

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 6 / 2020**

Precautionary Measure No. 888-19

Persons Deprived of Liberty in the Jorge Santana Prison regarding Brazil¹
February 5, 2020

I. INTRODUCTION

1. On September 24th, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by the State Mechanism for the Prevention and Combat of Torture in Rio de Janeiro and the Penitentiary System Center (NUSPEN) at the Rio de Janeiro State Public Defender's Office (hereinafter “the applicants”) in favor of the persons deprived of liberty in the Jorge Santana Prison (“the proposed beneficiaries”), urging the IACHR to request that the State of Brazil (“Brazil” or “the State”) adopt the necessary measures to protect their rights to health, life and personal integrity. According to the request, the proposed beneficiaries are at risk because of the conditions of imprisonment and lack of medical care.

2. The Commission requested information from the State, in accordance with Article 25 of its Rules of Procedure, on October 2nd, 2019, which replied on October 24th, 2019. The applicants sent additional information on November 18th, 2019.

3. After analyzing the factual and legal allegations from the parties, the Commission considers that the information presented demonstrates *prima facie* that the persons deprived of liberty in the Jorge Santana Prison are in a serious and urgent situation, since their rights to health, life and personal integrity are at serious risk. Consequently, in accordance with Article 25 of the Rules of Procedure, the IACHR requests that the State of Brazil: a) adopt the necessary measures to preserve the lives, personal integrity and health of the persons deprived of liberty in the Jorge Santana Prison; particularly, guaranteeing adequate and timely medical care, in accordance with the recommendations of the corresponding experts; b) take the necessary measures to ensure that the detention conditions of the beneficiaries meet the applicable international standards; in particular, ensuring that the structure of the Jorge Santana Prison meets the necessary safety conditions, taking into account the situation of beneficiaries who are disabled, injured, mutilated, fractured or injured in other ways, and in order to prevent further damage to the entire prison population, taking immediate actions to substantially reduce overcrowding; and providing adequate health and hygiene; c) consult upon the measures to be taken with the beneficiaries and their representatives; and d) provide information regarding the actions taken to investigate the alleged acts that caused the adoption of the present precautionary measure and, in this way, avoid their repetition.

SUMMARY OF FACTS AND ARGUMENTS

1. Information alleged by the applicants

4. The applicants reported that the Jorge Santana Prison (PPJS) is intended for receiving provisional prisoners who were shot or are in a serious health status due to the circumstances of their detentions, requiring specific and/or continued medical care. The PPJS is located in the Gericino Complex and receives these prisoners due to its proximity to the Hamilton Agostinho emergency unit (UPAHA).

¹ In accordance with Article 17.2.a of the Rules of Procedure of the IACHR, Commissioner Flávia Piovesan, of Brazilian nationality, did not participate in the debate or in the deliberation of this matter.

5. Considering the specific characteristics of the PPJS inmates, the applicants cited some examples (including images) of the health status in which several of the proposed beneficiaries are, noting that “[this] scenario worsened until 2019”:

- Prisoners with colostomy bags: a “majority of the prisoners” suffered colostomy, they therefore require hygienic spaces and weekly bag changes. However, in the PPJS, the proposed beneficiaries are reportedly forced to change their bags themselves, without specialized instruments or hygiene conditions. Nor is there a constant delivery of new bags, so they allegedly change them after a term longer than indicated. On inspections in 2018 and 2019, applicants reportedly found prisoners whose feces came out from their abdomens.
- External fixators: another “majority of the prisoners” reportedly have external fixators and unanimously allege lack of care. Partially due to the fact that the fixators are reportedly not removed within the stipulated term, inmates themselves or an officer must remove them, without anesthesia. This reportedly leads to loss of mobility in some cases.
- Amputations: the proposed beneficiaries with amputations allegedly do not have access to bandages or medicines to relieve pain. Consequently, they are reportedly reusing gauze or diapers, with the consequent risk of exposure to infections.
- Head wounds: On the 2018 and 2019 inspections, applicants allegedly found prisoners with serious head injuries, including people with settled projectiles, exposed bones, palate holes and clefts in the skull.

6. The applicants added that the proposed beneficiaries with more critical health conditions are in cells A and B, which however do not have particular conditions to house that population, since “they are identical to the other cells, counting more than 350 people for 150 seats,” with people even sleeping on the floor. They also indicated that, in cases of emergency, the proposed beneficiaries are transferred to the UPAHA, which in itself does not have the structure required to handle more complex cases (for example, surgeries) and, often, there is not transport availability to transfer them there, since there are not any ambulances. Additionally, it was alleged that the proposed beneficiaries, when they are admitted, “systematically receive an early discharge.” In addition, in the Jorge Santana Prison itself, in accordance with the inspection of September 2019 carried out by the applicants, the personnel responsible for healthcare is reportedly limited to three nurse technicians, a nurse and a doctor, who attends once a week.

7. In addition to these allegations, the applicants pointed out that the Jorge Santana Prison has overcrowding conditions, confirming that in March 2019, up to 1,842 prisoners were registered for 750 places, subject to unhealthy conditions: drain leakage in the cells, insect and rodent infestation, an average of two Turkish baths for 180 persons, insufficient mattresses and clothing. According to the applicants, the situation of the Prison “[...] becomes especially serious when it comes to the entry of the injured and ill, creating environments that exacerbate the risks already present to their persons and their right to life.” In addition, they indicated that there are problems with food, since the health necessities of the ill are not taken into account, and that sunbathing, labor, educational or recreational activities are not allowed.

8. Likewise, the applicants informed that, during the inspection of March 2019, they found that the application of “excessive measures” of discipline is reportedly “the usual way of unit operating”, as well as the silence imposition. They also claimed that less lethal weapons are used abusively, even having found projectiles in the cells and a person with gunshot wounds in his body.

9. The applicants alleged that the given risk situation is worsened by the frequency with which the proposed beneficiaries are not presented before the judge for the control hearings, explaining that when the prisoners are admitted, these hearings reportedly have a discretionary nature. The foregoing would prevent a judge from assessing not only the legality of the detention, but also the “same viability of survival in case of imprisonment.” Considering the scenario described, the

applicants stated that “a majority of the unit's prisoners end up acquiring a physical disability and are at risk of death, especially in a context framed in the status of a high mortality rate regarding persons who are deprived of liberty.”

10. Additionally, the request added that the situation of the Jorge Santana Prison is known by the corresponding authorities: already in the year 2009, the Public Prosecutor's Office of Rio de Janeiro filed a lawsuit in relation to such Prison, which at that time already showed signs of overcrowding, insufficient health supplies and medical care, among other issues. Applicants allegedly also submitted relevant reports to the authorities.

2. Response from the State

11. The State indicated, providing details, that its domestic legislation covers the protection of persons deprived of liberty, guaranteeing their access to health and providing for the protection of persons with disabilities. In that context, it was recognized that penalties and alternative measures to deprivation of liberty should be prioritized, mainly in relation to persons with physical disabilities, although it was indicated that, due to lack of application, the electronic ankle monitor system had been suspended in the state of Rio de Janeiro.

12. Specifically, in relation to the situation of the Jorge Santana Prison, the State affirmed that it is “working to change the scenario presented to the IACHR and that the current government is oriented to work in favor of the dignity of the person deprived of liberty, the health and physical integrity of those convicted in the prison system.” Thus, the State gave examples of links carried out between domestic bodies to consult upon relevant action plans and monitor the given situation. Of these, it was pointed out that the State Health Secretariat of Rio de Janeiro committed itself to buy and send medicines to the body responsible for the state prison administration, which “reported being without medicines.”

13. The State also provided information on proceedings taken at the Jorge Santana Prison. Among them, it was highlighted a project with tuberculosis control actions, the separation of the proposed beneficiaries with clinical care needs in specific cells “for the due custody”, and two health care campaigns (one in 2018 and another in 2019), contemplating between 1,000 and 1,500 inmates per campaign. The State also claimed that every Thursday there are itinerant visits of the health care team, consisting of a doctor, a nurse, a dentist and two nurse technicians, adding that the delivery of colostomy bags, with their respective medicine, has been regularized in August 2019. To this, the State added that those who need the bags and an eventual reversal procedure are being tracked in prison units.

14. Additionally, the State alleged that sunbathing was regularized in the PPJS and responded to the applicants' allegations that the food supplied was analyzed and found to be of good quality. The water supply is reportedly also “satisfactory” and the fumigation service has attended the Prison almost every month during 2019. Regarding the structural conditions of the Prison, the State affirmed that “the fact was already reported to the responsible authorities,” adding that some areas of the Prison have been reformed, including paintings, masonry, bathrooms installation and cleaning in the cells A and B, and in the isolation area, in addition to a project which is underway for the construction of an intimate visits place.

15. The State also claimed that a working group will be created to develop short and medium term action plans for the improvement of the Jorge Santana Prison and that it is in the process of acquiring an ambulance “for emergency cases, being necessary, even, to match the equipment to handle the movable units.” There is reportedly an ambulance to transfer prisoners to public hospitals.

16. The State also recognized the relevance of the prison control hearings and affirmed, on the absence of the proposed beneficiaries in them, that their transfer depends on the authorization of the corresponding medical team and that, in some cases, the inmates are still in custody of the Military Police of Rio de Janeiro.

17. Considering the above, the State considered that the serious situation does not persist in the PPJS, since it is reportedly taking the necessary measures to deal with the situation. Specifically, the State said: “[t]here is not a situation of risk: The State has been acting in the promotion of human rights of persons deprived of liberty in the Jorge Santana Prison, through the multidisciplinary and integrated action of several of its bodies, on various fronts, [...]” In addition, the State alleged that the applicants did not exhaust domestic remedies before filing this request.

3. Recent information from the applicants

18. The applicants provided their observations to the State's response, claiming that “the proposed beneficiaries are seriously injured in the unit, without access to healthcare or the extramural network so that it be possible to stop the consequences of their injuries, be it for the risk of septicemia generated by them or for the impossibility of recovering their full motor functions, which has already materialized in several prisoners.” In that regard, they indicated that the information provided by the State is insufficient to mitigate the risk situation of the Jorge Santana Prison, since the measures allegedly implemented do not “contradict the constant risk scenario that has been exposed in the present request for precautionary measures”; in addition, they mentioned that “the State chose to report numerous abstract claims and norms, although it has reported few concrete actions.”

19. Regarding the healthcare campaigns indicated by the State, the itinerant visits of a healthcare team and the project related to tuberculosis treatment, the applicants stressed that without prejudice to constituting measures “necessary to stop the health violations and violations of the integrity of persons deprived of liberty, they are temporary, palliative and inefficient in the medium and long term.” The applicants added that such measures are reportedly not able to “deal with the permanent demand of the unit or with the seriousness of the injuries found, which in many cases depend on access to extramural hospitals for performing surgeries or permanent care, such as physiotherapy.”

20. Regarding the other proceedings reported by the State, the applicants stated that they lack detail. Thus, the applicants note that it was not clear whether the structural reforms indicated in cells A and B have taken into account people with disabilities or reduced mobility, who would remain concentrated in them, including the need for structural changes to the beds, since to date these are limited to triple bunk beds, more than three meters high. Likewise, on the resumption of sunbathing, the applicants alleged that it is not deducted from the state report if in fact all the proposed beneficiaries receive it daily or if, “as in other units, there are [reportedly] shifts among the prisoners causing that all access the sun bath a few moments in the week.”

21. Additionally, the applicants alleged that the given situation is aggravated due to the “lack of flow” to bring the proposed beneficiaries at risk of death or severe suffering to the hospitals of the public network, particularly considering that neither the PPJS nor the UPAHA have the structure required to handle specialized emergency cases. According to the applicants, in an emergency, a seat has to be requested from a hospital and, although these are often authorized promptly, their access is not effective due to failures in the transfer service. As an example, they indicated that in August 2019 59 seats were requested, of which 52 were accepted but only 17 were effective. Of the 35 non-effective seats, 32 are reportedly due to the lack of assistance from the transfer system. In September, the scenario was reportedly repeated, with 54 authorized seats and only 10 executions. Therefore:

“several of the health issues that affect prisoners in the PPJS are reportedly not being resolved, even if the unit has a full scenario of health professionals and a functional ambulatory service, given that among

the emergencies found the need for specialized interventions is imperative, as in the case of surgeries. [...] On this important issue, the State merely clarified that medical emergencies must be sent to the UPAHA and still states that the unit 'installed within the prison system, which operates 24 hours a day and has a healthcare team to attend to demands of prison units.' We reinforce the information on the impossibility of dealing with serious cases in the unit [...], reaffirming that this is intended for emergency care and short-term hospitalization, [...] not being able to do anything other than refer cases that require emergency specialized care to hospitals of the public health network."

22. Considering the above, the applicants reinforced that several of the proposed beneficiaries acquire physical disabilities or die in the PPJS, adding that, in 2019, 11 people lost their lives in the aforementioned Prison². The applicants also indicated that they received information on the possibility of transferring the proposed beneficiaries of cells A and B to the Alfredo Tranjan Prison, which is reportedly intended for prisoners in a closed regime and allegedly does not meet the necessary conditions to house them, particularly in relation to their mobility problems. Lastly, they argued that a request for precautionary measures does not require the exhaustion of domestic remedies, although they have reportedly made efforts to remedy the situation internally, both through lawsuits and meetings between the parties.

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

23. The Precautionary Measures mechanism is part of the IACHR's function of overseeing 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 established in Article 41 (b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. The precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

24. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "I/A Court H.R.") have established repeatedly that precautionary and provisional measures have a dual nature, one being precautionary and the other being protective. As regards the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the request under consideration in the Inter-American System is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the *effet utile* of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. For such purposes, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;
- b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

² Of those, 6 reportedly died in the second half of 2019.

25. In the analysis of the aforementioned requirements, the Commission reaffirms that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided, to the effects of identifying a serious and urgent situation, should be met to allow a *prima facie* standard³. In addition, in consideration of the State's declaration stating that the domestic remedies had not yet been exhausted which is a requirement for the admissibility of a petition, the Commission states that the precautionary measures mechanism is exclusively regulated by Article 25 of the Rules of Procedure. In this sense, in subparagraph 6.a, only the following is established: "in considering a request, the Commission shall take into account its context and the following elements: a. whether the situation has been brought to the attention of the pertinent authorities or the reasons why it would not have been possible to do so; [...]."⁴

26. On a preliminary basis, the Commission recalls that, just as previously expressed by the IACHR, in regards to persons deprived of their liberty, the State is in a special position of warrantor given that the prison authorities exercise strong control or command over persons who are subject to their custody.⁵ This arises as a result of a unique relationship and interactions based on the control that the State has over the persons deprived of their liberty which is characterized by the particular intensity with which the State can regulate their rights and obligations. In addition, in the situation of confinement, the inmate cannot satisfy certain basic necessities for the development of a dignified life on his own⁶. The following are among the positive obligations required for a detained person to have full exercise of their rights⁷: i) taking protective measures when the person is faced with possible aggression or threats by the authorities or even other inmates⁸; ii) separating inmates by their categories⁹; iii) taking preventive measures regarding the presence of weapons in the penal institutions; and iv) improving detention conditions.

27. In the particular framework of the protective measures dictated by the bodies of the Inter-American system regarding persons deprived of their liberty, the following aspects, among others, have been taken into account: "inadequate safety conditions and internal control"¹⁰, the unacceptable detention conditions in regards to the extent of the overcrowding¹¹, the lack of medical assistance in

³In this regard, for example, referring to the provisional measures, the Inter-American Court has indicated that a minimum of detail and information is required to assess *prima facie* a situation of extreme seriousness and urgency. I / A Court HR, Matter of children and adolescents deprived of liberty in the "Complexo do Tatuapé" of the CASA Foundation. Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

CIDH, Marcelino Díaz Sánchez and others regarding Mexico (PM 1498-18), Resolution 24/2019, April 23, 2019. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/24-19MC1498-18-MX.pdf.23>. Available at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

⁴ Article 46 of the American Convention, which was quoted by the State, refers to "petition or communication presented 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 "complaints or claims" of the Convention. The precautionary measures mechanism does not have the aim of establishing the existence or lack thereof of one or more violations (see article 25.8 of the Commission's Rules of Procedure), and the consequent international responsibility of the States; but rather, in conformity with article 25 of the Rules of Regulations, the precautionary measures "[...] shall concern serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the Inter-American system."

⁵ I/A Court. *Case Mendoza et al v. Argentina*. Preliminary Exceptions, Merits and Costs. Judgement on May 14, 2013. Series C No. 260, para. 188. Also see: IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, December 31, 2011, para. 49

⁶ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, December 31, 2011, para. 49 and ss.

⁷ I/A Court, *Castillo Petruzzi et al. v. Paru Case*. Preliminary Exceptions, Merits and Costs. Judgement on May 30, 1999. Series C No 52, para. 61. Also see: IACHR, Report N. 41/99, Case 11.491, Merits, Detained Minors, Honduras, March 10, 1999, para. 125.

⁸ I/A Court, *Matter of the Socio-Educational Internment Facility regarding Brazil*. Precautionary Measures Resolution of November 20, 2012, considerandum 18.

⁹ I/A Court, *Matter of the Mendoza Prisons regarding Argentina*. Precautionary Measures Resolution of June 18, 2005, considerandum 11.

¹⁰ I/A Court, *Matter of Certain Venezuelan Prisons. Center of the Central Occidental Region (Uribana Prison)* Precautionary Measures Resolution of February, 2013, considerandums 10 y 14. Also see: CIDH, *Resolution 5/2016. Precautionary Measure No. 393-15. Matter of Persons Deprived of Liberty in "Punta Coco" regarding Panama.*, February 25, 2016, para. 21; y *Resolution 39/2016. Precautionary Measure No. 208-16. Penal Plácido de Sá Carvalho Penal Institute regarding Brazil*, July 15, 2016, para. 9

¹¹ I/A Court, *Matter of Certain Venezuelan Prisons Center of the Central Occidental Region (Uribana Prison)*. Precautionary Measures Resolution of February, 2013, considerandums 10 y 14. Also see: CIDH, *Resolution 8/17. Precautionary Measure No. 958-16. "Hogar Seguro Virgen de la Asunción" regarding Guatemala*, March 12, 2017, para. 17; and *Resolution 39/2016. Precautionary Measure No. 208-16. Sá Carvalho Penal Institute regarding Brazil*, July 15, 2016, para. 9

situations of severe illness¹² or poor health conditions¹³, inadequate and insufficient¹⁴, lack of water availability¹⁵, lack of space reserved for sleeping¹⁶.

28. As it pertains to the requirement of seriousness, the Commission takes into account its *in loco* visit to Brazil in November 2018 which included a visit to Jorge Santana Prison. During this visit, the Commission observed “[...] the alarming conditions presented in the Jorge Santana Unit which belongs to the Complexo Penitenciário de Gericinó” (Bangú) which present serious risk for the life and integrity of the persons detained therein. In this regard, the Commission declares that the 1.833 inmates, all of them in preventive prison, are permanently locked in their cells which contain almost three times their capacity and are in a deplorable state. In addition, they do not have access to any activity whatsoever, nor do they have scheduled time to sunbathe. This confinement is allegedly due to the lack of custody personnel which was evident on visitation day, as there were only five police officers for the totality of the inmates. This equaled one police officer for every 366 inmates. Those who are confined in cells ‘A’ and ‘B’ are in a particular situation of risk as their entry into this space arose in the framework of police operations, therefore, some of them have gunshot wounds. In this regard, the Commission observed the evident medical negligence with which they are being treated, for example, in regards to the the considerable infections that many of them present as a result of their wounds. The Jorge Santana Unit is, objectively, one of the worst penitentiary situations in the Americas.”¹⁷.

29. In the present matter, the Commission effectively observed that the proposed beneficiaries are facing a variety of risk factors and that the situation of the prison has not improved although one year has gone by since the IACHR’s visit. Firstly, the conditions of the detention facility are still concerning inasmuch as the overcrowding problem as not yet been solved, nor have the health issues and other structural deficiencies which put the inmates’ right to life and personal integrity at risk, in particular those who have a disability or a motor impairment¹⁸.

30. Secondly, pursuant to the ascertainties that the applicants inside the center made, and considering the characteristics of the inmates sent to the PPJS, that is, inmates who have been shot or who are in a severe health status due to the circumstances of their detention (see *supra* párr. 4), the inmates that require medical assistance are exposed and prone to severe infections as they do not have the support they need to manage their necessities which has, in some cases, already materialized in harm to these persons. In this sense, particular seriousness is due to these pleas which should not be undermined, in regards to the reported excessive use of force to impose discipline among the penitentiary population as these proposed beneficiaries are in a special situation of vulnerability due to their physical condition. These proposed beneficiaries should be treated with utmost care, and the

¹² IACHR, *Resolution 39/2016. Precautionary Measure No. 208-16. Sá Carvalho Penal Institute regarding Brazil*, July 15, 2016, para. 9

¹³ Matter of Persons Deprived of Liberty in “Punta Coco” regarding Panama., February 25, 2016, para 18 y 21

¹⁴ I/A Court, *MATTER OF THE PERSONS IMPRISONED IN THE “DR. SEBASTIÃO MARTINS SILVEIRA” PENITENTIARY IN ARARAQUARA, SÃO PAULO REGARDING BRAZIL*. Inter-American Court on Human Right’s Resolution. September 30, 2006, considerandum 13, 16 y 21. Also see: IACHR, *Resolution 31/2016. Precautionary Measure No. 496-14 y PM-37-15. Matter of Six Police Stations in Lomas de Zamora and La Matanza regarding Argentina*, May 12, 2016, para. 25

¹⁵ IACHR, *Resolution 5/2016. Precautionary Measure No. 393-15. Matter of Persons Deprived of Liberty in “Punta Coco” regarding Panama*, February 25, 2016, para. 18

¹⁶ I/A Court, *MATTER OF THE PERSONS IMPRISONED IN THE “DR. SEBASTIÃO MARTINS SILVEIRA” PENITENTIARY IN ARARAQUARA, SÃO PAULO REGARDING BRAZIL*. Inter-American Court on Human Right’s Resolution. September 30, 2006, considerandum 13, 16 y 21. Also see: IACHR, *Resolution 43/2016. Precautionary Measure No. 302-15. Matter of Adolescents deprived of liberty in the Center for Socio-Educational Services for Adolescents (CASA) of San Pablo regarding Brazil*, July 21, 2016, para 13 y 14.

¹⁷ IACHR, Preliminary Observations of IACHR’s In Loco Visit to Brazil, November 2018, p. 20. Available at: <https://www.oas.org/es/cidh/prensa/comunicados/2018/238OPesp.pdf>

¹⁸ In this regard, the Commission highlights that the States have the obligation to take special measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, which include persons with disabilities. See: IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II., Doc. 64, December 31, 2011, Cap. V, para 535. Available at: <http://www.oas.org/es/cidh/ppl/docs/pdf/PPL2011esp.pdf>

Commission recalls that the adoption of these types of measures should be exceptional and adequate to the situation at hand.¹⁹

31. The Commission takes into account the information provided by the State which indicates that “the current government is aimed towards working in favor of the dignity of persons deprived of their liberty, the health and the physical integrity of those sentenced in the penitentiary system”. In addition, it mentioned the alleged implemented diligences aimed at mitigating the risk situation (i.e. action control against tuberculosis, two campaigns for health treatment, regulating the availability of bags for colostomies and scheduled sunbathing). However, it is not yet evident if this response is suitable and sufficient to mitigate or neutralize the source of risk at hand as they are principally specific interventions of a palliative nature which do not address the main problem. Among the aforementioned necessities, there is lack of transport system for the inmates’ medical emergencies. The inmates cannot access specialized external medical assistance which means an increase in the risk that is faced. In fact, the State recognized that it is still in the process of acquiring an ambulance “for emergency situations given that it is still necessary to train the teams to manage the mobile units.” In this regard, the Commission recalls that the “[...] duty of the State to provide adequate and suitable medical assistance to those under their custody is even more serious in situations of injury or health issues which arise in the inmates as the direct action of the authorities.”²⁰

32. To all the aforementioned, the lack of adequate legal supervision of the proposed beneficiaries’ circumstances which have led them to be deprived of their liberty is also worth mentioning. This was not undermined by the State, and it makes the periodic evaluation of the temporary stay in the imposed penitence regime more difficult, in light of the progress of their health.

33. In view of the foregoing, the Commission concludes that, from the *prima facie* standard, the rights to health, life and personal integrity of the persons deprived of their liberty in the Jorge Santana Prison are in a situation of serious risk.

34. As it pertains to the requirement of urgency, the Commission considers that it has been met, in light of the continuity of the aforementioned events of risk and the materialization of recent harm to the rights of the proposed beneficiaries as is demonstrated in the 11 deaths that took place in 2019, 4 of them between the months of October and November. In this context, the available information is enough to determine that further infringements could continue to occur at any moment, be it due to lack of medical assistance or as a result of the conditions of the detention center described herein. Therefore, an imminent intervention is necessary.

35. As it pertains to the requirement of irreparable harm, the Commission considers that it is complied with, insofar as the possible impact on the rights to life, personal integrity and health constitutes the maximum situation of irreparability.

36. Lastly, the Commission recalls that, under the principle of complementarity, the State, through its domestic authorities, is primarily responsible for protecting the human rights of the persons under its jurisdiction; in this sense, the nature of international jurisdiction is “auxiliary” or “complementary,” without replacing it²¹. However, the Commission considers that the invocation of the principle of complementarity as an argument of irrelevance for the adoption of precautionary measures presupposes that the concerned State satisfies the burden of proving that the beneficiaries are not in

¹⁹ See: IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II., Doc. 64, December, 2011, Cap. IV, para. 372. Available at: <http://www.oas.org/es/cidh/ppl/docs/pdf/PPL2011esp.pdf>.

²⁰ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas. V, para. 530.

²¹ See *inter alia*: IACHR, Francisco Javier Barraza Gómez regarding Mexico (PM-209-14), Resolution from August 15, 2017, para. 22. Available at: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>; IACHR, Paulina Mateo Chic regarding Guatemala (PM 782-17), Resolution from December 1, 2017, para. 34; Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>; and IACHR, Santiago Maldonado regarding Argentina (PM 564-2017), Resolution from August 22, 2017, para 16. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf>

the situation set out in Article 25 of the Rules of Regulation, in view of the fact that the measures adopted by the State itself have had a substantive impact on reducing or mitigating the situation of risk, in such a way that it does not make it possible to assess a situation that meets the requirement of seriousness and urgency which precisely requires international intervention to prevent irreparable harm.²² In the present matter, the Commission confirms that the situation complies with the requirements of article 25 of the Rules of Procedure, therefore justifying the adoption of precautionary measures to protect their rights.

III. BENEFICIARIES

37. The Commission declares that the beneficiaries of this precautionary measures are the persons deprived of their liberty in the Jorge Santana Prison who have been duly identified within this procedure.

IV. DECISION

38. The Inter-American Commission on Human Rights considers that the present matter meets *prima facie* the requirements of seriousness, urgency and irreparability contained in Article 25 of its 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 deprived of liberty in the Jorge Santana Prison; particularly, guaranteeing adequate and timely medical care, in accordance with the recommendations of the corresponding experts;
- b. take the necessary measures to ensure that the detention conditions of the beneficiaries meet the applicable international standards; in particular, ensuring that the structure of the Jorge Santana Prison meets the necessary safety conditions, taking into account the situation of beneficiaries who are disabled, injured, mutilated, fractured or injured in other way, and in order to prevent further damage to the entire prison population, taking immediate actions to substantially reduce overcrowding; and providing adequate health and hygiene;
- c. consult upon the measures to be taken with the beneficiaries and their representatives; and
- d. provide information regarding the actions taken to investigate the alleged acts that caused the adoption of the present precautionary measure and, in this way, avoid their repetition.

39. The Commission requests that the Government of His Excellency report, within 15 days from the date of this resolution, on the adoption of the precautionary measures requested and to update this information periodically.

40. The Commission emphasizes that, in accordance with Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected in the applicable human rights instruments.

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

²² Ibidem

42. Approved on February 5, 2020 by: Esmeralda Arosemena de Troitiño, President; Joel Hernández García, First Vice-President; Antonia Urrejola Noguera, Second Vice-President; Margarete May Macaulay; and Julissa Mantilla.