Central Penitentiary of Porto Alegre; b) provide hygienic conditions and adequate medical treatment to the inmates in the facility, according to their respective clinical conditions; c) implement measures aimed at regaining secure control of all areas of the PCPA, following international human rights standards and safeguarding the lives and physical integrity of all inmates. In particular, ensure that the agents of the State security forces are responsible for the internal security functions and that inmates are not in charge of disciplinary, safety or control functions; d) implement a contingency plan, make fire extinguishers and other necessary tools available; and e) take immediate action to substantially reduce overcrowding within the PCPA.

**II. POSITIONS OF THE PARTIES**

4. The petitioners make the following allegations in their request:

a) The PCPA was opened in 1959, with two individual cell blocks. Currently, the PCPA includes ten wings and houses 4,591 inmates, despite the fact that the facility was only designed to hold 1,984 persons. In this context, the petitioners claim that: i) because of the extreme overcrowding, the current facility is organized in a "gallery

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<sup>1</sup> *Associação dos Juizes do Rio Grande do Sul* (AJURIS - "Judges' Association of Rio Grande do Sul"), *Associação do Ministério Público do Rio Grande do Sul* (AMPRS - "Offices of Public Prosecutors' Association of Rio Grande do Sul"), *Associação dos Defensores Públicos do Estado do Rio Grande do Sul* (ADPERGS - "Public Defenders Association of Rio Grande do Sul"), *Clínica de Direitos Humanos UniRitter* (CDH/UniRitter - "UniRitter Human Rights Clinic", on the quality of *amicus curiae*), *Conselho da Comunidade para Assistência aos Apenados das Casas Prisionais Pertencentes às Jurisdições da Vara de Execuções Criminais e Vara de Execução de Penas e Medidas Alternativas de Porto Alegre* (CCPOA - "Community Council for Assistance to inmates from the detention facilities belonging to the Jurisdictions of the Court of Criminal Enforcement and Court of Sentences Enforcement and Alternatives Penalties of Porto Alegre"), *Conselho Regional de Medicina do Estado do Rio Grande do Sul* (CREMERS - "Regional Council of Medicine of Rio Grande do Sul"), *Instituto Brasileiro de Avaliações e Perícias de Engenharia* (IBAPE - "Brazilian Institute of Engineering Assessments and Surveys"), *Instituto Transdisciplinar de Estudos Criminais* (ITEC - "Transdisciplinary Institute of Criminal Studies"), *Ordem dos Advogados do Brasil - Subseção do Rio Grande do Sul* (OAB/RS - "Brazilian Bar Association - Subsection of Rio Grande do Sul"), y *Themis Assessoria Jurídica e Estudos de Gênero* ("Themis Legal Advising and Gender Studies").

system". In these areas, the cell doors have been removed, the access corridors to the cells are used by inmates to sleep and stay during the day; ii) the hydraulic system, sewage collection and disposal system have collapsed, generating waste water infiltration on the ceilings. The sanitary waste is discarded from scaffolding made from plastic tubes, among other materials, manufactured by the inmates themselves iii) according to the request, the electrical installations are extremely hazardous, with exposed wires and the unauthorized installation of electric ovens, showers, televisions, radios, among others; iv) the petitioners indicate that whole galleries lack a water supply; and v) lack of a fire safety plan. According to statements made by a Criminal Enforcement Judge, "there is no fire safety plan, nor is there the possibility of formulating one. If there is a fire, everyone will die". In this regard, on April 25, 2012, the Brazilian Institute of Engineering Assessments and Surveys (hereinafter "IBAPE") established that "there is no fire safety plan, and even if there were, it could not be approved by the competent authorities, due to the failure to comply with the applicable laws, because of the extreme overcrowding, hazardous electrical wiring, and the lack of fire prevention and fire extinguishing facilities."

b) According to the petitioners, by converting the cells into the aforementioned gallery system, the State authorities failed to comply with their role as guarantor of the detainees' situation at the facility and thus created a *de facto* system of "shared management" or "self management". Allegedly, through this system, State authorities only occupy the access corridors to the galleries and administrative sectors of the facility. Allegedly, the galleries holding the inmates are controlled by criminal gangs of detainees, who possess sharp weapons and firearms. Allegedly, in this context, the task of opening and closing doors is performed by inmates called "key makers" and not by State authorities. In the words of a Criminal Enforcement Judge, "ensuring the physical integrity of the persons deprived of liberty is not under State control, but under the criminal gangs". In these circumstances, the "gallery leaders" allegedly order killings, disappearances and acts of violence against other inmates transferred to other prisons or under the semi-open regime of the facility.

c) The poor hygiene conditions caused by the lack of maintenance at the facility and exacerbated by overcrowding generates a high risk to the physical integrity of the proposed beneficiaries, specifically because of the lack of basic medical assistance for the inmates. The petitioners argue that, *inter alia*: i) there are not enough health professionals for the number of persons deprived of liberty; ii) the Emergency Room fails to meet the requirements for health surveillance; iii) the inmates with infectious and contagious diseases are not segregated from other inmates, and medical examinations are deficient; iv) and access to medical treatment is authorized by the criminal organizations that control the galleries.

d) In 2009, the Parliamentary Commission of Inquiry on the Prison System recommended that the PCPA be "decommissioned due to its evidently deficient infrastructure" and that, due to the criteria on "overcrowding, insanitary conditions, inadequate architecture, capacity of social rehabilitation, medical assistance and ill-treatment", the PCPA is the "worst penitentiary facility in the country". The petitioners argue that at least since 1995, the State has been aware of the absolutely hazardous situation of the PCPA, through legal actions resulting in court rulings, domestic precautionary measures (injunctions) and final sentences. However, these decisions have not been implemented to date. It is also stressed that, despite several inspections and recommendations issued by various national bodies, the State authorities have failed to remedy the ongoing risks to life, health and physical integrity faced by the detainees at the PCPA.

5. On February 11, 2013, the IACHR requested information from the State. On March 4, 2013, the State responded requesting an extension, which was granted. On March 21 and May 9, 2013, the State presented its observations, alleging that:

a) The competent authorities conducted inspections in 2006, 2009 and 2012, resulting in recommendations which have improved conditions of detention at the facility. These improvements presumably include the removal of open waste areas, the construction of kitchens and an exclusive wing to house trans-gender inmates, among other improvements. The State also claims to have made a series of investments in the penitentiary system of Rio Grande do Sul, which will make possible the transfer of inmates from the PCPA to other detention centers. The State indicates that the current number of inmates amounts to 4,179 with a capacity of 2,032.

b) Regarding medical assistance, the State reports that it has adopted improvements in the penitentiary health system of Rio Grande do Sul, including the purchase of equipment, the allocation of hospital beds and the refurbishment of clinical units. Specifically at the PCPA, the State indicates that the facility has a clinic with 27 health professionals, including *inter alia* seven physicians, one specialist in infectious diseases, and two nurses.

c) Regarding the fire safety plan, the State underscored the availability of twelve "firefighters of the military police" working in the penitentiary, and 19 fire extinguishers distributed throughout the facility. Without indicating a date, Brazil claims there will be a fire safety plan.

6. The State reports were sent to the petitioners. On May 23, 2013, the petitioners requested an extension, which was granted. On May 31 and September 18, 2013, the petitioners submitted the following information:

a) According to the petitioners, the State recognizes their allegations in its response to the Commission. They state that the measures taken are cosmetic, and fail to address the facility's structural issues that continue to pose a risk to the rights of the proposed beneficiaries. In this regard, it was noted that the IBAPE survey that identified an alarming structural situation of the facility "was not even challenged" by the State. They stressed that the State's allegation that they had improved the facility refers to actions taken before the inspection that served as the basis for the present request for precautionary measures.

b) On May 16, 2013, the petitioners stated that they undertook a visit to the facility, corroborating the disparity between the information provided by the State and the internal situation. Specifically, it was stated that there were fewer health professionals than indicated by the State, the clinics were hazardous and lacking basic material for adequate surgical operations, there was no separation of detainees with tuberculosis, and medical examinations were deficient. Furthermore, it is argued that, in general, the health programs identified by the State in its report are absent from the PCPA.

c) That the extreme overcrowding continues, regardless of the capacity of the facility. In this vein, they state that there are from 73 to 978 inmates in each gallery, which exceeds three times the capacity in some galleries.

d) It is stated that between 2009 and 2012, 280 inmates died, allegedly by violent means, including hangings, firearms, suffocation, strangulation, among other causes. Additionally, there have been deaths from diseases such as cirrhosis of the liver and bronchopneumonia, among others. The petitioners claim that during 2013 a case of attempted murder was officially registered, from which the victim survived, and four cases of suspicion of murder.

7. On October 9, 2013, the IACHR sent the information to the State. On October 18, 2013, the State indicated that:

i) from 2010 to date, the population has been reduced by 1,000 inmates and currently the PCPA has 4,400 inmates, with a capacity for 2,069 people. The State reported that 370 military police officers work in the facility, ii) that the State has made investments in the penitentiary system of the Rio Grande do Sul, which will allow the transfer of detainees from the PCPA, with the aim of "decommissioning" the facility; iii) regarding the activities undertaken by the inmates, called "key makers", the State asserts that "no operational activity or movement is under the control of detainees". In this regard, the State noted that control over the entry to, or exit from, the galleries is performed by public servants of the Military Police. In addition, it states that "the gallery representative figure, cited by the petitioners, has no resemblance to the 'key maker' figure. The function of the gallery representatives is speaking on behalf of other inmates in collective demands, as well as to pass general information from the administration to other prisoners", iv) regarding medical assistance, the State argues that it has implemented a number of health programs and, as of May 2013, 55,678 health care activities were performed in the clinic of the PCPA. Additionally, the State argues that, from 2008 until October 10, 2013, 63 detainees died, including six deaths during 2013. Among the suspected causes of death are, *inter alia*: 20 from lung diseases, 12 from infectious diseases, and 12 from unknown causes. As for the latter deaths of detainees at the PCPA in 2013, the State claims that they were registered and investigated by the police.

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

8. 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.

9. 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.

10. In the current situation, the Commission considers that the requirement of seriousness is met, in view of the situation faced by the inmates at the Central Penitentiary of Porto Alegre due to, *inter alia*, the inadequate infrastructure of the facility, the acts of violence, the deficient medical attention received by the inmates, the lack of penitentiary agents, and the insanitary conditions. Specifically, according to the information provided by the petitioners, the seriousness of the situation is exacerbated by the extreme overcrowding at the facility, which exceeds approximately twice its capacity. In this scenario, the lack of penitentiary agents in the areas called "galleries" is of particular significance, as is the lack of an emergency plan for any eventuality, which presumably attests to the lack of effective control by the State authorities. In this regard, the Commission notes that the reports and recommendations exposing the situation were issued by the local State authorities themselves.

11. Taking into consideration the information provided, evaluated as a whole, and in 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 Central Prison of Porto Alegre are at serious risk.

12. Regarding the requirement of urgency, the Commission believes that it is met, to the extent that the information provided does not permit the conclusion that State authorities are taking effective measures to protect the life and physical integrity of the inmates at the PCPA, despite the serious situation described. In this regard, the Commission takes note of the programs that have been implemented, in general, in the penitentiary system of Rio Grande do Sul and certain specific measures developed in the PCPA, for health care, among others. However, the Commission observes that it has not received substantial information aimed at removing the central elements of concern that presumably provide the basis for the present matter: in particular, those concerning the efforts of State authorities to regain effective control of certain areas of the prison - in strict compliance with the human rights of the persons deprived of liberty - and to eliminate the high levels of overcrowding that lead to violent acts, and measures designed to give the penitentiary agents sufficient control, among other things. In this

regard, given the specific particularities of the PCPA, the Commission considers it necessary to adopt adequate and effective measures to meet the diverse situations of risk outlined by the petitioners.

13. Regarding the requirement of irreparable harm, the Commission considers that it is fulfilled, to the extent that the possible effect to the right to life and physical integrity represents the highest irreparable situation.

14. As 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**

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

#### **V. DECISION**

16. 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 measures to ensure the life and physical integrity of the persons deprived of their liberty at the Central Penitentiary of Porto Alegre;
- B. provide hygienic conditions and adequate medical treatment to the inmates in the facility, according to their respective clinical conditions;
- C. implement measures aimed at regaining secure control of all areas of the PCPA, following international human rights standards and safeguarding the lives and physical integrity of all inmates. In particular, ensure that the agents of the State security forces are responsible for the internal security functions and that inmates are not in charge of disciplinary, safety or control functions;
- D. implement a contingency plan, make fire extinguishers and other necessary tools available; and
- E. take immediate action to substantially reduce overcrowding within the PCPA.

17. The Commission also requests that the Government of Brazil provide information within a time limit of 15 days from the date that the present resolution is issued, on the adoption of precautionary measures and provide updated information periodically.

18. The Commission wishes to point out that in accordance with Article 25(8) of its Regulations, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Convention on Human Rights or any other applicable instrument.

19. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the State of Brazil and to the petitioners.

20. Approved on December 30, 2013 by: Jose de Jesus Orozco, President; Tracy Robinson, First Vice-President; Rosa Maria Ortiz, Second Vice-President; Commissioners Felipe Gonzalez, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Belle Antoine.