

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 1, 2011**

**PROVISIONAL MEASURES
WITH REGARD TO THE REPUBLIC OF ARGENTINA**

MATTER OF THE MENDOZA PRISONS

HAVING SEEN:

1. The order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of November 22, 2004, in which it decided, in keeping with Articles 63(2) of the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") and 25 of the Rules of Procedure of the Court in force at the time,¹ to require the Republic of Argentina (hereinafter also "the State" or "Argentina") to adopt immediately all necessary measures to protect the life and personal integrity of all those deprived of liberty in the Mendoza Provincial Prison and in the Gustavo André unit, of Lavalle, as well as all those who are within these prisons.
2. The order of the Court of June 18, 2005, reiterating the measures of protection ordered by the Court.²
3. The order of the Court of March 30, 2006, in which it decided to maintain the provisional measures in force.³
4. The order of August 22, 2007,⁴ issued by the President of the Court at that time, in which, having consulted with the other judges of the Court, he decided to reject the request to expand the said provisional measures, presented by the representatives of the beneficiaries and endorsed by the Inter-American Commission. In addition, he required the State to maintain the measures ordered by the Court in its orders of November 22, 2004, June 18, 2005 and March 30, 2006.

* In accordance with Article 19(1) of the Inter-American Court's Rules of Procedure, Judge Leonardo A. Franco, an Argentine national, did not take part in the deliberation and signature of this order. In addition, Judge Alberto Pérez Pérez advised the Court that, for reasons beyond his control, he would be unable to be present for the deliberation and signature of this order.

¹ Approved by the Court at its forty-ninth regular session held from November 16 to 26, 2000, and partially amended by the Court at its sixty-first regular session held from November 20 to December 4, 2003.

² *Matter of the Mendoza Prisons*. Provisional measures with regard to Argentina. Order of the Inter-American Court of Human Rights of June 18, 2005.

³ *Matter of the Mendoza Prisons*. Provisional measures with regard to Argentina. Order of the Inter-American Court of Human Rights of March 30, 2006.

⁴ *Matter of the Mendoza Prisons*. Provisional measures with regard to Argentina. Order of the Inter-American Court of Human Rights of August 22, 2007.

5. The order of the Court of November 27, 2007, in which it decided to ratify all aspects of the order of the President of the Court of August 22, 2007, and to require the State to continue adopting the said provisional measures.

6. The order of the Court of November 26, 2010,⁵ in which it decided:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights on November 22, 2004, ratified and described in the Orders of June 18, 2005, March 30, and November 27, 2007, ordered to protect the life and integrity of all the persons deprived of liberty in the Mendoza Provincial Prison and in the Gustavo André Unit, in Lavalle, as well as all the persons who are within those prisons.

2. To clarify that, according to Article 1(1) of the American Convention, the lifting of the provisional measures does not imply that the State is relieved of its treaty-based obligations of protection.

3. To request the Secretariat of the Court to notify this order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries and the Argentine State.

4. To close the file on this matter.

7. The brief of March 14, 2011, at its attachments, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") filed a "request to re-open the provisional measures" to protect the life and personal integrity of the inmates of the Mendoza Provincial Prison, specifically in the Penitentiary Complexes of San Felipe (hereinafter also "San Felipe Unit" or "San Felipe Prison Unit") and Boulogne Sur Mer (hereinafter also "Boulogne Sur Mer Unit" or "Boulogne Sur Mer Prison Unit"). In addition, it asked that the measures be extended in particular to William Vargas García, Walter Fabián Correa, Andrés Yacante and Matías Marcelo Tello Sánchez.

8. The note of the Secretariat of the Court (hereinafter also "the Secretariat") of March 11, 2011, in which, on the instructions of the President of the Court and in application of Article 27(5) of the Rules of Procedure, it asked the State to present, by March 15, 2011, at the latest, any observations and documentation it considered pertinent in order to decide the said request.

9. The communication of March 14, 2011, in which the State requested "a new time frame to respond," and the note of the Secretariat of March 15, 2011, in which the State was granted the requested extension until March 21, 2011.

10. The brief of March 21, 2011, without attachments, in which the State presented its observations on the above-mentioned request of the Inter-American Commission.

11. The Secretariat's note of March 31, 2011, in which, on the instructions of the President of the Court, the State's brief was forwarded to the Inter-American Commission so that, by April 12, 2011, at the latest, it would present any observations it deemed pertinent.

⁵ *Matter of the Mendoza Prisons*. Provisional measures with regard to Argentina. Order of the Inter-American Court of Human Rights of November 26, 2010.

12. The communication of April 5, 2011, and its attachments, in which the Inter-American Commission indicated that one of the representatives had "stated that the violence continued in the Mendoza prison."

13. The brief of April 11, 2011, and its attachments, in which the Inter-American Commission provided information on an alleged confrontation between inmates and about recent events in the San Felipe Unit involving Andrés Yacante and Matías Marcel Tello Sánchez, whose protection had been requested.

14. The communication of April 12, 2011, in which the Commission requested an extension for the presentation of its observations on the State's brief of March 21, 2011, as well as the Secretariat's note of April 13, 2011, granting the requested extension until April 25, 2011.

15. The brief of April 25, 2011, in which the Commission forwarded its observations on the State's report.

16. The Secretariat's note of May 3, 2010, advising that the Commission's request together with the observations of the State and of the Commission would be submitted to the Court's consideration. In addition, in view of the alleged facts described in the Commission's request and the State's observations, the latter was reminded of its obligation to adopt any mechanisms it considered effective to ensure to all persons subject to its jurisdiction the free and full exercise of their rights, particularly the rights to life and to personal integrity, in keeping with the general obligations of the States Parties to the American Convention, embodied in Article 1(1) thereof.

17. The brief of May 3, 2011, in which the State presented observations on the information provided by the Commission on April 5 and 11, 2011.

18. The Secretariat's note of May 25, 2011, in which, on the instructions of the Court meeting in plenary for its forty-third special session, held in Panama City, the State and the Inter-American Commission were requested to present by June 8, 2011, at the latest, updated information on the situation of the persons deprived of liberty in the Mendoza Provincial Prison, specifically in the San Felipe and Boulogne Sur Mer Units, and particularly of William Vargas García, Walter Fabián Correa, Andrés Yacante and Matías Marcelo Tello Sánchez. In addition, they were asked to refer to any progress made in the criminal, administrative and any other type of investigations underway into the events described, as well as any other information they might consider relevant in this regard.

19. The brief of June 1, 2011, with which the State forwarded a "copy of the law providing for the creation of the mechanism known as the Provincial Commission for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment."

20. The briefs of June 7 and 8, 2011, with which the State and the Commission, respectively, forwarded documentation and information in response to the request contained in the Secretariat's note of May 25, 2011.

21. The brief of June 24, 2011, in which the Commission forwarded additional information.

CONSIDERING THAT:

1. Argentina has been a State Party to the American Convention since September 5, 1984, and, pursuant to Article 63 thereof, accepted the compulsory jurisdiction of the Court in the act of ratification.

2. Article 63(2) of the 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. In this regard, the pertinent part of Article 27 of the Court’s Rules of Procedure (hereinafter “the Rules of Procedure”) establishes that:

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.
2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.
[...]

4. The Commission requested the “re-opening” of the provisional measures that the Court had ordered in the matter of the Mendoza Prisons as of November 22, 2004, which were in force until December 15, 2010, the date of notification of the order of November 26, 2010. In order to determine the admissibility of this request, the Court will examine the information and justification presented by the Commission, together with its observations and those of the State in this regard.

A. Information presented by the Commission and the State

a) Regarding the alleged acts of torture or violence

5. The Commission has presented information to the Court regarding alleged acts that could be classified as torture against inmates of the San Felipe Unit, which is part of the Mendoza prison system. It indicated that, during the first half of January 2011, a mobile telephone owned by a prison official was found outside the Boulogne Sur Mer Prison Unit,⁶ with several videos and photographs that show acts of torture inflicted on inmates of the San Felipe Prison Unit by members of the prison staff, as well as other “violent and irresponsible [types of conduct] among the members of the prison staff and

⁶ The Commission indicated that “several photographs have been taken with the same device, which have been named “Me” and allow it to be inferred that this person is the owner of the mobile telephone in question and the person who made the said videos.”

towards those deprived of liberty for whom they are responsible." The Commission's request was accompanied by audiovisual material, which it described as follows:

- i) The first video "appeared to have been made on September 4, 2010, and in [...] it can be seen at least five prison officials in the San Felipe complex wearing boxing gloves and practicing fighting, during evening hours";
- ii) The second video was apparently made on "December 3, 2010, and in [...] it can be seen that [two] prison officials are punching and kicking an inmate, possibly a young adult – in other words, older than 18 and less than 21 years of age – in a room next to the San Felipe Unit that accommodates this prison population, with the connivance of the individual filming the incident; and, when an attempt is made to hide the beating by closing the door, the latter indicates his disappointment at being unable to continue filming. The moans emitted by the defenseless inmate in response to the beating he is receiving on his abdomen and legs can be heard in the audio";
- iii) The third video is composed of two files of June 6, 2010, "where it is possible to observe at least [five] prison officials who are forcing an as yet unknown inmate to kneel on the floor, handcuffed and tied to a window of the pavilion, with his arms stretched up contrary to their natural flexion. In this macabre scenario, the prison officials punch and kick the inmate, especially on the ribs, which, according to the inmate's protests, appear to have been broken. Moreover, the officials ask him where it hurts and then punish him there";
- iv) The video "*light for a fag end*" [...] records how, following an inmate's request for a light for his cigarette, prison staff use a flame-throwing device against the that cell's peephole. The prison officials film this situation, joking and boasting about their actions";
- v) The last video "films the actions of the prison staff locking the cells of the pavilion." The video appears to show that the staff "take advantage [that] the inmates [...] are bathing and [it can also be seen that] they push them violently into the cells using anti-regulatory means such as wooden and iron batons. Furthermore, the prison officials boast jokingly about what they are doing in front of the device used to make the video."

6. According to the Commission, the representatives of the petitioners indicated that the inmates who appear in the videos being subjected to the alleged acts of torture are Walter Fabián Correa and William Vargas García, and the inmates who contacted the representatives are Andrés Yacante and Matías Marcelo Tello Sánchez. According to the information provided by the Commission, during a visit to the San Felipe Unit on February 6, 2011, by the lawyer, Carlos Varela, the inmates Andrés Yacante and Matías Tello had stated that "[a] young man named Emanuel had been placed in cell 12, apparently accused of rape, and this person [...] was constantly [and severely] tortured with blows to the head; they say that, once, they heard [him] shouting that they had dislocated his shoulder and thrown pepper gas in his face."

b) Regarding the alleged systemic or general nature of the reported acts of torture

7. The Inter-American Commission indicated that the acts of torture and ill-treatment recorded in the videos that came to light were not isolated events, but reveal a systematic practice by the agents of the Mendoza Prison Service. In relation to the briefs of the petitioners' representatives of February 2, 6 and 10, 2011, the Commission provided the following elements:

- i) Statement made by William Vargas to *Diario UNO* on February 10, 2011;
- ii) Statements made by Walter Fabián Correa during a visit to the San Felipe Unit by the legal advisers of the Assistant Secretariat of Justice and Human Rights and of the Human Rights Directorate on February 8, 2011, in which Carlos Varela also participated;
- iii) Accounts given by the inmates, Andrés Yacante and Matías Marcel Tello Sánchez, during a visit to the San Felipe Unit by the lawyer Carlos Varela on February 6, 2011;
- iv) Audiovisual information;
- v) Letter from the President of the Human Rights and Guarantees Commission of the Chamber of Deputies of the province of Mendoza addressed to the Executive Secretary of the Inter-American Commission dated February 14, 2011, stating that he had received complaints of mistreatment and appalling detention conditions from next of kin of inmates, before the videos came to light, and that it had been "possible to verify that this was not an isolated event because the videos that were found reveal that the inmates are mistreated in different places and also the incidents happened during different periods of time";
- vi) Statements made to the press in Mendoza by the Prison Attorney, Francisco Mugnolo, on February 10, 2011, in which he asserted "that episodes of torture such as those recorded are common in Argentine prisons, and that one of the reasons why this happens is the deficient training of prison agents." In other declarations, the Attorney stated that "the violation of the human rights of detainees is a daily practice," and
- vii) Other complaints concerning similar acts filed by inmates after the alleged acts of torture committed against William Vargas and Walter F. Correa had become public.

8. In addition, the Commission indicated that there is a culture of violence, irresponsibility and indiscipline among the members of the Provincial Penitentiary Service. They presented the following elements in support of this affirmation:

- i) "A video recorded on September 5, 2010, that shows the prison staff of the San Felipe Unit fighting with gloves at night, in the absence of any sporting or training context. This is happening while they smoke and drink *mate*. In the background can be heard the voice of the person filming who repeats phrases such as: "the first man who fails to get up loses";

- ii) "Another two videos in which prison staff, in an undisciplined and irresponsible manner, annoy each other and end up hitting and kicking each other 'fraternally' but visibly arousing their tempers";
- iii) Three groups of photographs in which the prison staff can be observed in various obscene situations or justifying violence during the exercise of their functions;
- iv) Newspaper articles according to which, in November 2009, a candidate for the Mendoza Prison Service reported that one of the instructors submitted his students to physical abuse. The "existence of this complaint was confirmed by the Director of the Prison Service and the instructor has been removed from his post while an investigation is undertaken."

9. Regarding the foregoing, the State argued that "[t]he specific acts of violence that came to light in February 2011, and regarding which the Commission bases its request to re-open provisional measures, do not constitute a systematic pattern of torture and cruel, inhuman or degrading treatment of the inmates by prison staff. These are isolated acts of violence, whose common denominator is the identity of the authors who have been deprived of their liberty and charged with the offenses committed."

10. With regard to the elements provided by the Commission, and in relation to the petitioners' allegations of a possible systematic practice of torture based on a letter from a deputy reproduced by the Commission, the State acknowledged that the alleged acts took place in different parts of the establishment, but indicated that the same prison staff intervened in each of the alleged acts. Consequently, the fact that the acts occurred in different places within the establishment could not prove that a general pattern exists, but merely that they were acts of "a specific and identified group of prison guards who are being investigated by the provincial system of justice." It indicated that these individuals are being processed under the most severe administrative charges possible and are no longer able to affect the rights of the inmates.

11. With regard to the declarations of the Prison Attorney, the State indicated that his powers relate to federal rather than provincial inmates; that the last time the Prison Attorney visited the Mendoza prisons was in 2007, and that he had not visited any of the prisons of the province of Mendoza since then. Regarding the complaints mentioned by the President of the Human Rights and Guarantees Commission of the Chamber of Deputies of the province of Mendoza, the State affirmed that it was unaware of these complaints and that, although it had requested them, it had not yet received a response to the said request; hence, the "provincial Executive Branch is unaware of the content of the said complaints received from the [said] Deputy or of how they have been dealt with."

12. Lastly, in its observations on the State's brief, the Commission added, with regard to the evidence of a systematic practice that, in the context of the provisional measures, it was "sufficient that there is *prima facie* evidence of the extreme gravity, urgency and irreparability of the damage." Furthermore, it mentioned that the State had merely established that "only seven guards were responsible for torturing the inmates, and that they were being prosecuted, without offering any other information

on the measures taken in response to the affirmations at the domestic level that what happened was part of a systematic practice.” In addition, even though the Commission did not indicate the specific information to which it was referring, it alleged that, in the context of the provisional measures, “information [existed] concerning the actions of the prison guards against the inmates,” to which should be added “the information reported to the Court in March 2011 concerning torture committed by prison guards – not only as regards seven of them – as well as concerning the numerous statements by inmates, their next of kin, and public officials indicating that what was recorded on video was not a isolated event but is a constant within the prisons and that the inmates do not report it for fear of reprisals.” Finally, it alleged that the “information on the culture of violence, irresponsibility and indiscipline of the prison guards, as well as the deficient training of prison staff” should be added to the case file.

c) Regarding the alleged actual detention conditions in the Mendoza Prisons

13. The Commission advised that problems still exist arising from the actual detention conditions of the inmates of the San Felipe and Boulogne Sur Mer Units, such as the failure to provide cleaning materials and adequate food, together with the absence of activities for the prisoners, except for a two-hour visit once a week.

14. The Commission also indicated that, added to the alleged acts of torture and the evidence of a systematic pattern of violence by state agents, “the most recent information regarding fights and mistreatment reveals that violence continues among the inmates – the central issue of the provisional measures while they were in force – and this means that the threats to life and integrity persist.” In particular, the Commission, based on the reports of the petitioners, advised of confrontations among inmates in the San Felipe and Boulogne Sur Mer Units.

15. Regarding the detention conditions, the State referred to several projects that are being implemented in the province of Mendoza that relate to the prison situation. In particular, it mentioned: (i) the “Mendoza Penitentiary School” project to provide prison personnel with permanent education and training on the relevant international human rights standards, and (ii) implementation of health care programs for the inmates.

16. With regard to the fights and acts of violence, the State declared that: (i) they constitute “conflicts within the prisons, which do not involve the responsibility of prison staff”; (ii) effective measures had been taken to ensure the integrity of the inmates affected by acts of violence, and (iii) the inmates had been attended by health professionals, both at the time of the events and also in the following days to monitor the evolution of the injuries suffered.

17. In its latest report, the State referred to diverse construction and repair work in several pavilions of the Boulogne Sur Mer Unit and the San Felipe Unit that would result in improved conditions and increased capacity. In addition, it provided figures on the numbers of inmates who were working or receiving job training and indicated that, by monitoring their health and introducing preventive health care, it had been possible to make considerable improvements in the quality of life of the inmates, their next of kin, and the prison staff.

d) Regarding the alleged measures adopted by the State in relation to the reported facts

18. The State alleged that it had taken a series of measures to put an end to the acts that had occurred and been reported by the Inter-American Commission. It submitted a report by the province of Mendoza in which, it alleged, the individualized acts of torture and mistreatment against inmates of the Mendoza prisons were not tolerated or justified in any way. The State indicated that, owing to the actions taken, the safety, life and integrity of the inmates "are ensured as evaluated in November 2010."

19. With regard to William Vargas García, Walter Fabián Correa, Andrés Yacante and Matías Marcelo Tello Sanchez, the State alleged that it had adopted the following measures:

- i) The Treatment Department of the San Felipe Prison Complex had conducted an "exhaustive physical, mental and legal review" of them. They had undergone an "individual psychological interview to verify their situation as regards their transit through the progressive punishment regime, their actual mental conditions, and the possibility of and/or need for temporary relocation." The provincial report indicated that, owing to the time that has elapsed and despite the notoriety of the facts, no visible aftereffects had been identified.
- ii) Regarding the legal situation, the judicial files and records of each inmate were reviewed.
- iii) In relation to the above, on February 9, 2011, William Vargas García was released on parole.
- iv) The other three accused, who are being prosecuted for different offenses, are awaiting their respective oral trial. As a safeguard measure, and in order to ensure a "comprehensive containment scheme," they were incorporated into a module without inmates and with a special guard composed of guards from other units. Subsequently, and at the request of their next of kin and the representative, they were transferred to Unit VII of Tunuyán (the Transit Prison), to await the conclusion of the preliminary administrative proceedings of all those eventually found responsible for the facts. In this unit, they receive a weekly medical inspection. In its latest report, the State indicated that, on April 28, 2011, Walter Fabián Correa, Andres Yacante and Matías Marcelo Tello Sánchez had been transferred to Almafuerite Prison Complex III. They are in a module for inmates who are "Young Adults – on trial" and have access to food, central heating, a public telephone, different types of recreational activities, and a once-weekly seven-hour visiting regime. This module has internal and external exercise yards, individual cells and appropriate conditions. The "Social Action Division" has provided them with specialized professional attention. On May 27, 2011, Walter Fabián Correa was transferred back the San Felipe Unit, at his mother's express request, and
- v) According to a medical evaluation in May 2011, Andrés Yacante and Marcelo Tello Sánchez are in good health. And Walter Fabián Correa, who has repeatedly tried to commit suicide, has been provided with permanent

psychological monitoring and assistance; on 11 occasions, he has received attention in the Medical Assistance Division and, although he was treated in the El Sauce Hospital for a fresh suicide attempt on May 19 and 20, four days later he was re-evaluated by the psychiatric services and it was determined that he had been "compensated, and was no longer considering suicide." The State also presented conclusions of reports on these three individuals prepared by the Psychological Treatment Division.

20. In its latest brief (*supra* twenty-first having seen paragraph), the Commission stated that William Vargas García was allegedly continuing to receive threats, even though he had been accepted into the witness protection program when he was released on parole and the State has not given him any protection. In addition, although the provincial government had apparently obtained a house for him, he does not live in it "because there is no furniture." Furthermore, one of his former cellmates had also been a victim of torture that had been reported, and he does not have protection either. Regarding Walter Fabián Correa, "who reported harassment and being beaten in Almafuerte, he asked to be released, but his request was refused," and the authorities have taken no action in relation to his suicide attempts. Regarding Andrés Yacante and Marcelo Tello Sánchez, the application for habeas corpus filed in their favor owing to the alleged beating received in the Almafuerte Unit, and orders had been issued to transfer them to the San Felipe Unit. The Commission reiterated that they are in a situation of aggravated risk, not necessarily owing to the fact that they remain detained in the place where the reported facts occurred, but rather owing to the complaint itself, which revealed what happens in the said prison units. Lastly, the Commission stated that, during the investigation into the acts of torture, it was reported that an inmate had been forced to sign a statement affirming that it was he who had obtained the mobile telephone with the films.

21. The State indicated that it had taken several measures with regard to those who had been identified as "allegedly responsible for the acts of torture and ill-treatment against the inmates of the San Felipe Prison Complex"; in particular:

- i) Administrative proceedings by the General Security Inspectorate, a decentralized body responsible for investigating and initiating pre-trial proceedings for administrative errors, with the consequent determination of responsibility of the members of the provincial security forces. Ten preliminary administrative procedures have been conducted, in which the opening of preliminary administrative proceedings and the application of preventive suspension or removal has been ordered for seven of the agents involved;
- ii) Those exercising supervisory tasks were charged and removed from their functions based on failure to comply with their control obligations;
- iii) Administrative case files have been opened owing to complaints received by telephone from next of kin of inmates based on newspaper articles, and owing to complaints forwarded by the Human Rights Directorate of the Ministry of Governance;

- iv) The Provincial Deputy Secretariat of Human Rights took statements from inmates of the pavilion where the acts allegedly occurred, and these were incorporated into the administrative and judicial investigations;
- v) Following the filing of the complaints by the Human Rights Directorate of the Ministry of Governance of the province of Mendoza, the office of the Prosecutor for Complex Crimes of the province of Mendoza initiated the corresponding investigations. Currently, there are: (i) three individuals accused of the crime of torture; (ii) one individual charged with the offense of harsh and humiliating treatment; (iii) one individual charged with the crime of torture compounded by the offense of harsh and humiliating treatment, and (iv) two individuals charged with the offense of omissions in the performance of their functions, which allowed the torture to occur. These seven individuals are currently detained, based on the justified fear that, owing to their condition of prison agents, they could obstruct the investigation."
- vi) In its last report, the State specified that the agent accused of the offense of harsh and humiliating treatment had been released and that the other six agents were located in Prison Unit No. 6 of the Boulogne Sur Mer Complex. In addition, the Prosecutor had requested pre-trial detention for these six agents who had been charged, but no decision had been taken in this regard. Even though the case has not been brought to trial, "the probative aspect is quite complex" and there has been "permanent procedural activity by the defense counsel of each of the accused," and
- vii) The province of Mendoza – represented by the Minister of Governance, Justice and Human Rights, the Deputy Secretary for Human Rights, the Director of Human Rights and the Director General of the Prison Service, together with the Argentine State, through the national Human Rights Secretariat, are the complainants in the case.

22. The State has referred to other measures undertaken based on the facts reported by the Commission and the representatives of the beneficiaries of the measures that were lifted. In particular, it mentioned the following:

- i) In order to increase its presence in the prisons, to inspect the cells without prior notice, and to guarantee the right of the inmates to report this type of ill-treatment, the Provincial Human Rights Directorate has created delegations in each of the prisons with the daily presence of lawyers attached to the Directorate to tour the facilities, and to receive statements and complaints of different types, and
- ii) In order to identify whether there have been other acts of a similar nature that have not been reported, as well as to advance the investigation of the facts denounced, the individualization of those responsible, and the application of the corresponding legal sanction, the Deputy Secretariat of Justice and Human Rights has instructed its advisors to receive testimony from the inmates lodged in the pavilion where the incidents allegedly occurred. These recorded statements are useful for advancing the administrative investigations and were also provided to the legal proceedings.

B. Regarding the request to "re-open" the provisional measures.

a) Regarding the "re-opening" of the provisional measures and other procedural aspects

23. The State questioned the concept of "re-opening" provisional measures, arguing that it was not supported by any procedural norm in force. It added that the provisional measures ordered by the Court in 2004, "concluded automatically with the decision to lift them adopted in November 2011, so that any ruling on the matter would require a new and detailed examination of the situation reported and, eventually, the issue of a new order that would assess whether a situation of extreme gravity and urgency existed that could justify the issue of an exceptional measure such as the one proposed by the Commission."

24. The State underscored that the request did not denounce any new act, but "attempts to justify the order of a new provisional measure based on events that had already taken place, precisely while the order of November 22, 2004, was in force." The report of the province of Mendoza indicates that the State was unaware of these events until February 2, 2011, when the videos were publicized by the media and, although the videos were made before the request to lift the measures, the expert assessment had not been made to determine the date on which the files were created. Moreover, the State mentioned that it should be stressed that "the general situation in the establishments covered by the measures was widely discussed during the public hearing [...] which resulted in the decision duly made to lift the provisional measures" and that, all things considered, "the events [in question] had occurred in 2010, were reported in 2011 and, in addition, the local authorities had not been unresponsive to them; to the contrary, the facts had resulted in the detention and prosecution of those allegedly responsible."

25. Thirdly, the State observed that the Commission had submitted the request for measures to the Court "*inaudita parte*," without requesting any information from the Argentine State, based merely on the information provided by the petitioners and on newspaper articles, and without previously invoking the powers granted to it by Article 25 of its Rules of Procedure, which allows it to request the State to adopt precautionary measures in serious and urgent situations. The State argued that, anyway, it was unable to present its observations on the information provided by the petitioners.

26. Lastly, the State argued that, based on the petitioners' complaint, the province of Mendoza had coordinated a series of measures that demonstrate that the State was determined to find a solution to the events that took place in the prison prior to the request, so that, in observance of the principle of the subordination of the inter-American system, the request to re-open the measures was inadmissible.

27. The Commission indicated in this respect that its request to re-open the measures was based "on the nature of the facts reported to the Court in March 2011, on events that occurred during the second half of 2010 in the context of the serious situation that was reported to the Inter-American Court throughout the six years that the measure were in force." It added that it was particularly relevant that the events occurred while the provisional measures ordered by the Court were in force and that

those events were not known when the Court ordered the lifting of the provisional measures on November 26, 2010, but were provided as supervening evidence and would clearly have had an impact on the assessment made by the Court. In this regard, “the fact that the Court and the Commission were unaware of these events is precisely because the State was not exercising the necessary supervision or implementing the measures to protect the beneficiaries of the provisional measures in force at the time. Consequently, the Commission considered that it was unnecessary to make a new, separate analysis of the matter, as the State claimed, because the events occurred while the provisional measures were in force, without the State providing the appropriate protection.” Lastly, the Commission stated that, irrespective of how the name given to the concept of “re-opening,” the situation that occurred reveals the concurrence of the elements of extreme gravity and urgency, and the need to avoid irreparable harm to persons.

28. With regard to the State’s observations concerning whether the Commission should have issued precautionary measures before submitting the request that is being decided, this Court recognizes that, in several matters, when ordering provisional measures, the Court has found it relevant that, previously, the Commission had ordered the State to adopt precautionary measures and that these had not produced the required protection or the State had not adopted them.⁷ Moreover, the Court has recognized the importance of the precautionary measures ordered by the Commission as an instrument of prevention and protection and, in numerous cases, the Commission’s practice has been to order them before submitting a request for provisional measures to the Court. Despite this, Article 63(2) of the Convention does not require as a prerequisite for the Court to order provisional measures that the Commission should have previously ordered precautionary measures or any other requisites that could delay or prevent their issue, thus increasing the risk to the human rights that should be protected. Consequently, the observations of the State in this regard are without merit.

29. The Court also observes that, as the State has noted, the concept of “re-opening” provisional measures is not established in the Court’s Rules of Procedure. Nevertheless, this does not prevent the Court from examining the Commission’s arguments in view of the alleged needs for protection of persons by provisional measures, in the terms of Article 63(2) of the Convention. Regardless of the name used by the Commission to submit its request, the request is founded on the alleged existence of acts that took place while the provisional measures recently lifted in the matter of the Mendoza Prisons were in force, and the beneficiaries of those measures were the same individuals whose protection is now requested. Therefore, the Court can consider the Commission’s request as a simple request for provisional measures, just as it has in previous matters where the Court has ordered such measures even when they had already been lifted.⁸ In this situation, even if the Commission did not hear the State

⁷ Cf., *inter alia*, *Matter of Case of Vogt*. Provisional measures with regard to Guatemala, Order of the President of the Inter-American Court of Human Rights of April 12, 1996, fifth considering paragraph; *Matter of María Lourdes Afiuni*. Provisional measures with regard to Venezuela, Order of the Inter-American Court of Human Rights of December 10, 2010, ninth considering paragraph; *Matter of Gladys Lanza Ochoa*. Provisional measures with regard to Honduras, Order of the Inter-American Court of Human Rights of September 2, 2010, tenth considering paragraph.

⁸ Cf. *Case of Loayza Tamayo*, Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of December 13, 2000, the measures were lifted by the Order of the Inter-American

before submitting this request, it would be consistent with its own understanding of the procedure to be followed in the situation described and, in any case, the State has had many opportunities to manifest its position and arguments when the Court forwarded it the Commission's request. Consequently, the Court must examine whether the specific requirements for ordering provisional measures concur.

b) Regarding the need to order provisional measures

30. Article 63(2) of the Convention requires that three conditions must be met for the Court to be able to order provisional measures: (i) "extreme gravity"; (ii) "urgency," and (iii) that the purpose is to "avoid irreparable damage." Likewise, these three conditions must persist for the Court to maintain the protection ordered. If one of them is no longer valid, the Court must assess the pertinence of continuing the protection ordered, without prejudice to ordering the measures again if, in the future, the three conditions are again met. In addition, although, when ordering the measures of protection, the standard of assessment of these requirements by the Court or its President is *prima facie*,⁹ the maintenance of the measures of protection requires a more rigorous evaluation by the Court of the persistence of the situation that gave rise to them.¹⁰

31. The Court has established on previous occasions that, under provisional measures, it is not appropriate to consider the merits of any argument other than those strictly related to the extreme gravity, urgency and need to avoid irreparable harm to the beneficiaries. Any other matter can only be submitted to the consideration of the Court in a contentious case or in a request for an advisory opinion.¹¹ Furthermore, the Court has recognized that provisional measures are of a protective rather than a merely precautionary nature.¹² Consequently, the Court will not refer to the observations of the

Court of Human Rights of November 11, 1997; *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 8, 2004, fifteenth considering paragraph.

⁹ Cf. *Case of Raxcacó Reyes et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, tenth considering paragraph; *Matter of Guerrero Larez.* Provisional measures with regard to the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, fourteenth considering paragraph, and *Matter of Alvarado Reyes et al.* Provisional measures with regard to the United Mexican States. Order of the Inter-American Court of Human Rights of May 26, 2010, fourteenth considering paragraph.

¹⁰ Cf. *Matter of the Kankuamo Indigenous People.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, seventh considering paragraph; *Matter of A. J. et al.* Provisional measures with regard to Haiti. Order of the Inter-American Court of Human Rights of September 21, 2009, eighteenth considering paragraph, and *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), and the Capital Detention Center El Rodeo I and El Rodeo II.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, fourth considering paragraph.

¹¹ Cf. *Case of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, sixth considering paragraph; *Matter of Eloisa Barrios et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 4, 2010, third considering paragraph, and *Matter of Belfort Istúriz et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, ninth considering paragraph.

State on the execution of a friendly settlement agreement that has apparently been reached in the proceedings on the petition before the Commission.

32. In relation to the requirement of “gravity” for the adoption of provisional measures, the Convention calls for this to be “extreme”; in other words, that it is to its most intense and severe degree.¹³ As for the requirement concerning the “urgency” of the situation that is the subject of the request for provisional measures, this implies that the danger or threat involved is imminent, which requires that the response to remedy them be immediate. When analyzing this aspect, the opportuneness and the duration of the requested precautionary or protective measures must be assessed.¹⁴

33. In this matter, in addition to requesting protection for four individuals, the Inter-American Commission asked the Court to order the protection of those deprived of liberty in the San Felipe and Boulogne Sur Mer Units (*supra* seventh having seen paragraph); thus the potential beneficiaries are identifiable, because they are individuals imprisoned in the said detention centers, or who may enter them in the future as inmates, or who enter them, regularly or eventually, either as officials or as visitors.¹⁵

34. In this matter, the gravity arises from the documentary and audiovisual elements provided, which consist of videos and photographs from a mobile telephone allegedly owned by a prison agent, as well as from the testimony of those deprived of liberty and of public officials (*supra* fifth considering paragraph), which reveal *prima facie* the existence of violent acts perpetrated against inmates of the San Felipe Prison Unit by members of the prison staff, which could even be classified as acts of torture. In addition, further elements may reveal other types of undue and violent conduct among members of the prison staff and towards those deprived of liberty for whom they are responsible. These acts allegedly took place while the provisional measures were in force, although the Commission and the Court were not advised of them, because the alleged acts had not yet been revealed, which is, in turn, evidence of a lack of internal monitoring by the State of the actions of the prison staff, actions that should be monitored by the State in its capacity as guarantor in prisons and detention centers.

35. According to the arguments and information provided by the Commission and the representatives, while the provisional measures in this matter were in force numerous tense and violent situations arose in the relations between inmates and prison staff.¹⁶ In

¹² Cf. *Matter of the Capital Detention Center El Rodeo I and El Rodeo II*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, seventh to ninth considering paragraphs; *Matter of the Urso Branco Prison*, Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of May 2, 2008, fourth considering paragraph.

¹³ Cf. *Matter of Four Ngöbe Indigenous Communities and their Members*. Provisional measures with regard to Panama. Order of the Inter-American Court of Human Rights of May 28, 2010, eighth considering paragraph.

¹⁴ Cf. *Matter of Four Ngöbe Indigenous Communities and their Members*, *supra* note 15, ninth considering paragraph.

¹⁵ Cf. *Matter of the Aragua Penitentiary Center "Tocorón Prison."* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2010, thirteenth considering paragraph.

¹⁶ Cf., *Matter of the Mendoza Prisons*, *supra* note 3, eighth considering paragraph.

particular, information was provided on reports of inhuman and degrading treatment inflicted on inmates in the provincial prisons, the investigation of which suffered long delays and gave rise to fears that it was neither independent nor exhaustive.¹⁷ The representatives argued that, even though the judicial authorities had declared several applications for habeas corpus admissible, prolonged detention and acts of torture within the pavilions continued.¹⁸ The report of the visit made to the prisons by the Inter-American Commission's Rapporteur for the Rights of Persons Deprived of Liberty at the end of April 2009, stated that prison staff inspection teams comprised only a few officials, so that, given their numerical disadvantage, they used very violent procedures to carry out the inspections.¹⁹

36. Although the facts alleged on this occasion refer to acts committed by several prison agents against two inmates of the San Felipe Unit, the reported situation of acts that could be classified as inhuman or degrading treatment, and even forms of torture, could indicate the possible existence within the prisons of certain practices incompatible with the State's obligations under the Convention. In any case, this should be an obvious line of investigation into the facts by the domestic authorities during the administrative and criminal proceedings. Although the State may be adopting measures to investigate and prosecute the alleged perpetrators of the acts, in both the administrative and the criminal jurisdictions, together with measures to prevent similar acts (*supra* twenty-second considering paragraph), it did not report whether all its investigative mechanisms were trying to determine specifically whether similar practices or acts exist within the prisons, because it alleged that such practices do not exist.

37. With regard to the individual or specific protection requested by the Commission, according to the information provided by the Commission and by the State, the latter appears to have adopted a series of measures in order to protect the life and physical integrity of William Vargas García, Walter Fabián Correa, Andrés Yacante and Matías Marcelo Tello Sanchez (*supra* nineteenth considering paragraph). Nevertheless, the Commission has advised that these individuals have been attacked in the places of detention to which they were transferred and that the witnesses of the acts are not receiving adequate protection, and the State has not provided any response to this.

38. In relation to the measures adopted with regard to the "alleged perpetrators of the acts of torture and ill-treatment against the inmates of the San Felipe Prison Complex," together with other measures, the State underscored:

- i) The opening of 10 administrative procedures (investigation and pre-trial proceedings for possible administrative offenses) by the General Security Inspectorate, during which it was decided to open a summary administrative proceeding and apply preventive suspension or removal in the case of seven prison agents who were involved; as well as charges against and the dismissal of

¹⁷ Cf. Annual Report of Amnesty International published on May 25, 2005, on significant events between January and December 2004, folio 1114 of the case file.

¹⁸ Cf. *Matter of the Mendoza Prisons*, *supra* note 3, having seen paragraph 51(d).

¹⁹ Cf. Special report of November 16, 2008, on the situation of the Provisional Prison and the "Dr. Juan Bautista Vitale Nocera" Penal Farm in the Gustavo André district, Lavalle department, Mendoza, Argentina, and observations on the State's most recent reports on implementation of the provisional measures ordered by the Court on November 22, 2004, paragraph 17, folio 6912 of the case file.

those exercising supervisory tasks based on failure to comply with their control obligations;

- ii) The opening of administrative case files based on complaints made by the next of kin of inmates, newspaper articles, and complaints forwarded by the Human Rights Directorate of the Ministry of Governance;
- iii) The opening of a criminal investigation by the office of the Prosecutor for Complex Crimes of the province of Mendoza, whose current status is: (a) three individuals charged with the crime of torture; (ii) one person charged with the offense of harsh and humiliating treatment; (iii) one person charged with the crimes of torture in conjunction with the offense of harsh and humiliating treatment, and (iv) two individuals charged with the offense of omission in performance of functions which permitted torture. The six accused are currently detained in the Boulogne Sur Mer Complex (the agent accused of the offense of harsh and humiliating treatment has been released). The Minister of Governance, Justice and Human Rights, the Deputy Secretary for Human Rights, the Director of Human Rights and the Director General of the Prison Service, all of the province of Mendoza, and also the federal State – through the national Human Rights Secretariat – are the complainants in the case;
- iv) The creation of delegations of the Provincial Human Rights Directorate in each prison to receive statements and complaints of different kinds.

39. The irreparable nature of possible harm to the rights of those deprived of liberty is evident if pertinent measures of prevention and protection are not adopted at the domestic level. In view of the special severity of the situation denounced, the obligation to ensure the protection of those directly involved in the facts must be stressed, as well as of other inmates who could be victims or witnesses should similar acts occur, and also not to thwart their due investigation owing to the presence of other prison staff and the possible obstacles this could represent, including to prevent threats, intimidation or reprisals.

40. Irrespective of whether the requirements concur to order the protection of those deprived of liberty in these prisons, the Court has reiterated that, based on the principle of complementarity and subordination that governs the inter-American human rights system, an order to adopt or maintain provisional measures is only justified in situations established in Article 63(2) of the American Convention, in which the ordinary guarantees that exist in the State regarding which they are requested are insufficient or ineffective, or the domestic authorities cannot or do not want to ensure their effectiveness.²⁰ The State has provided information on numerous, significant measures that its administrative and judicial authorities are adopting as a result of the reported facts (*supra* twenty-first and twenty-second considering paragraphs), which would indicate the willingness of the authorities to set in motion specific mechanisms of prevention and investigation at the domestic level. In other words, the domestic authorities have responded to the situation in the Mendoza Prisons since the Court

²⁰ Cf. *Matter of the Mendoza Prisons*. *supra* note 4, and *Matter of the Capital Detention Center El Rodeo I and El Rodeo II*. Provisional measures with regard to Venezuela, Order of the Inter-American Court of Human Rights of February 8, 2008, fifteenth considering paragraph.

ordered the provisional measures, and have reacted to the facts that caused the Commission to request the re-opening of the provisional measures. This leads to the reasonable assumption that they will continue exercising due control of respect for the provisions of the Convention,²¹ and also as regards the measures of protection that may be required in future. Consequently, the Court finds that, at this time, it is not appropriate to order provisional measures of protection.

41. Nevertheless, it is worth underlining what this Court indicated in its last order of November 26, 2010, when requiring the lifting of the measures decided in the matter of the Mendoza Prisons:

52. Notwithstanding the Court's decision, it must be reiterated that Article 1(1) of the Convention establishes the general obligations of the States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms in all circumstances. In particular, the Court emphasizes the State's position as guarantor with regard to those deprived of liberty, [...] because the prison authorities exercise total control over them, and consequently those general obligations acquire a special nuance that obliges the State to provide the interns with the minimum conditions compatible with their dignity while they remain in a detention center, in order to protect and guarantee their rights to life and personal integrity.[...] Consequently, irrespective of the existence of specific provisional measures,[...] the State is specifically obliged to guarantee the rights of those deprived of liberty.[...] Moreover, in this particular matter, the Court recalls that in conformity with international norms, the State must ensure that the measures of security adopted in the prison centers include the appropriate training of the penitentiary personnel who provide the security in the prison and the effectiveness of the said mechanisms for the prevention of intra-prison violence, such as the possibility of their having to react to acts of violence or emergencies within the pavilions. The State must ensure that searches are carried out periodically and appropriately, in order to prevent violence and eliminate danger, in function of an adequate and effective control within the pavilions by the penitentiary guards, and that the results of these searches are duly and opportunely communicated to the competent authorities.

53. Regarding minimum detention conditions, it is important to recall the principle that the State must provide adequate facilities, separate interns by categories, provide access to satisfactory health, hygiene and education services, and offer activities for recreation and the mental and physical health of persons deprived of liberty.[...] Furthermore, the State must ensure that the personnel responsible for the custody of interns have the necessary capabilities and tools to perform their work respecting the rights of the detainees, especially that they only use planned and limited force exceptionally, in order to avoid violence within the prison. To this end, the measures that the State must adopt should give priority to a system of preventive measures, addressed, *inter alia*, at avoiding arms smuggling and an increase in violence, rather than a system of repressive measures.[...]

42. In addition, it should be emphasized that, when lifting these provisional measures, the Court merely determines whether the situation of risk that gave rise to the proceeding subsists, in the terms indicated (*supra* thirtieth considering paragraph), and that the inter-American human rights system will continue to address the situation of the Mendoza Prisons through the actions of one of its organs [the Inter-American Commission], which must determine the next step in the proceedings, either within the framework of the petition pending definition, or by means of other mechanisms, such as

²¹ Cf. Regarding "control of respect for the provisions of the Convention," see, *inter alia*: *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, paras. 124 and 125; *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru, Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006, Series C No. 158, para. 128, and *Case of Cepeda Vargas v. Colombia. Preliminary objections, merits and reparations*. Judgment of May 26, 2010. Series C No. 213, paras. 206 to 208.

the Inter-American Commission's Rapporteur for the Rights of Persons Deprived of Liberty.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 27 of its Rules of Procedure,

DECIDES:

1. To reject the request to re-open the provisional measures ordered by the Inter-American Court on November 22, 2004, subsequently ratified, and lifted on December 15, 2010, to protect the life and integrity of all those deprived of liberty in the Mendoza Provincial Prison and in the Gustavo André Unit, of Lavalle, as well as all those who are within these prisons.
2. In keeping with the principle of complementarity and subordination that regulates the inter-American human rights system, not to order the State on this occasion to adopt provisional measures to protect the life and personal integrity of the persons deprived of liberty in the San Felipe and Boulogne Sur Mer Units of the Mendoza Provincial Prison, despite the information included in the forty-first and forty-second considering paragraphs.
3. To require the Secretariat of the Court to notify this order to the Inter-American Commission on Human Rights and to the Republic of Argentina.
4. To close the case file of this matter.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary