

**INTER- AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 40/2019**

Precautionary Measure No. 379-19

Evaristo de Moraes Detention Facility regarding Brazil¹

August 5, 2019

I. INTRODUCTION

1. On April 22, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “IACHR”) received a precautionary measure request filed by the Public Defender’s Office of Rio de Janeiro (“the applicants”), urging the IACHR to request that the Federative Republic of Brazil (hereinafter “Brazil” or “the State”) adopt precautionary measures in order to protect the rights of the people deprived of their liberty that are in the “Evaristo de Moraes Detention Facility” (“PEM”), located in Rio de Janeiro City (“the proposed beneficiaries”). According to the request, the proposed beneficiaries face a situation of risk due to their detention conditions and lack of adequate medical care; several deaths have been recorded in recent years.

2. The Commission requested information from both parties, according to Article 25.5 of the Rules of Procedure. The applicants presented further additional information on three times during July: 1, 10, and 24. The State requested an extension deadline, and submitted its reply on July 1.

3. After analyzing the legal and factual allegations from the parties, the Commission considers that the present matter *prima facie* the seriousness, urgency, and irreparability requirements established in Article 25 of the Rules of Procedure. Consequently, the Commission requests that the State of Brazil: a) adopt the necessary measures to preserve the lives, personal integrity, and health of the persons detained in the Evaristo de Moraes Detention Facility; b) adopt immediate actions to substantially reduce overcrowding inside the detention facility in accordance to international standards; c) provide adequate hygiene conditions inside the facilities, access to drinkable water, and adequate medical care for the detainees, according to the illnesses they have; d) adopt the necessary measures to have contingency plans in case of an emergency; e) consult upon the measures to be adopted with the beneficiaries and their representatives; e f) provide information regarding the actions taken to investigate the alleged acts that caused the adoptions of the present precautionary measure and, in this way, avoid its repetition.

II. SUMMARY OF THE FACTS AND ARGUMENTS

1. Information Provided by the Applicants

4. The proposed beneficiaries are persons deprived of liberty in the “Evaristo de Moraes Detention Facility” (“PEM”)², located in the São Cristóvão area of Rio de Janeiro city, intended to detain “neutral” prisoners who are not in a criminal group of the zone. The request is based on a generalized picture of risk source, similar to other precautionary measures granted by the IACHR³.

¹ According to Article 17.2.a of the IACHR’s Rules of Procedure, the Brazilian commissioner, Flávia Piovesan, did not participate on the discussion of the matter.

² On 1967, it was a military warehouse in which the army stored their tanks. Then it became a detention facility for sentenced people or preventive prisoners, close regime.

³ IACHR, *Instituto Penal Plácido de Sá Carvalho Penal Institute regarding Brazil* (PM-208-16), Resolution 19/2016 of July 15, available on: <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC208-16-ES.pdf>

5. Firstly, the applicants mentioned the high number of deaths⁴, which are similar to Plácido de Sá Carvalho Penal Institute ("IPPSC")⁵, a penitentiary establishment subject to provisional measures granted by the Inter-American Court of Human Rights⁶; the causes of deaths were mostly unclarified. Since 2017, the applicants requested the Secretariat of State for Penitentiary Administration ("SEAP" by its initials in Spanish) for information on the strategies aimed to reducing this rate; however, the authorities replied that (at that time) "[t]here is currently no specific plans related to health care and reducing mortality". It "[...] does not know about the causes of deaths since the notifications [to them] arrive as 'illnesses', not being specified". Furthermore, the applicants doubt on the methodology used by the authorities to categorize the deaths and the criteria used because, in several occasions, it was possible to establish a cause with a certain probability and there was not information. By July 24, 2019, thirteen people died.

6. Secondly, applicants reported that, by April 2019, the PEM has an overcrowding rate of 252.17%, having surpassed 200% since June 2018 with three thousand seven hundred and seventy-five prisoners, but with places for only one thousand four hundred and ninety-seven, despite a judicial procedure issued on 2012 set one thousand six hundred and eighty-seven places as the maximum capacity. The applicants claimed the negative consequences that this Figure represents for the proposed beneficiaries, especially in terms of health, having attached several photographs to the file.

⁴ Figure provided by the applicants:

| Year | Number of deaths |
|------|----------------------------|
| 2008 | 5 |
| 2009 | 9 |
| 2010 | 12 |
| 2011 | 14 |
| 2012 | 13 |
| 2013 | 07 |
| 2014 | 08 |
| 2015 | 11 |
| 2016 | 26 |
| 2017 | 20 |
| 2018 | 17 |
| 2019 | 5 until the request's date |

⁵ Figure provided by the applicants:

| Year | PEM | IPPSC |
|-------|---------------------|---------------------|
| 2008 | 05 | 04 |
| 2009 | 09 | 04 |
| 2010 | 12 | 07 |
| 2011 | 14 | 09 |
| 2012 | 13 | 11 |
| 2013 | 07 | 06 |
| 2014 | 08 | 15 |
| 2015 | 11 | 16 |
| 2016 | 26 | 32 |
| 2017 | 20 | 20 |
| 2018 | 17 | 19 |
| 2019 | 05 (until April 22) | 04 (until April 22) |
| Total | 147 | 147 |

⁶ I/A Court H. R. Resolution of the Inter-American Court on Human Rights of February 13, Provisional Measures regarding Brazil, *Matter Plácido de Sá Carvalho Penal Institute*. Available on: http://www.corteidh.or.cr/docs/medidas/placido_se_01.pdf

7. Thirdly, regarding the detention conditions, the applicants stated that the facilities are divided into five galleries (A, B, C, D, E) with a total of thirty-nine cells. Those in gallery A present more "reasonable" conditions, and those in gallery E (for isolation and security) are the worst. In this sense, they detailed the unhealthy state of the place: leaks, lack of ventilation, lighting (tiny windows with bars are mentioned), and beds, having to sleep more than half of the prisoners on the floor without any space to move. The applicants also denounced an intermittent supply of water (about four times a day, for thirty minutes) and insufficient mechanisms to make it drinkable, lack of regular and adequate food, proliferation of mice and insects, suffocating heat, etc. In addition, the applicants pointed out that the prisoners are confined in their cells at all times, being allowed to go out to sunbathe only once a week or during the days of visits (once a week per detainee). The toilets are a hole in the floor in the cells without divisions with the rest of the space and poor sanitary conditions. The toilets are also used for personal hygiene, as well as for washing clothes.

8. Regarding health care, the applicants claimed that there was only one doctor and two nurses in the building who were unable to attend all the patients, as well as a dentist who attended patients twice a week; the doctor, however, retired in September 2019 without informing if anyone else will replace her. In addition, the applicants pointed out that there is medicines are insufficient despite the fact that tuberculosis and dermatological illnesses due to infections have been registered. According to the applicants, several prisoners have tuberculosis and dermatological diseases, which they could see during a visit to the center. A priest from the state Prison Pastoral also visited the building on mid-July 2019.

9. In fact, the State Mechanism for Preventing and Combating Torture in Rio de Janeiro had already declared against the PEM "because of its structure; it does not offer the minimum conditions for the custody of prisoners [...]." The Public Prosecutor's Office stated that "there is no doubt that the closure should have occurred a long time ago," a statement shared by the criminal enforcement judge, who decreed a "scheduled vacancy measure" in 2012.

2. Response from the State

10. The State referred to the commitments assumed by the state of Rio de Janeiro and the Public Prosecutor's Office through SEAP, attaching a document signed in December 2018 in order to institutionalize the judicial monitoring mechanism in regard to overcrowding in the state prison system, define indicators and progressive goals for reducing individual occupancy rates, adopt specific measures to mitigate and regularize operating conditions in penitentiary facilities, and create a plan to address the problem throughout the state. These actions will be carried out by means of a special procedure to the competent criminal enforcement court. In this sense, the State indicated that it "[...] covered all other special procedures and judicial decisions available that define operational limitations in penitentiary facilities based on overcrowding in order to allow and enable an impact analysis of the present decisions and future ones [...]"

11. The State reported that supervisory hearings were held throughout the year, reviewing the goals set and that extreme situations of overcrowding in prisons with a rate of over 270% were eliminated; "[...] basically, all the specific goals of reducing leisure and occupancy rates in prison units were met." In January 2019, the PEM had an overcrowding level of 261%, dropping to 239% by June 2019. According to the commitments assumed, the center will have been supplied with 3,700 mattresses; 3,800 white shirts; 3,744 toothbrushes; 11,088 toothpastes; 22,080 soaps; 11,520 toilet paper and 50 "kits" of cleaning material in the last eight months. The State also attached a six-monthly compliance report. Regarding the number of deaths, it reported that, during 2017 and 2018, there were

twenty-two natural deaths and one violent in total; about it, the State claimed that it must verify both the health conditions of the prison environment and endogenous and exogenous factors of disease transmission, as well as the medical and pharmaceutical assistance provided to prisoners. The State indicated that the PEM has medical, dental, pharmaceutical, emergency service, space for sunbathing and it lasts two or more hours, based on an annual report of a technical visit for 2018 and 2019. Furthermore, the Public Prosecutor's Office requested the SEAP to clarify certain cases and adopt measures about it, such as transferring prisoners in need to the "Hamilton Agostinho" emergency and ambulatory unit, which attends persons deprived of their liberty.

12. The State informed that the problems observed in the facilities are present in other buildings since the issues' origins are in the State penitentiary system. This is why the Public Prosecutor's Office's of Rio de Janeiro strategy consist of addressing the situation from a macro point of view, detailing the ongoing procedures for resolving the medical care issue: "i) Human resources deficit in the penitentiary system - the state and municipality of Rio de Janeiro must provide health professionals to supply its lack inside the penitentiary system - effective implementation of an integral prison health care policy - make it possible to set up health teams together with the Ministry of Health; ii) state and municipal authorities must adopt measures to improve public health care in the penitentiary system; iii) lack of health care for patients with tuberculosis that are in the penitentiary units of the Rio de Janeiro municipality; lack of human resources, consultations, inputs for examinations, medicines; (iv) adequate health care protocol for the prison population with diabetes; (v) to determine the possibilities and difficulties of performing transit reconstruction surgeries (reversion) for ostomized prisoners within the prison system; vi) determine the structural conditions for the storage of medicines in SEAP, as well control and distribution of medicines and supplies; vii) delivery of medicines and supplies necessary to guarantee the right to health of the people that are in the prison system."

13. The State continued explaining other measures and strategies carried out by the competent authorities, as well as the development of thematic axes for the improvement of penal execution at the national level, in the areas of health care, education, staff qualification, culture, work, social assistance and promotion of diversity. Finally, the State alleged that the regulatory requirements in this matter were not met, inasmuch as the actions taken at the domestic level were effective in dealing with the possible seriousness of the situation and, for that reason, the intervention of international bodies is not necessary; it also noted that the applicants did not demonstrate compliance with domestic remedies, based on Article 46.1 of the IACHR's Rules of Procedure. Moreover, it noted that the National Observatory of Penitentiary Services reported that it had not been aware of any deaths that had occurred within the PEM in recent months, although it undertakes to take the necessary measures to carry out an inspection and protect the rights of persons deprived of liberty.

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

14. The mechanism of precautionary measures is part of the Commission's function to supervise compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States ("OAS"), based on Article 41 (b) of the American Convention on Human Rights ("American Convention") and Article 18 (b) of the Statute of the IACHR. Moreover, the mechanism of precautionary measures is described in Article 25 of the Rules of Procedure, according to which the Commission grants precautionary measures in situations that are serious and urgent, necessary to prevent irreparable harm.

15. The Inter-American Commission and the Inter-American Court of Human Rights ("the Inter-American Court" or "IACHR") have repeatedly established that precautionary and provisional measures

have a dual character, one precautionary and the other tutelary. With respect to the tutelary character, the measures seek to avoid irreparable harm and preserve the exercise of human rights, while the precautionary aspect aims to preserve a legal situation while the organs of the Inter-American System are considering a petition or case. Its object and purpose are to ensure the integrity and effectiveness of the substantive decision and, in this way, prevent the alleged rights from being violated, a situation that could render harmless or distort the useful effect (*effet utile*) of that decision. In this sense, precautionary or provisional measures thus allow the State in question to comply with the final decision and, if necessary, to comply with the reparations ordered. To this end, and in accordance with Article 25.2 of its Rules of Procedure, the Commission considers that:

- a. The "seriousness of the situation" implies the serious impact that an action or omission may 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. The "urgency of the situation" is determined by the information provided, indicating the risk or threat that may be imminent and materialize, thus requiring preventive or tutelary action; and
- c. The "irreparable harm" consists of the affectation of rights which, by their very nature, are not subject to reparation, restoration or adequate compensation.

16. In the analysis of the above requirements, the Commission reiterates that the facts underlying a request for precautionary measures do not need to be fully verified. The information provided, for the purpose of identifying a situation of seriousness and urgency, must be assessed from a *prima facie*⁷ perspective. Furthermore, and in relation to the State's statement on the alleged failure to exhaust domestic remedies, the Commission recalls that this requirement concerns the admissibility of a petition and that the mechanism of precautionary measures is governed by Article 25 of the Rules of Procedure. In this sense, paragraph 6.a only states that: "[a] considering the application, the Commission shall take into account its context and the following elements: a. whether the risk situation has been reported to the relevant authorities, or the reasons why it could not have been done [...]"⁸. The foregoing, for the purpose of determining whether, after having knowledge of the alleged risk situation, the measures adopted by the State have succeeded in mitigating it.

17. In relation to seriousness requirement, the Commission reiterates that States "[...] are in a special position of guarantor, since prison authorities exercise a strong control or dominion over the persons in their custody. This is the result of the special relationship and special interaction of subjection between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate its rights and obligations [...] by the circumstances of

⁷ In this regard, for example, referring to provisional measures, the Inter-American Court has considered that such standard requires a minimum of detail and information that allows for a *prima facie* appreciation of the situation of risk and urgency. IACHR, Matter of children and adolescents deprived of their liberty in the "Complexo do Tatuapé" of the Fundação CASA. Request for extension of provisional measures. Provisional Measures with respect to Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Available at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

⁸ Article 46 of the American Convention, cited by the State, refers to "petition or communication submitted pursuant to Articles 44 or 45 [...]" which refer exclusively to the system of petitions and cases. It is noted that Articles 44 and 45 of the American Convention refer to "denunciations or complaints of violation" of the Convention. The function of the mechanism of precautionary measures is not to establish the existence or non-existence of one or more violations (see Article 25.8 of the Commission's Rules of Procedure), and the consequent international responsibility of the State; rather, according to Article 25 of the Commission's Rules of Procedure, the precautionary measures "[...] shall relate to situations of seriousness and urgency that present an irreparable risk of harm to persons or to the object of a petition or case pending before the organs of the Inter-American System.

confinement, where the prisoner is prevented from satisfying on his own a series of basic needs essential for the development of a dignified life.”⁹

18. In the present case, the Commission notes that the situation raised by the applicants revolves around the circumstances in which the proposed beneficiaries are deprived of their liberty, who would also be exposed to various sources of risk. On the basis of the provided information, the main factors would be the conditions of detention - which include a high level of overcrowding - and the medical care provided. From the reports of both parties, a controversy can be noted over certain figures, such as the number of alleged deaths to have occurred during the year 2019. Irrespective of this, the Commission understands that the unhealthiness and conditions of detention indicated, as well as the lack of health care inside the penitentiary establishment, all that may be sufficient to qualify the existence of a risk situation. Precisely as a result of the foregoing, some authorities at the internal level have already expressed their alarm (*see supra* para. 9). In this sense, as already highlighted by the applicants, the Commission has granted precautionary measures in Brazil with respect to other centers with similar levels of overcrowding and structural deficiencies.

19. The Commission takes into consideration the State's reply, in particular of the measures that were taken in various fields to address this issue. While it shares the view that it is appropriate to approach this problem from an integral perspective, the Commission cannot ignore the fact that the situation of the Evaristo de Moraes Detention Facility remains worrying. While noting that the rate of overcrowding has decreased over the past few months, the proposed beneficiaries are still deprived of their liberty under conditions that could seriously affect their rights; apart from the foregoing, the procedures mentioned by the State are based on the recognition that there are major shortcomings in terms of medical care or health. With all this, it should be recalled that the invocation of the principle of complementarity, as a basis for considering that the adoption of precautionary measures would not be appropriate, would mean that by virtue of the actions taken by the State, the proposed beneficiaries would no longer be in the situation established in Article 25 of the Rules of Procedure because the measures adopted by the State had a substantial impact on reducing the risk situation that it would not be possible to assess a situation that meets the requirements of seriousness and urgency, which existence requires international intervention to prevent irreparable damage¹⁰.

20. In view of the foregoing, and from the applicable *prima facie* standard, the Commission concludes that the existence of a situation of serious risk in relation to the rights to life, personal integrity and health of persons deprived of liberty in the Evaristo de Moraes Penitentiary is sufficiently established.

21. As regards the requirement of urgency, the Commission considers that it is also satisfied, in so far as the continuity of the sources of risk identified and their entity are still liable to have a negative impact on the rights of the proposed beneficiaries at any time, either through the spread of diseases or as an inherent consequence of the rates of overcrowding and conditions of detention described.

22. With regard to the requirement of irreparability, the Commission understands that the possible impairment of the right to life, personal integrity and health constitutes the maximum situation of irreparability.

⁹ IHR Court. Case of "Instituto de Reeducción del Menor" ("Institute for the Reeducción of Minors") Vs. Paraguay, Judgment of 2 September 2004, para. 152. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_112_esp.pdf

¹⁰ IACHR, Francisco Javier Barraza Gómez with respect to Mexico (MC-209-17), Resolution 31/2017 of 15 August, para. 22. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/31-17MC209-17-MX.pdf>

IV. BENEFICIARIES

23. The Commission declares that the beneficiaries of the present precautionary measure are all persons deprived of their liberty in the Evaristo de Moraes Penitentiary, who can be determined on the basis of Article 25.3.

V. DECISION

24. The Commission considers that the present case meets *prima facie* the requirements of seriousness, urgency and irreparability contained in Article 25 of its Rules of Procedure. Consequently, it requests the State of Brazil to:

- a) adopt the necessary measures to preserve the lives, personal integrity, and health of the persons detained in the Evaristo de Moraes Detention Facility;
- b) adopt immediate actions to substantially reduce overcrowding inside the detention facilities in accordance to international standards;
- c) provide adequate hygiene conditions inside the facilities, access to drinkable water, and adequate medical care for the detainees, according to the illnesses they have;
- d) adopt the necessary measures to have contingency plans in case of an emergency;
- e) consult upon the measures to be adopted with the beneficiaries and their representatives; and
- f) provide information regarding the actions taken in order to investigate the facts that led to the adoption of the present precautionary measure and, in this way, avoid its repetition.

25. The Commission requests the Government of Brazil to report, within 20 days from the date of the present resolution, on the adoption of the required precautionary measures and to update such information periodically.

26. The Commission emphasizes that, in accordance with Article 25 (8) of its Rules of Procedure, the granting of the present precautionary measure and its adoption by the State do not constitute a prejudice to any violation of the rights protected in the American Convention and other applicable instruments.

27. The Commission instructs its Executive Secretariat to notify Brazil and the applicants of the resolution.

28. Approved on August 5, 2019 by: Esmeralda Arosemena de Troitiño, President; Joel Hernández García, First Vice-President; Antonia Urrejola Noguera, Second Vice-President; Francisco José Eguiguren Praeli, Commissioner.

Marisol Blanchard
Chief of Staff of the Executive Secretariat