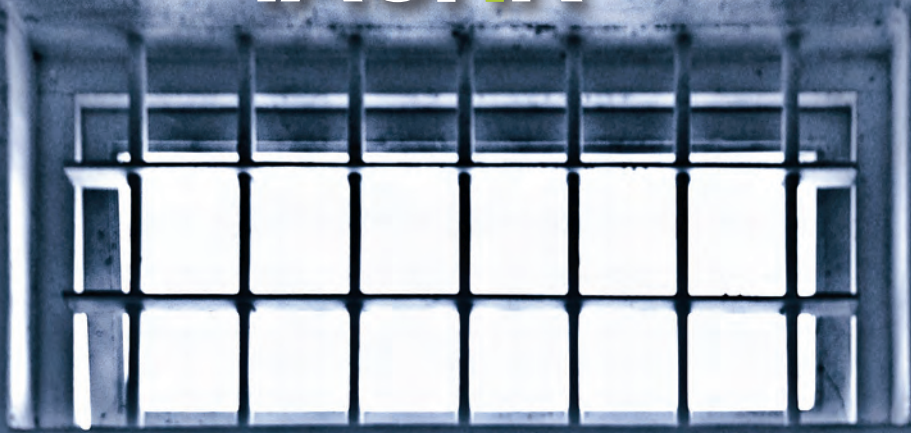


# IACHR



# Report on the Human Rights of Persons Deprived of Liberty in the Americas

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**



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**REPORT ON THE HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS**

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## PREFACE

Since its establishment, the Inter-American Commission on Human Rights has devoted special attention to the situation of persons deprived of liberty in the Americas. Accordingly, from its first country reports on Cuba and the Dominican Republic, until the most recent one, on Venezuela and Honduras, the Commission has been referring consistently to the rights of persons deprived of liberty. Visits to centers of detention have been a constant in the most than 90 on-site visits that it has carried out in the last 50 years. In addition, the Inter-American Commission on Human Rights has adopted a large number of reports on contentious cases and has granted a large number of precautionary measures aimed at protecting persons deprived of liberty in the Americas.

The Commission has found that respect for the rights of persons deprived of liberty is one of the main challenges faced by the member States of the Organization of American States. It is a complex matter that requires the design and implementation of medium- and long-term public policies, as well as the adoption of immediate measures necessary to address the current and urgent situations that gravely affect fundamental human rights of the inmate population.

The nature of the problems identified in this report reveals the existence of serious structural shortcomings that gravely impair non-derogable human rights, such as the right to life and to humane treatment of inmates, and that in practice prevent penalties of deprivation of liberty from meeting their essential aim as established by the American Convention: the reform and social readaptation of convicts. Therefore, in order for the prison systems – and particularly the deprivation of liberty as a response to crime – to serve their essential purpose, the States must adopt specific measures aimed at addressing these structural shortcomings.

In these circumstances, the Inter-American Commission on Human Rights presents this report for the purpose of helping the member States of the Organization of American States to fulfill their international obligations, and to serve as a useful tool for the work of those institutions and organizations committed to the promotion and defense of the rights of persons deprived of liberty.

The Inter-American Commission on Human Rights highlights and recognizes the work of Commissioner Rodrigo Escobar Gil, Rapporteur on the Rights of Persons Deprived of Liberty, in directing the work to produce this report. In addition, the Commission thanks the contribution of the Pan American Health Organization on all issues related to the right to medical care of persons deprived of liberty; and of the Centro de Estudios de Derecho Internacional (Center for Studies in International Law) of the Universidad Javeriana of Colombia on comparative constitutional law.

The preparation of this report was possible thanks to valuable financial support from the Government of Spain.



## REPORT ON THE HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS

### I. INTRODUCTION

#### A. Context and purpose of this report

1. For 50 years the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission”, or the “IACHR”) has been monitoring the situation of persons deprived of liberty in the Americas through its various mechanisms, and particularly since the Commission established its Rapporteurship on the Rights of Persons Deprived of Liberty (hereinafter “the Rapporteurship” or “the Rapporteurship of PDL”) in March 2004<sup>1</sup>.

2. Accordingly, the IACHR has observed that the most serious and widespread problems in the region are:

- (a) overcrowding and overpopulation;
- (b) the deficient conditions of confinement, both physical conditions and the lack of basic services;
- (c) the high incidence of prison violence and the lack of effective control by the authorities;
- (d) the use of torture in the context of criminal investigations;
- (e) the excessive use of force by those in charge of security at prisons;
- (f) the excessive use of preventive detention, which has direct repercussions on overpopulation of the prisons<sup>2</sup>;
- (g) the lack of effective means for protecting vulnerable groups;
- (h) the lack of labor and educational programs, and the lack of transparency in the mechanisms of access to these programs; and
- (i) corruption and the lack of transparency in prison management.

3. These challenges in respecting and ensuring the rights of persons deprived of liberty identified by the IACHR are fundamentally the same as those that have been observed regularly in the Americas by the monitoring mechanisms of the United

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<sup>1</sup> During the 2004-2011 period, the Rapporteurship has conducted twenty working visits to fifteen countries in the hemisphere: Uruguay (July 2011); Suriname (May 2011); El Salvador (October 2010); Argentina (June 2010); Ecuador (May 2010); Uruguay (May 2009); Argentina (April 2009); Paraguay (September 2008); Chile (August 2008); Mexico (August 2007); Haiti (June 2007); Argentina (December 2006); Bolivia (November 2006); Brazil (September 2006); Dominican Republic (August 2006); Colombia (November 2005); Honduras (December 2004); Brazil (June 2005); Argentina (December 2004); and Guatemala (November 2004). In the course of these working visits the team of the Rapporteurship has conducted visits to prisons and other places of detention; and has held meetings with high level authorities and civil society organization who are committed to advocate in favor of the Rights of persons deprived of liberty. The official web page of the Rapporteurship of Persons Deprived of Liberty is available at: <http://www.oas.org/es/cidh/ppl/default.asp>.

<sup>2</sup> The excessive use of preventive detention is another serious problem in the absolute majority of countries of the region, and is in turn the cause of other serious problems such as overcrowding and the failure to separate persons awaiting trial from the convicted. The excessive use of this measure is a broad and complex issue on which the Commission will be producing a thematic report in due course.



7. In response to the context described herein, the IACHR has prepared this report, which identifies the main patterns of violations of the human rights of persons deprived of liberty in the region, and analyzes which international standards apply to these violations. This is with the fundamental objective of making specific recommendations to the States geared to ensuring full respect of and guarantees for prisoners' rights. It is directed first and foremost to public authorities, and also to civil society organizations and other actors associated with the work of persons deprived of liberty. The Commission clarifies that this is a framework report that encompasses a variety of issues that may be developed more extensively in subsequent thematic reports.

## **B. Principles and fundamental contents**

8. This report is based on the fundamental principle that the State is in a special position as guarantor when it comes to persons deprived of liberty, and that as such, it assumes specific duties to respect and guarantee the fundamental rights of these persons; and in particular the rights to life and humane treatment, which are an essential condition for attaining the special purposes of using deprivation of liberty as a penalty: the reform and social readaptation of convicts. Thus, the exercise of the power of custody entails the special responsibility of ensuring that the deprivation of liberty serves its purpose and does not lead to the violation of other basic rights.<sup>7</sup>

9. Moreover, and like the *Principles and Best Practices on the Protection of the Persons Deprived of Liberty in the Americas* (hereinafter also "the Principles and Best Practices of the IACHR"), this report is based on the principle of humane treatment according to which every person deprived of liberty is to be accorded humane treatment, with unrestricted respect for his or her inherent dignity, and fundamental rights and guarantees, and strictly abiding by international human rights instruments.<sup>8</sup> This fundamental principle is widely accepted in international law.

10. In addition, this report is based on the fundamental idea that respect for the fundamental rights of persons deprived of liberty is not in conflict with the aims of

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...continuation

paragraph 3; OAS, General Assembly Resolution, AG/RES. 2510 (XXXIX-O/09), adopted on June 4, 2009, operative paragraph 3; OAS, General Assembly Resolution, AG/RES. 2403 (XXXVIII-O/08), adopted on June 13, 2008, operative paragraph 3; OAS, General Assembly Resolution, AG/RES. 2283 (XXXVII-O/07), adopted on June 5, 2007, operative paragraph 3; and OAS, General Assembly Resolution, AG/RES. 2233 (XXXVI-O/06), adopted on June 6, 2006, operative paragraph 3; OAS, General Assembly Resolution, AG/RES. 2125 (XXXV-O/05), adopted on June 7, 2005, operative paragraph 11; OAS, General Assembly Resolution, AG/RES. 2037 (XXXIV-O/04), adopted on June 8, 2004, operative paragraph 3; and OAS, General Assembly Resolution, AG/RES. 1927 (XXXIII-O/03), adopted on June 10, 2003, operative paragraph 3.

<sup>7</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111. Doc. 21 rev., adopted on April 6, 2001, (hereinafter "*Fifth Report on the Situation of Human Rights in Guatemala*"), Ch. VIII, para. 1.

<sup>8</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, adopted by the IACHR by Resolution 1/08 at its 131<sup>st</sup> regular period of sessions, held March 3 to 14, 2008, (hereinafter "*Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*"), Principle I.

citizen security, but that to the contrary it is an essential element for their attainment. In this regard, in the *Report on Citizen Security and Human Rights*, the Commission indicated:

Most prison institutions in the region are today a breeding ground for the violence with which the societies in the Hemisphere are coping. In the Commission's view, the priorities of the public policies that the member States of the region put into practice for citizen security should be measures to prevent violence and crime in the three generally accepted categories: (1) primary prevention, which are measures directed at the entire population, and have to do with programs in public health, education, employment and instruction in observance of human rights and building a democratic citizenry; (2) secondary prevention, which involves measures that focus on individuals or groups who are more vulnerable to violence and crime, using targeted programs to reduce the risk factors and open up social opportunities; and (3) tertiary prevention, which involves individualized measures directed at persons already engaged in criminal conduct, who are serving a sentence or have recently completed their sentence. Particularly important here are the programs that target persons serving prison sentences.<sup>9</sup>

11. A prison system that operates adequately is necessary for ensuring the security of the citizenry and sound administration of justice. When the prisons do not receive needed attention or resources, their operations become distorted, and instead of providing protection they become schools of crime and antisocial behavior that foster recidivism instead of rehabilitation.<sup>10</sup>

12. As for its content, this report is organized into six chapters in which the IACHR refers to those issues that are considered the most serious and widespread in the region, those that affect more strongly the fundamental rights of the of the persons deprived of liberty as a whole. While acknowledging that this reality also includes other elements and thus other issues of great importance that are not directly addressed at this time, they will be analyzed in subsequent thematic reports.

13. Chapter II, which relates to *The guarantor role of the State before the persons deprived of liberty*, departs from the fundamental idea that when the State deprives a person from his/her freedom, it assumes a special responsibility from which specific duties of respect and guarantee of their rights derive, and from which a strong presumption of international responsibility arises with regard to the damage people suffer while under its custody.

14. In this sense, it is clearly established that the first duty of the State as guarantor of the persons under its custody, is the duty to exercise effective control and

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<sup>9</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, adopted on December 31 2009, (hereinafter "*Report on Citizen Security and Human Rights*"), para. 155.

<sup>10</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, paras. 68 and 69.

internal security of the prisons. If this essential condition is not met, it becomes difficult for the State to ensure the fundamental legal rights of persons in its custody. In this regard, it is unacceptable from every point of view that there are a number of prisons in the region that are governed by systems of “self-government”, in which effective control of all internal aspects of the prison are in the hands of certain prisoners or criminal gangs, or systems of “shared governance”, in which these gangs share the power and profits with the prison authorities. When this occurs, the State becomes unable to guarantee the minimal human rights of prisoners and completely turns upside down and distorts the object and purpose of the deprivation of liberty. In these cases, there is an increase in the levels of violence and deaths in prisons; a creation of dangerous circles of corruption, among other consequences of the lack of institutional control in prisons.

15. Likewise, it also refers to the high rates of prison violence in some countries of the region such as Venezuela, which according to the information provided by this State, there were 1,865 deaths and 4,358 wounded in violence (riots, brawls and fights) in prisons in the period 2005-2009. In this respect, it is recommended as a measure to prevent violence, to reduce the overcrowding and overpopulation; to effectively prevent the entry of weapons, drugs, alcohol and other illicit substances to prisons, to establish a proper classification and separation of prisoners; to ensure continuous training and appropriate prison staff; and to end impunity by investigating and punishing acts of violence that are committed.

16. Similarly, this opening chapter develops other basic duties of the State arising from its role as guarantor of the rights of persons deprived of liberty, such as: (a) to secure a prompt and effective judicial control of detention, as a fundamental guarantee of the rights to life and physical integrity of detained persons; (b) the duty to maintain complete records, organized and reliable regarding the people entering the detention centers, and the duty to conduct an initial medical examination of detainees to determine the possible existence of signs of violence and the presence of communicable diseases that warrant specific treatment; (c) the need for suitable, qualified prison staff to exercise their functions under appropriate conditions, which must be civil in nature and institutionally separate from the police or the army –especially if in direct contact with inmates or their families–; the duty to resort to the use of force – deadly and not deadly – only when strictly necessary, proportionate to the nature of the situation that is sought to control, according to previously established protocols for that purpose, and ensuring that such actions are subject to institutional and judicial controls; and the duty to establish appropriate judicial resources and complaint systems effective against possible human rights violations arising from the conditions of detention.

17. Chapter III on the *Right to life* discusses the main situations in which the Commission has observed that the lives of persons deprived of liberty are at risk, the most important one being prison violence among inmates. Thereafter, there is a wide range of scenarios ranging from those in which the authorities themselves are directly responsible for the deaths of prisoners (including extrajudicial executions, enforced disappearances and deaths due to excessive use of force), to cases in which the inmates resort to suicide, to situations where the victim's death was due, for example, to lack of timely medical care.

18. In this context, most deaths are caused by acts of violence between inmates. According to official data collected as part of this report, the number of violent deaths in prisons in some States, in addition to the aforementioned case of Venezuela, was as follows: Chile 203 (2005-2009); Ecuador 172 (2005-June 2010); and Colombia 113 (2005-2009). In this chapter, it is emphasized that in all of these cases, the State, as guarantor of the rights of persons in its custody, has a duty to investigate through its own due diligence the death of all persons who died while under its custody, even in those cases in which they initially appear as suicides or deaths by natural causes.

19. Chapter IV on the *Right to personal integrity*, highlights that the current widespread and common cause for the use of torture is for criminal investigative purposes, a situation that has been widely documented, both by the Commission, as other international monitoring mechanisms, in countries like Mexico, Paraguay, Ecuador, Brazil and very specifically in the Guantanamo naval base in the territory of the United States, among others. This section discusses the main causes of this phenomenon: the existence of inherited institutional practices and a culture of violence firmly rooted in the State's security forces; the impunity with which these events are held; the lack of training, equipment and resources necessary for the security forces responsible for investigating crimes to have the right tools to perform their functions; policies of "tough" or "0 tolerance"; and the granting of probative value to evidence obtained under torture. In this regard, the Commission promotes the adoption of concrete measures to prevent torture, effective judicial control of detention, diligent and effective investigation of these acts, and the need for State authorities send a clear, determined and energetic message of repudiation of torture and cruel, inhuman and degrading treatment.

20. Also, this chapter presents the main international standards that should govern the exercise of disciplinary functions in the prisons, with the emphasis on the duty to establish legal and regulatory rules to clearly define what behaviors are likely to be punished and what are the possible penalties, in addition to providing for a process, though simple, that secures certain minimum safeguards to protect the individual against the arbitrary exercise of disciplinary powers. In this sense, the existence of flexible and effective disciplinary systems that effectively serve to maintain internal order in the prisons is essential for its proper functioning.

21. The right to humane treatment of prisoners may also be violated by the severe conditions of confinement in which they are kept. In this sense, overcrowding generates a series of conditions that are contrary to the very purpose of imprisonment as a penalty. Overcrowding increases the friction and outbreaks of violence between inmates, fosters the spread of disease, hinders access to basic services and health services of the prisons, increases the risk factor for the occurrence of fires and other disasters, and prevents access to rehabilitation programs, among other serious effects. This problem, common to all countries of the region, is in turn the result of other serious structural deficiencies such as excessive use of pretrial detention, the use of incarceration as a unique response to the needs of public safety, and the lack of adequate facilities to house inmates.

22. Chapter V on *Health Care*, establishes that the State's duty to provide health services to persons in their custody is an obligation which derives directly from its

duty to guarantee the rights to life and humane treatment of prisoners, and that this international responsibility is maintained even in the event that such services are provided in prisons by private contractors. Likewise, it also analyzes several major obstacles faced by detainees when they require medical attention, such as lack of personnel and supplies sufficient to meet actual demand.

23. In the Chapter VI on *Family relations of inmates*, it is recognized that maintaining family contact and relations of the persons deprived of liberty, not only is a right protected by the international law of human rights, but is a condition essential for their social rehabilitation and reintegration into society. In addition, in many places of deprivation of liberty, basic resources and services do not meet minimum standards, and the relatives of the inmates are forced to meet these needs.

24. The IACH emphasizes that States should create the conditions for family visits to occur in a dignified manner, in other words, in conditions of security, privacy and hygiene; additionally, the staff of the prisons should be adequately trained to deal with the families of the prisoners, avoiding in particular the use of humiliating body searches and inspections, especially in the body of women who come to visit. States should use technological or other appropriate methods, including for the search of their own personnel, so as to minimize such degrading procedures.

25. In the concluding chapter, the Commission highlights that the reform and social rehabilitation of convicted persons, as an essential aim of the deprivation of liberty (Article 5.6 of the Convention), are public safety guarantees<sup>11</sup> as well as rights of the individuals deprived of liberty. Therefore, this provision is a norm with its own content and scope of which is derived from the corresponding obligation of the State to implement programs of work, study and other services necessary for the detainees to have the choice of a dignified life project. This duty of the State is particularly relevant when considering that in most countries of the region the prisons are populated mostly by young people who are in the prime of their lives.

26. Furthermore, the Inter-American Commission on Human Rights positively considers the transparency of many States to recognize the presence of important challenges in this area, as well as the need for significant reforms to overcome them. In this sense, when researching for the preparation of this report, the IACH has taken note of all measures and initiatives that States have identified as recent advances in compliance with its international obligations regarding the persons deprived of liberty. In this regard, there have been interesting initiatives related to the provision of medical services in prisons, with the signing of cooperation agreements with educational institutions; the formation of proposals to encourage the creation of new work options for inmates; and even some have taken into consideration interesting options to support and monitor the post-detention. All the initiatives lead to the conclusion that it is possible to create positive changes in this area and address the major challenges faced by member States of the OAS

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<sup>11</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II. Doc. 34, adopted on June 28, 2007, (hereinafter "*Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*"), Ch. III, para. 209.

### C. Legal framework

27. International human rights treaties enshrine rights that the States must guarantee to all persons under their jurisdiction. Accordingly, international human rights treaties are inspired by common higher values focused on the protection of the human being; they are applied in keeping with the notion of collective guarantee; they enshrine essentially objective obligations; and they have specific supervisory mechanisms.<sup>12</sup> In addition, besides ratifying human rights treaties the States undertake the task to interpret and apply their provisions such that the guarantees that the treaties establish are truly practical and effective<sup>13</sup>; in other words, they must be carried out in good faith so that they have a useful effect and serve the purpose for which they were adopted.

28. In the Inter-American human rights system the rights of persons deprived of liberty are protected fundamentally in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), which entered into force in July 1978 and which at the present is binding for 24 member States of the OAS.<sup>14</sup> In the case of the other States, the fundamental instrument is the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”)<sup>15</sup>, adopted in 1948 and incorporated into the Charter of the Organization of American States through the Protocol of Buenos Aires, adopted in February 1967. In addition, all the other treaties that are part of the Inter-American legal regime for protection of human rights contain provisions applicable to the protection of the rights of persons deprived of liberty, mainly the Inter-American Convention to Prevent and Punish Torture, which entered into force in February 1987, and which as of this writing has been ratified by 18 member States of the OAS.<sup>16</sup>

29. In addition to these international obligations acquired by the States of the region in the context of the Organization of American States, most of these States are

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<sup>12</sup> I/A Court H. R., *Control of Legality in the Exercise of the Atributions of the Inter-American Comisión on Human Rights (Arts. 41 y 44 of the American Convention on Human Rights)*. Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, para. 21.

<sup>13</sup> I/A Court H.R., *Case of Baena Ricardo et al. V. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para.66; I/A Court H.R., *Case of Ivcher Bronstein V. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 37. I/A Court H.R., *Case of the Constitutional Court V. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 55, para. 36.

<sup>14</sup> These are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

<sup>15</sup> Its application to persons deprived of liberty has been consistently reaffirmed by the member States of the OAS in the context of its General Assembly. See, OAS, General Assembly Resolution AG/RES. 2668 (XLI-O/11), adopted June 7, 2011; OAS, General Assembly Resolution AG/RES. 2592 (XL-O/10), adopted on June 8, 2010; OAS, General Assembly Resolution AG/RES. 2510 (XXXIX-O/09), adopted on June 4, 2009; OAS, General Assembly Resolution, AG/RES. 2403 (XXXVIII-O/08), adopted on June 13, 2008; OAS, General Assembly Resolution, AG/RES. 2283 (XXXVII-O/07), adopted on June 5, 2007; and OAS, General Assembly Resolution, AG/RES. 2233 (XXXVI-O/06), adopted on June 6, 2006; and OAS, General Assembly Resolution, AG/RES. 2125 (XXXV-O/05), adopted on June 7, 2005.

<sup>16</sup> These are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.



also parties to analogous treaties adopted in the context of the United Nations (hereinafter also “the Universal human rights system”); particularly the International Covenant on Civil and Political Rights, which entered into force in March 1976, and which to date has been ratified by 30 States of the Americas<sup>17</sup>, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force in June 1987, and to which 23 States of this region are party.<sup>18</sup> The same can be said in relation to other treaties adopted in the context of United Nations and which also contain provisions directly applicable to the prison population, such as the Convention on the Rights of the Child, which is fundamental for the protection of this sector of the prison population, and which has been ratified by all the States of the region except the United States of America.

30. The IACHR reaffirms that international human rights law demands that the State guarantee the rights of the persons under their custody.<sup>19</sup> Accordingly, one of the most important predicates of the international responsibility of States in relation to human rights is to care for the life and physical and psychological integrity of persons deprived of liberty.<sup>20</sup>

31. In addition, all the constitutions of the OAS member States contain provisions that directly or indirectly apply to essential aspects of the deprivation of liberty. In this regard, the absolute majority of constitutions of the region contain general provisions aimed at protecting the rights to life and humane treatment of their inhabitants, and some of them make specific reference to the respect for this right of persons who are confined or in custody.<sup>21</sup> In addition, several of these constitutions expressly establish that penalties entailing deprivation of liberty, or the prison systems, shall be geared to or have as their aim the reeducation and/or social reinsertion of convicts.<sup>22</sup>

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<sup>17</sup> These are: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela.

<sup>18</sup> These are: Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Vincent and the Grenadines, Uruguay, and Venezuela.

<sup>19</sup> IACHR, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II. Doc. 54, adopted on December 30, 2009, (hereinafter “*Democracy and Human Rights in Venezuela*”), Ch. VI, para. 814.

<sup>20</sup> IACHR, Report No. 60/99, Case of 11,516, Merits, Ovelário Tames, Brazil, April 13, 1999, para. 39.

<sup>21</sup> See, e.g., Constitution of the Argentina Nation, Art. 18; Constitution of the Plurinational State of Bolivia, Art. 73; Constitution of the Federative Republic of Brazil, Title II, Ch. I, Art. 5.XLIX; Constitution of the Republic of Cuba, Art. 58; Constitution of the Republic of Guatemala, Art. 19(a); Constitution of the Republic of Haiti, Art. 25; Constitution of the Republic of Honduras, Art. 68; Constitution of the Republic of Panama, Art. 28; Constitution of the Oriental Republic of Uruguay, Art. 26; and Constitution of the Bolivarian Republic of Venezuela, Art. 46.

<sup>22</sup> See, e.g., Constitution of the Plurinational State of Bolivia, Art. 74; Constitution of the Republic of Ecuador, Art. 201; Constitution of the Republic of El Salvador, Art. 27(3); Constitution of the Republic of Guatemala, Art. 19; Constitution of the United Mexican States, Art. 18; Constitution of the Republic of Nicaragua, Art. 39; Constitution of the Republic of Panama, Art. 28; Constitution of Peru, Art. 139(22); Constitution of the Oriental Republic of Uruguay, Art. 26; and Constitution of the Bolivarian Republic of Venezuela, Art. 272.

32. Indeed some States have included more specific safeguards in their constitutions related, for example, to the intake and registration of persons who enter prisons;<sup>23</sup> the separation and difference in treatment between persons charged and persons convicted;<sup>24</sup> the separation of children and adolescents from adults,<sup>25</sup> and of men from women<sup>26</sup>; and the maintenance of communication between the prisoners and their families,<sup>27</sup> among others.

33. The international legal framework taken into consideration to draw up this thematic report is made up fundamentally of the international human rights instruments adopted in the framework of the Inter-American human rights system, mainly: the American Declaration,<sup>28</sup> the American Convention,<sup>29</sup> and the Inter-American Convention to Prevent and Punish Torture.<sup>30</sup> In addition, to the extent that they apply, are the Additional Protocol to the American Convention in the area of Economic, Social and Cultural Rights “Protocol of San Salvador;”<sup>31</sup> the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará;”<sup>32</sup> the Inter-American Convention on Forced Disappearance of Persons<sup>33</sup>; and the

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<sup>23</sup> See, e.g., Constitution of the Plurinational State of Bolivia, Art. 23 (VI); and Constitution of the Republic of Chile, Art. 19(7)(d).

<sup>24</sup> See, e.g., Constitution of the Republic of Ecuador, Art. 77(2); Constitution of the Republic of Guatemala, Art. 10; Constitution of the Republic of Haiti, Art. 44; Constitution of the Republic of Honduras, Art. 86; Constitution of the United Mexican States, Art. 18; Constitution of the Republic of Nicaragua, Art. 33(5); and Constitution of the Republic of Paraguay, Art. 21.

<sup>25</sup> See, e.g., Constitution of the Plurinational State of Bolivia, Art. 23(II); Constitution of the Federative Republic of Brazil, Title II, Ch. I, Art. 5.XLVIII; Constitution of the Republic of Nicaragua, Art. 35; Constitution of the Republic of Panama, Art. 28; Constitution of the Republic of Paraguay, Art. 21; and Constitution of the Oriental Republic of Uruguay, Art. 43.

<sup>26</sup> See, e.g., Constitution of the Federative Republic of Brazil, Title II, Ch. I, Art. 5.XLVIII; Constitution of the United Mexican States, Art. 18; Constitution of the Republic of Nicaragua, Art. 39; Constitution of the Republic of Paraguay, Art. 21; Constitution of the Oriental Republic of Uruguay, Art. 43.

<sup>27</sup> See, e.g., Constitution of the Republic of Ecuador, Art. 51(2); and Constitution of the Republic of Guatemala, Art. 19(c).

<sup>28</sup> OAS, *American Declaration of the Rights and Duties of Man*, adopted at the Ninth International Conference of American States, Bogotá, Colombia, 1948.

<sup>29</sup> OAS, *American Convention on Human Rights*, signed in San José, Costa Rica, November 22, 1969, at the Specialized Inter-American Conference on Human Rights.

<sup>30</sup> OAS, *Inter-American Convention to Prevent and Punish Torture*, adopted in Cartagena, Colombia, on December 9, 1985, at the 15<sup>th</sup> regular session of the General Assembly.

<sup>31</sup> OAS, *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights “Protocol of San Salvador,”* adopted in San Salvador, El Salvador, on November 17, 1988, at the 18<sup>th</sup> regular session of the General Assembly.

<sup>32</sup> OAS, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará,”* adopted in Belém do Pará, Brazil, June 9, 1994, at the 24<sup>th</sup> regular session of the General Assembly.

<sup>33</sup> OAS, *Inter-American Convention on Forced Disappearance of Persons*, adopted in Belém do Pará, Brazil, June 9, 1994, at the 24<sup>th</sup> regular session of the General Assembly.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.<sup>34</sup>

34. Particularly relevant for the analysis of this report are the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, adopted by the Inter-American Commission on Human Rights in March 2008 in the context of its 131<sup>st</sup> period of sessions. This document is a review of the current international standards and the criteria issued by the organs of the Inter-American human rights system regarding persons deprived of liberty. In addition, contributions by OAS member States, experts, and civil society organizations were taken into account while drafting it.

35. The corresponding treaties adopted in the framework of the United Nations are also part of the legal framework of this report, particularly: the International Covenant on Civil and Political Rights;<sup>35</sup> the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>36</sup>, and its Optional Protocol,<sup>37</sup> and the Convention on the Rights of the Child.<sup>38</sup>

36. Other relevant treaties and instruments include the Standard Minimum Rules for the Treatment of Prisoners;<sup>39</sup> the Basic Principles for the Treatment of Prisoners;<sup>40</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;<sup>41</sup> the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;<sup>42</sup> the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against

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<sup>34</sup> OAS, *Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities*, adopted in Guatemala City, Guatemala, on June 7, 1999, at the 29<sup>th</sup> regular session of the General Assembly.

<sup>35</sup> United Nations, International Covenant on Civil and Political Rights, approved and open for signature, ratification and accession by General Assembly resolution 2200 A (XXI), December 16, 1966.

<sup>36</sup> United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and open for signature, ratification and accession by General Assembly resolution 39/46, of December 10, 1984.

<sup>37</sup> United Nations, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 57/199, of December 18, 2002.

<sup>38</sup> United Nations, Convention on the Rights of the Child, approved and open for signature by General Assembly resolution 44/25, of November 20, 1989.

<sup>39</sup> United Nations, Standard Minimum Rules for the Treatment of Prisoners, adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977.

<sup>40</sup> United Nations, Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, December 14, 1990.

<sup>41</sup> United Nations, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly resolution 43/173, of December 9, 1988.

<sup>42</sup> United Nations, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113, December 14, 1990.

torture, and other cruel, inhuman or degrading treatment or punishment;<sup>43</sup> the Code of Conduct for Law Enforcement Officials;<sup>44</sup> the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;<sup>45</sup> United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules);<sup>46</sup> and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).<sup>47</sup>

37. These international instruments have been used consistently by the Commission and by the Inter-American Court (hereinafter also “the Court”) as guidance for interpretation in determining the content and scope of the provisions of the American Convention in cases involving persons deprived of liberty, particularly the Standard Minimum Rules for the Treatment of Prisoners, which its importance and universality have been recognized by both the Court<sup>48</sup> and the Commission.<sup>49</sup>

#### **D. Scope of the concept of deprivation of liberty**

38. While this report is focused mainly on the situation of persons deprived of liberty in prisons, provisional detention centers, and police stations, the IACHR underscores that the concept of “deprivation of liberty” encompasses:

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<sup>43</sup> United Nations, Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture, and other cruel, inhuman or degrading treatment or punishment, adopted by UN General Assembly resolution 37/194, December 18, 1982.

<sup>44</sup> United Nations, Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, December 17, 1979.

<sup>45</sup> United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from August 27 to September 7, 1990.

<sup>46</sup> United Nations, United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), adopted by General Assembly resolution 45/110, December 14, 1990.

<sup>47</sup> United Nations, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by General Assembly resolution 40/33, November 29, 1985.

<sup>48</sup> See in this regard, I/A Court H.R., *Case of Raxcacó Reyes V. Guatemala*. Judgment of September 15, 2005. Series C No. 133, para. 99.

<sup>49</sup> See in this regard, *Special Report on the Human Rights Situation at the Challapalca prison*, OEA/Ser.L/V/II.118, doc. 3, adopted on October 9, 2003, (hereinafter “*Special Report on the Human Rights Situation at the Challapalca prison*”), paras. 16 and 17; IACHR, Report No. 28/09, Merits, Dexter Lendore, Trinidad and Tobago, March 20, 2009, paras. 30 and 31; IACHR, Report No. 78/07, Merits, Chad Roger Goodman, Bahamas, October 15, 2007, paras. 86-87; IACHR, Report No. 67/06, Case 12.476, Merits, Oscar Elías Biscet *et al.*, Cuba, October 21, 2006, para. 152; IACHR, Report No. 76/02, Case 12,347, Merits, Dave Sewell, Jamaica, December 27, 2002, paras. 114 and 115; IACHR, Report No. 58/02, Case 12,275, Merits, Denton Aitken, Jamaica, October 21, 2002, para. 134 and 135; Report No. 127/01, Case 12,183, Merits, Joseph Thomas, Jamaica, December 3, 2001, para. 133; IACHR, Report No. 49/01, Cases 11,826, 11,843, 11,846, 11,847, Merits, Leroy Lamey, Kevin Mykoo, Milton Montique, Dalton Daley, Jamaica, April 4, 2001, para. 204; IACHR, Report No. 48/01, Merits, Cases 12,067, 12,068 and 12,086, Michael Edwards, Omar Hall, Brian Schroeter and Jerónimo Bowleg, Bahamas, April 4, 2001, para. 195; and IACHR, Report No. 41/00, Cases 12,023, 12,044, 12,107, 12,126, 12,146, Merits, Desmond McKenzie *et al.*, Jamaica, April 13, 2000, para. 289. In addition, in its country reports the IACHR has repeatedly used both the Standard Minimum Rules and the results of the international instruments mentioned above.

Any form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under *de facto* control of a judicial, administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses. This category of persons includes not only those deprived of their liberty because of crimes or infringements or non compliance with the law, whether they are accused or convicted, but also those persons who are under the custody and supervision of certain institutions, such as: psychiatric hospitals and other establishments for persons with physical, mental, or sensory disabilities; institutions for children and the elderly; centers for migrants, refugees, asylum or refugee status seekers, stateless and undocumented persons; and any other similar institution the purpose of which is to deprive persons of their liberty.<sup>50</sup>

Therefore, the considerations set forth in this report apply to these other settings. In effect, the deprivation of liberty of a person is a condition that can occur in different contexts; therefore, the States' obligations to respect and ensure human rights transcend merely prison and police-related situations.<sup>51</sup>

39. In practice, the IACHR has decided several cases in which the facts alleged occurred in places other than prisons, such as airports,<sup>52</sup> military checkpoints,<sup>53</sup> INTERPOL offices,<sup>54</sup> naval bases,<sup>55</sup> clandestine detention centers,<sup>56</sup> and psychiatric hospitals,<sup>57</sup> among others. In addition, it has issued precautionary measures to protect persons who at the time of the facts were confined in psychiatric hospitals,<sup>58</sup> military hospitals,<sup>59</sup> and

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<sup>50</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (General Provision).

<sup>51</sup> This broad concept of the deprivation of liberty is reflected in several international instruments. Thus, for example, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) provides that for its purposes deprivation of liberty is understood to mean "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority." (Article 4.2)

<sup>52</sup> IACHR, Report No. 84/09, Case 12,525, Merits, Nelson Iván Serrano Sáenz, Ecuador, August 6, 2009.

<sup>53</sup> IACHR, Report No. 53/01, Case 11,565, Merits, Ana Beatriz and Celia González Pérez, Mexico, April 4, 2001.

<sup>54</sup> IACHR, Report No. 64/99, Merits, Case 11,778, Ruth del Rosario Garcés Valladares, Ecuador, April 13, 1999.

<sup>55</sup> IACHR, Report No. 1/97, Case 10,258, Merits, Manuel García Franco, February 18, 1998.

<sup>56</sup> IACHR, Report No. 31/96, Case 10,526, Merits, Diana Ortiz, Guatemala, October 16, 1996.

<sup>57</sup> IACHR, Application to the I/A Court H.R. in the Case of Damiao Ximenes Lopes, Case No. 12,237, Brazil, October 1, 2004.

<sup>58</sup> Precautionary Measures MC-277-07, *Hospital Neuropsiquiátrico*, Paraguay.

<sup>59</sup> Precautionary Measures MC-209-09, *Franklin José Brito Rodríguez*, Venezuela.

orphanages.<sup>60</sup> In different reports reference has also been made to the conditions of detention at centers where migrants are held.<sup>61</sup>

#### **E. Methodology and terms used**

40. As part of building this report, the IACHR published a questionnaire that was sent to the member States of the OAS and other relevant actors involved in the issue. The questionnaire was answered by 20 member States of the OAS, and by a large number of civil society organizations, experts, and academic institutions. In addition, a Regional Seminar on Best Prison Practices was held in Buenos Aires from November 12 to 16, 2007, that included the participation of non-governmental organizations, universities and academic centers, international organizations, and representatives from 16 Latin American States.<sup>62</sup>

41. With respect to the factual basis of the issues addressed in this report, primary consideration has been given to the direct observations by the IACHR during its on-site visits, and by its Rapporteur on the Rights of Persons Deprived of Liberty in the course of its working visits. Consideration has also been given to all those situations and trends observed by the IACHR in the exercise of its competence with respect to petitions and cases; and in the context of its immediate monitoring mechanisms, and press releases and requests for information from the States, made based on the authority vested in the IACHR by Article 41 of the American Convention. In addition, note is taken of the pronouncements on persons deprived of liberty by the IACHR in Chapter IV of its Annual Reports, on countries that pose major challenges in ensuring respect for the human rights of the persons under their jurisdiction.

42. Also relevant is the information obtained by mechanisms of the United Nations in its missions to States of the Americas, in particular by the Working Group on Arbitrary Detention,<sup>63</sup> the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations (hereinafter also "UN Rapporteur on Torture"),<sup>64</sup> and the Subcommittee against Torture (hereinafter also "SPT").<sup>65</sup> In other words, this report is constructed fundamentally on the basis of actual situations directly observed.

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<sup>60</sup> Precautionary Measures MC-554-03, "*Michael Roberts*," Jamaica.

<sup>61</sup> See, in general, see in general the official website of the Rapporteurship on the Rights of Migrant Workers and Their Families: available at: <http://www.cidh.oas.org/Migrantes/Default.htm>.

<sup>62</sup> The reports and conclusions of the Latin American Seminar on Good Prison Practices are available at: <http://www.oas.org/es/cidh/pp/actividades/seminario.asp>.

<sup>63</sup> It has made eight monitoring visits in the Americas to the following states: Colombia (2008); Honduras (2006); Nicaragua (2006); Ecuador (2006); Canada (2005); Argentina (2003); Mexico (2002); and Peru (1998).

<sup>64</sup> He has made seven visits to the following states: Uruguay (2009); Paraguay (2006); Brazil (2000); Chile (1995); Colombia (1994); Mexico (1997); and Venezuela (1996).

<sup>65</sup> To date it has published three reports on monitoring visits to countries of the region: Honduras (2009), Paraguay (2009), and Mexico (2008).

43. Consideration is also given to the reports issued as part of the monitoring by the Human Rights Committee (hereinafter also "HRC") and the Committee against Torture (hereinafter also "CAT"), with respect to observance of the International Covenant on Civil and Political Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, respectively.

44. In addition, the information provided by different civil society organizations which in recent years have presented more than 50 thematic hearings on issues related to persons deprived of liberty, all of which has been taken into account. The IACHR also takes note of the studies and reports prepared by specialized agencies such as the United Nations Office on Drugs and Crime (UNODC); the United Nations Development Program (UNDP); the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD); and the Department of Public Security of the OAS; and other relevant current documents, such as those produced in the context of the 12<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice.

45. In this report, the following terms are used:

(a) "Detained person or detainee": refers to any person deprived of liberty except as a result of a conviction for an offence.

(b) "Imprisoned person or prisoner": refers to any person deprived of liberty as the result of a conviction for an offence.

(c) "Person deprived of liberty," "prisoner," or "inmates": generically understood as any person deprived of liberty in either of the aforementioned situations; these terms refer broadly to persons subject to any form of confinement or imprisonment.

(d) "Arrest": the act of apprehending a person for the alleged commission of an offence or by the action of an authority.

(e) "Detention center": refers to all establishments for holding persons who have not yet been criminally convicted.

(f) "Penitentiary", "prison", "jail," "penal center" or "center of confinement": refers to those establishments for holding persons provisionally or preventively and those for holding prisoners who have been convicted.

(g) "Penitentiary system": refers to the institution entrusted with the administration of the jails and the whole set of prison establishments.

## II. THE STATE'S POSITION AS GUARANTOR OF THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY

46. As the basis of the international obligations assumed by the States parties, the American Convention on Human Rights establishes in its Article 1(1) that the States “undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction” without any discrimination whatsoever. These general obligations to *respect* and *ensure*, binding on the State with respect to any person, imply a greater commitment by the State when dealing with persons in a situation of risk or vulnerability.

47. The respect for human rights – based on the recognition of the dignity inherent to the human being – constitutes a limit on State activity, which applies to any branch or official who exercises power over the individual. The obligation to guarantee implies that the state must adopt all “necessary measures” to make certain that every person under their jurisdiction can effectively enjoy his or her rights.<sup>66</sup> This obligation entails that the States must prevent, investigate, punish, and make reparation for any violation of human rights.

48. In this regard, the Inter-American Court has established that “from the general obligations to respect and guarantee rights, derive special duties, which can be ascertained based on the particular needs of protection of the legal person, considering the personal condition or the specific situation of the person.”<sup>67</sup> Such is the case of persons deprived of liberty, who, for the duration of their detention or imprisonment, are subject to the effective control of the State.

49. In effect, the principal element that defines the deprivation of liberty is the individual’s dependence on the decisions made by the personnel of the establishment where he or she is being held.<sup>68</sup> In other words, the State authorities exercise complete control over the person who is under their custody.<sup>69</sup> This particular context of subordination of the prisoner to the State – which constitutes a legal relationship of public law – fits within the category of *ius administrativista* known as a special relationship of subordination, by virtue of which the State, by depriving a person of liberty, becomes the

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<sup>66</sup> I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies* (Articles 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights. Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 34.

<sup>67</sup> I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C. No. 218, para. 98; I/A Court H.R., *Case of the Massacre of Pueblo Bello V. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 111; I/A Court H.R., *Case of González et al. (“Cotton Field”) V. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 243.

<sup>68</sup> United Nations, Working Group on Arbitrary Detention, Report submitted to the Human Rights Council, A/HRC/10/21, adopted on February 16, 2009. Ch. III: *Thematic considerations*, para. 46.

<sup>69</sup> I/A Court H.R., Provisional Measures in the matter of María Lourdes Afiuni, Venezuela, Order of the President of the Inter-American Court of Human Rights, December 10, 2010, Considering paragraph 11; I/A Court H.R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 126.



*guarantor* of all those rights not restricted by the very act of deprivation of liberty; and the prisoner, for his or her part, is subject to certain statutory and regulatory obligations that he or she must observe.

50. The position of guarantor in which the State is situated is the basis for all those measures which, under international human rights law, it must adopt in order to respect and ensure the rights of persons deprived of liberty.

51. The Inter-American Court – following the European Court of Human Rights – established as of the case of *Neira Alegría et al.*, that “every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal dignity, and the State must guarantee to that person the right to life and to humane treatment. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners.”<sup>70</sup>

52. Subsequently, in the case of the “*Juvenile Reeducation Institute*,” the Court further developed this concept, and added *inter alia* that:

Given this unique relationship and interaction of subordination between an inmate and the State, the latter must undertake a number of special responsibilities and initiatives to ensure that persons deprived of their liberty have the conditions necessary to live with dignity and to enable them to enjoy those rights that may not be restricted under any circumstances or those whose restriction is not a necessary consequence of their deprivation of liberty and is, therefore, impermissible. Otherwise, deprivation of liberty would effectively strip the inmate of all his rights, which is unacceptable.<sup>71</sup>

53. Similarly, the IACHR established more than a decade ago in its Report on the Merits No. 41/99 in the case of *Minors in Detention* that:

The State, by depriving a person of his liberty, places itself in the unique position of guarantor of his right to life and to humane treatment. When it detains an individual, the State introduces that individual into a “total institution”--such as a prison--where the various aspects of his life are subject to an established regimen; where the prisoner is removed from his natural and social milieu; where the established regimen is one of absolute control, a loss of privacy, limitation of living space and, above

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<sup>70</sup> I/A Court H.R., *Case of Neira Alegría et al. V. Peru*. Judgment of January 19, 1995. Series C No. 20, para. 60. This fundamental criterion has been reiterated consistently by the Inter-American Court both in its judgments and in its orders on provisional measures; with respect to the latter, the first such decision was in its order granting provisional measures on the Urso Branco Prison, Brazil, Order of the Inter-American Court of Human Rights, June 18, 2002, Considering paragraph 8.

<sup>71</sup> I/A Court H.R., *Case of “Juvenile Reeducation Institute” V. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paras. 152 and 153. See also, I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 87.

all, a radical decline in the individual's means of defending himself. All this means that the act of imprisonment carries with it a specific and material commitment to protect the prisoner's human dignity so long as that individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health and personal integrity, among other rights.<sup>72</sup>

54. The State is in the role of guarantor in situations such as internment in psychiatric hospitals and institutions for persons with disabilities; institutions for children and older adults; centers for migrants, refugees, asylum seekers, stateless persons, and undocumented persons; and any other similar institution that deprives persons of liberty.<sup>73</sup> In each of these situations the specific measures adopted by the State will be determined by the particular conditions and needs of the group in question.

55. Similarly, the duty of the State to respect and ensure the rights of the persons deprived of liberty is not limited to what happens within the institutions mentioned, but also extends to circumstances such as the transfer of prisoners from one establishment to another; their transfer to judicial proceedings; and their transfer to hospital centers outside the confines of the institution in question.

56. In addition, in those cases in which the provision of certain basic services in jails – such as food or medical care – has been delegated or given in concession to private persons, the State must supervise and control the conditions in which such services are provided.

57. Another legal consequence particular to the deprivation of liberty is the rebuttable presumption that the State is internationally responsible for violations of the rights to life or to humane treatment committed against persons under its custody. The State bears the burden to rebut that presumption with sufficient evidence to the contrary. Accordingly, the State has the responsibility to ensure the rights of the individuals under its custody and to provide the information and evidence on what happens to them.<sup>74</sup>

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<sup>72</sup> IACHR, *Special Report on the Human Rights Situation at the Challapalca prison in Peru*, para. 113; IACHR, Report No. 41/99, Merits, Minors in Detention, Honduras, March 10 1999, para. 135.

<sup>73</sup> IACHR, Principles and Best Practices on Persons Deprived of Liberty in the Americas, General Provision.

<sup>74</sup> I/A Court H.R., *Case of Tibi V. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 129; I/A Court H.R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 126. This presumption was recognized by the Inter-American Court when granting of provisional measures in the matter of the Urso Branco Prison, in Brazil, in which the Court held:

In light of the responsibility of the State to adopt security measures to protect persons who are under its jurisdiction, the Court deems that this duty is more evident with respect to persons detained in a State detention center, in which case the responsibility of the State must be presumed regarding what happens to those who are under its custody. I/A Court H.R., Provisional Measures, Matter of Urso Branco Prison, Brazil, Order of the Inter-American Court of Human Rights, June 18, 2002, Considering paragraph 8.

58. The Commission considers that the exercise by the State of its *position as guarantor* of the rights of persons deprived of liberty entails a complex task in which the competences of different State institutions come together. These range from the executive and legislative branches, entrusted with determining prison policies and legislating the legal order necessary for the implementation of those policies, to administrative entities and authorities who perform their functions directly in the jails.<sup>75</sup> The judiciary, in addition to hearing criminal cases, is entrusted with reviewing the legality of the act of detention; judicial protection of the conditions of confinement; and judicial oversight of enforcement of the penalty entailing deprivation of liberty. In this regard, the IACHR has found that the shortcomings of the judicial institutions have a direct impact on both the individual situation of the persons deprived of liberty and the general situation of the prison systems.<sup>76</sup>

59. In relation to this point, the analysis by the United Nations Rapporteur on Torture in the report on his visit to Uruguay is particularly enlightening. He concluded that “in many, if not all, of the problems faced by the penitentiary system and the juvenile justice system are a direct result of the lack of a comprehensive criminal justice policy.”<sup>77</sup> In addition, the Working Group on Arbitrary Detention observed after its mission to Ecuador:

The absence of a genuine administration in the judiciary, the lack of funds and the general perception of a lack of independence, of politicization and of corruption in the judiciary, the police and the prison system have had a real impact on the enjoyment of human rights, mainly affecting the most destitute people, who account for the large majority of the prison population.<sup>78</sup>

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<sup>75</sup> For example, the IACHR, in its recent report *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, after analyzing the various challenges the Bolivian State faces in terms of its prison administration, concluded:

The prison situation observed in Bolivia and the resulting problems are complex, and call for official responses developed through dialogue and coordination among the three branches of government, some of which should be implemented immediately while others could be carried out in the medium and long term. The Commission therefore urges the executive, judicial and legislative branches of Bolivia to encourage interagency dialogue and debate with a view to remedying the situation of human rights of persons deprived of liberty, taking a comprehensive view and applying solutions that carry the agreement of all sectors involved. IACHR, Country Report on Bolivia: *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II. Doc. 34, adopted on June 28, 2007, Ch. III, para. 214.

<sup>76</sup> In this respect see, IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, para. 2; IACHR, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96. Doc. 10 rev. 1, adopted on April 24, 1997. (hereinafter “*Report on the Situation of Human Rights in Ecuador*”), Ch. VI.

<sup>77</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Mission to Uruguay, A/HRC/13/39/Add.2, adopted on December 21, 2009. Ch. IV: *Administration of criminal justice: underlying causes for collapsing administration of justice and penitentiary systems*, para. 77. The problems that the United Nations Rapporteur identified in Uruguay, such as the sluggishness of the judicial system, the routine use of pretrial detention, and the application of a punitive penitentiary policy are common in many countries of the region.

<sup>78</sup> United Nations, Working Group on Arbitrary Detention, *Report on Mission to Ecuador*, A/HRC/4/40/Add.2, adopted on October 26, 2006, para. 98.

60. In addition to the political will of the States to address the challenges posed by the prison situation, and the normative and institutional measures that can be adopted, it is fundamental to recognize the importance of an adequate allocation of resources that makes it possible to implement prison policies.<sup>79</sup> In effect, the adoption of specific measures aimed at resolving the structural shortcomings of the prisons requires a major decision to earmark the resources necessary to cover everything from such basic needs as provision of food, drinking water, and hygienic services to implementing work and educational programs that are fundamental for meeting the objectives of the penalty, and, if necessary, to adequately cover the prison systems' operating costs.

61. In addition, the lack of economic resources does not justify the violation, by the State, of non-derogable rights of persons deprived of liberty.<sup>80</sup> In this regard, the Inter-American Court has consistently affirmed that "the States cannot invoke economic hardships to justify imprisonment conditions that do not comply with the minimum international standards and respect the inherent dignity of the human being."<sup>81</sup>

62. The IACHR has made pronouncements along the same lines on several occasions;<sup>82</sup> for example, on referring to the conditions of detention of children and adolescents deprived of liberty in Haiti, where it affirmed that "proper attention to the rights of Haitian children and adolescents cannot wait until Haiti's complex political and social problems are resolved."<sup>83</sup> In addition, the IACHR, in reports on the merits on Jamaica, has indicated that the provisions on treatment in Article 5 of the American Convention apply independent of the level of development of the State party to the Convention,<sup>84</sup> and even if the economic or budgetary circumstances of the State party may make it difficult to observe it.<sup>85</sup>

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<sup>79</sup> See in this regard, IACHR, Report on the Situation of Human Rights in Ecuador, Ch. VI; and IACHR, *Report on the Situation of Human Rights in Brazil*, OEA/Ser.L/V/II.97. Doc. 29 rev. 1, adopted on September 29, 1997. (hereinafter "*Report on the Situation of Human Rights in Brazil*"), Ch. IV.

<sup>80</sup> United Nations, Human Rights Committee, General Comment No. 21: Humane treatment of persons deprived of liberty, adopted at the 44<sup>th</sup> session (1992), para. 4. In: *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies, Volume I, HRI/GEN/1/Rev.9 (Vol. I)* adopted on May 27, 2008, p. 242.

<sup>81</sup> I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C. No. 218, para. 198; I/A Court H.R., *Case of Boyce et al. V. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, para. 88; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 85; I/A Court H.R., *Case of Raxcacó Reyes V. Guatemala*. Judgment of September 15, 2005. Series C No. 133, para. 96.

<sup>82</sup> See, e.g., IACHR, Press Release 104/10 – Office of the Rapporteur Attests to Structural Deficiencies in Prison System of El Salvador. Washington, D.C., October 20, 2010.

<sup>83</sup> IACHR, *Annual Report 2006*, Chapter IV, Haiti, OEA/Ser.L/V/II.127. Doc. 4 ver. 1, adopted on March 3, 2007, para. 129; IACHR, *Annual Report 2005*, Chapter IV, Haiti, OEA/Ser.L/V/II.124. Doc. 7, adopted on February 27, 2006, para. 245.

<sup>84</sup> IACHR, Report No. 49/01, Cases 11,826, 11,843, 11,846, 11,847, Merits, Leroy Lamey, Kevin Mykoo, Milton Montique, Dalton Daley, Jamaica, April 4, 2001, para. 203.

<sup>85</sup> IACHR, Report No. 50/01, Case 12,069, Merits, Damion Thomas, Jamaica, April 4, 2001, para. 37.

63. In this respect, one of the points of the questionnaire sent to the States for this report referred to the percentage of the national budget earmarked to the prison systems. The States that answered this question provided the following information:

Argentina	The budget allocated to the Federal Prison Service in the fiscal year 2010 represents 0.56% of the total of the General Budget for the National Public Administration.
Bahamas	In the 2008/09 period, 1.25% of the national budget (22,881,955 dollars) was earmarked to the prison service.
Bolivia	The budget allocated, according to what was stated by the General Bureau of Prisons at the national level, comes to 33,368,146 <i>bolivianos</i> .
Chile	The percentage of the national budget earmarked to the prison system is 0.792% (source: DIPRES), with the following breakdown: Law on Public Sector Budget for 2010: 25,046,832,028,000 pesos; Budget of the Gendarmerie of Chile for 2010: 198,472,578,000 pesos; and percentage of the public sector budget for 2010 allocated to the Gendarmerie of Chile for 2010 is: 0.792%.
Colombia	In 2010 the percentage of the national budget allocated to the National Prison Institute (INPEC) was 0.68%, which is equivalent to: 1,009,364,822,282 pesos.
Costa Rica	In 2010 the budget allocated to the prison administration was 50,298,953,000 <i>colones</i> , which represents 1.1% of the total national budget.
Ecuador	The percentage of the national budget earmarked to the prison system is 0.33%.
El Salvador	The national budget earmarked for the Prison System comes to a total of 28,670,365 dollars, equivalent to 0.7% of the national budget for fiscal year 2010.
Guatemala	Of the general state budget for fiscal year 2010, which comes to 49,723,107,632 quetzals, 249 million quetzals, equivalent to 0.50% of expenditures, is allocated to the General Directorate of the Prison System.
Guyana	The budget earmarked to the Guyana Prison Service for 2010 was 982 million Guyana dollars.
Mexico	A total of 0.23% of the national budget was earmarked to the federal Prison System, including support for the states under the category <i>Socorro de Ley</i> .
Nicaragua	The percentage of the national budget earmarked to the National Prison System is 0.45%.
Panama	The percentage of the general budget of the state earmarked to the Prison System is more or less (sic) 0.35%. The budget of the Prison System is 21,111,671.00 dollars.
Peru	The national budget earmarked to the Prison System is 378,994,950 soles, which represents 0.38% of the total budget of the Republic.
Trinidad and Tobago	The percentage of the national budget earmarked to the prison system for fiscal year 2009 is 0.88%.
Uruguay	The total expenditure on the Prison System (Execution 2009 of the National Directorate of Prisons, <i>CNR</i> and <i>Patronato</i> ) is 1,496,918,000 pesos, which represented 0.21% of Uruguay's GDP in 2009.

Venezuela

The State's total allocation to the Prison System in fiscal year 2010 was 395,607,899 *bolívars fuertes*, which represents 0.25% of the national budget.

64. The need to adopt comprehensive prison policies that propose the adoption of different measures by different institutions is even more evident in those States in which serious structural deficiencies have been observed in the prison systems. In some cases, the nature of the situation not only requires the design of long-term policies or plans, but demands that specific measures be taken in the short term to address grave and urgent situations.<sup>86</sup>

65. In summary, the IACHR considers that in light of Articles 1(1) and 2 of the American Convention, the States of the region should adopt public policies that include both measures to be adopted immediately and long-term plans, programs, and projects; as well as adapting the legislation and the system of criminal procedure to be compatible with the personal liberty and judicial guarantees established in international human rights treaties, which should be considered as a priority of the State independent of whether the particular administration in power has more or less interest in the matter, nor on the ups and downs of public opinion. Rather, a commitment should be forged that binds all the branches of government, legislative, executive, and judicial, as well as civil society, for the purpose of constructing a system based on human dignity that works to improve society and democracy, and the rule of law.

#### **A. The principle of humane treatment**

66. The recognition of the dignity inherent in every person independent of his or her personal conditions or legal situation is the basis of the development and international protection of human rights. Accordingly, the exercise of public power has certain limits that stem from the fact that human rights are attributes inherent to human dignity. The protection of human rights is based on the affirmation of the existence of certain inviolable attributes of the human person that cannot be legally impaired or diminished by the exercise of public authority.

67. The right of persons deprived of liberty to humane treatment while under the custody of the State is a universally accepted norm in international law.<sup>87</sup> In the Inter-American human rights system, this principle is enshrined primarily in Article XXV of the American Declaration, which provides: “[e]very individual who has been deprived of his liberty [...] has the right to humane treatment during the time he is in custody.” In addition, the humane treatment to be accorded to persons deprived of liberty is an essential element of Article 5(1) and (2) of the American Convention, which protects the right to humane treatment of all persons subject to the jurisdiction of a State party.

<sup>86</sup> See in this regard, IACHR, *Democracy and Human Rights in Venezuela*, Ch. VI, para. 905; and IACHR, *Annual Report 2008*, Chapter IV, Venezuela, OEA/Ser.L/II.134, Doc. 5 Rev.1, adopted on February 25, 2009, para. 430.

<sup>87</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116. Doc. 5 rev. 1 corr., adopted on October 22, 2002, (hereinafter “*Report on Terrorism and Human Rights*”), para. 147.

68. In addition, as already mentioned, the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* are grounded in the fundamental idea that:

All persons subject to the jurisdiction of any member State of the Organization of American States shall be treated humanely, with unconditional respect for their inherent dignity, fundamental rights and guarantees, and strictly in accordance with international human rights instruments.

In particular, and taking into account the special position of the States as guarantors regarding persons deprived of liberty, their life and personal integrity shall be respected and ensured, and they shall be afforded minimum conditions compatible with their dignity. (Principle I)

69. In the Universal human rights system, the International Covenant on Civil and Political Rights expressly enshrined the principle of humane treatment as the core of its Article 10, which establishes the fundamental norms applicable to persons deprived of liberty. Article 10(1) provides: “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>88</sup>

70. Criminal sanctions are an expression of the punitive power of the State and entail the limitation, deprivation, or alteration of the rights of persons as a consequence of illicit conduct.<sup>89</sup> The rigor of the criminal justice response to certain punishable conduct is determined by the seriousness of the sanction that the criminal law prescribes for that conduct. This is already determined ahead of time by the law. Therefore, the State as guarantor of the rights of every person under its custody has the duty to ensure that the manner and method of the deprivation of liberty does not exceed the level of suffering inherent to being locked up.<sup>90</sup>

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<sup>88</sup> This principle is developed more extensively by other international instruments adopted within the framework of the United Nations, such as the Standard Minimum Rules for the Treatment of Prisoners, Rule 57; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 1; and the UN Basic Principles for the Treatment of Prisoners, Principles 1 and 5. See also, United Nations, Human Rights Committee, General Comment No. 21: Humane treatment of persons deprived of liberty, adopted at the 44<sup>th</sup> session (1992), paras. 2-4. In *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies*, Volume I, HRI/GEN/1/Rev.9 (Vol. I) adopted on May 27, 2008, p. 242.

<sup>89</sup> I/A Court H.R., *Case of García Asto and Ramírez Rojas V. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 223; I/A Court H.R., *Case of Lori Berenson Mejía V. Peru*. Judgment of November 25, 2004. Series C No. 119, para. 101.

<sup>90</sup> I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 198; I/A Court H.R., *Case of Yvon Neptune V. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180; para. 130; I/A Court H.R., *Case of Boyce et al. V. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169; para. 88.

71. Accordingly, the Commission has stated that:

It is fundamental that the deprivation of liberty have well-defined objectives, which cannot be exceeded by the activity of the prison authorities, not even under the cover of the disciplinary power that vests in them, and, therefore, the prisoner may not be marginalized, but instead reinserted in society. In other words, the prison practices must be in accord with a basic principle: no suffering should be added to the deprivation of liberty than what it already represents: The prisoner should be accorded humane treatment, with full respect for the dignity of his or her person, while at the same time seeking to facilitate reinsertion of the prisoner in society.<sup>91</sup>

**B. The State's duty to exercise effective control over prisons, and to prevent acts of violence**

72. As already mentioned, the State, when depriving a person of liberty, assumes a specific and material commitment to respect and ensure his or her rights<sup>92</sup>, particularly the rights to life and humane treatment. These rights, in addition to being non-derogable, are fundamental and basic for the exercise of all other rights, and constitute indispensable minimums for the exercise of any activity.<sup>93</sup>

73. The duty of the State to protect the life and ensure humane treatment for any person deprived of liberty includes the positive obligation to take all preventive measures to protect the prisoners from the attacks or attempted attacks by the State's own agents or third persons, including other prisoners.<sup>94</sup> In effect, as the prison is a place where the State exercises total control over the prisoners' lives, it is obligated to protect them from acts of violence, whatever the source.<sup>95</sup>

74. In addition, the Inter-American Court has established that the States' obligations *erga omnes* to respect and ensure the norms of protection, and to ensure the effectiveness of the rights, have effects beyond the relationship between its agents and the persons subject to its jurisdiction. These effects are manifested in the positive obligation of the State to adopt the necessary measures to ensure, in certain circumstances, the effective protection of human rights in relations among individuals. Hence, omissions in its

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<sup>91</sup> IACHR, *Annual Report 2002*, Chapter IV, Cuba, OEA/Ser.L/V/II.117, Doc 1 Rev. 1, adopted on March 7, 2003, para. 73. IACHR, *Annual Report 2001*, Chapter IV(c), Cuba, OEA/Ser.L/V/II.114, Doc. 5 Rev., adopted on April 16, 2002, para. 76.

<sup>92</sup> IACHR, *Special Report on the Human Rights Situation at the Challapalca prison*, para. 113; IACHR, Report No. 41/99, Merits, Minors in Detention, Honduras, March 10 1999, para. 135.

<sup>93</sup> IACHR, *Democracy and Human Rights in Venezuela*, Ch. VI, para. 667.

<sup>94</sup> IACHR, Report No. 41/99, Merits, Minors in Detention, Honduras, March 10, 1999, paras. 136 and 140.

<sup>95</sup> IACHR, Report No. 67/06, Case 12,476, Merits, Oscar Elías Biscet *et al.*, Cuba, October 21, 2006, para. 149.



duty to prevent human rights violations committed by third persons may give rise to the international responsibility of the State.<sup>96</sup>

75. With respect to this duty of the State to effectively protect persons deprived of liberty, even vis-à-vis third persons, the IACHR has also indicated that:

[I]n addition to an adequate regulatory framework for prisons, there is an urgent need to implement specific actions and policies with an immediate impact on the situation of risk faced by detainees. The State's obligation toward prison inmates is not limited to merely enacting provisions to protect them, nor is it enough for state agents to refrain from actions that could injure the lives and persons of detainees; instead, international human rights law requires States to adopt all measures available to them to guarantee the lives and personal integrity of people held in their custody.<sup>97</sup>

76. In this sense, for the State to be able to effectively ensure prisoners' rights it must exercise effective control over the prisons. In other words, the State should take charge of the fundamental aspects of prison administration, for example maintaining security inside and outside the prison; providing the basic goods and services necessary for the prisoners' lives; and preventing crime from being committed in or from prisons. In this respect, the Inter-American Court has recognized the existence of the authority and even the obligation of the State to guarantee security and maintain public order, especially within the prisons, using methods in line with the applicable norms for the protection of human rights.<sup>98</sup>

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<sup>96</sup> I/A Court H.R., *Case of Ximenes Lopes V. Brazil*. Judgment of July 4, 2006. Series C No. 149, paras. 85 and 86. This case is cited as representative due to the facts that gave rise to it; nonetheless, this doctrine on the situation in which the international responsibility of the state is triggered by the actions of third persons has been gradually developed by the Court from its first merits decision. See, I/A Court H.R., *Case of Velásquez Rodríguez V. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 172. In addition, this doctrine has been reiterated systematically by the Inter-American Court in the context of the provisional measures granted with respect to prisons. See, for example: I/A Court H.R., Provisional Measures in the matter of Centro Penitenciario de Aragua "Cárcel de Tocarón," Venezuela, Order of the President of the Inter-American Court of Human Rights, November 1, 2010, Considering paragraph 13; I/A Court H.R., Provisional Measures in the matter of the Capital El Rodeo I & El Rodeo II Judicial Confinement Center, Order of the Inter-American Court of Human Rights, February 8, 2008, Considering paragraph 11; I/A Court H.R., Provisional Measures in the matter of Penitentiary Center of the Central Occidental Region (Uribana Prison), Order of the Inter-American Court, February 2, 2007, Considering paragraph 5; I/A Court H.R., Provisional Measures in the matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison), Order of the Inter-American Court of Human Rights, March 30, 2006, Considering paragraph 14; I/A Court H.R., Provisional Measures in the matter of the Monagas Judicial Confinement Center ("La Pica"), Order of the President of the Inter-American Court of Human Rights, January 13, 2006, Considering paragraph 14; I/A Court H.R., Provisional Measures in the matter of the Mendoza Prisons, Order of the Inter-American Court, November 22, 2004, Considering paragraph 12. In granting these provisional measures, the Court took into consideration the alarming levels of violence among inmates in those prisons.

<sup>97</sup> IACHR, *Democracy and Human Rights in Venezuela*, Ch. VI, para. 826.

<sup>98</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison V. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 240; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 70; I/A Court H.R., Provisional Measures in the matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison), Order of the Inter-American Court of Human Rights, March 30, 2006, Considering paragraph 15.

77. Accordingly, the fact that the State exercises effective control of the prisons implies that it must be capable of maintaining internal order and security within prisons, not limiting itself to the external perimeters of the prisons. It should be capable of ensuring at all times the security of the prisoners, their family members, visitors, and those who work in the prisons. It is not admissible under any circumstance for the prison authorities to limit themselves to external or perimeter surveillance, leaving the inside of the facilities in the prisoners' hands. When this happens, the State puts the prisoners at permanent risk, exposing them to violence in the prison and to the abuses of other more powerful prisoners or the criminal groups that run such prisons.

78. Similarly, the fact that the State exercises effective control over centers of detention also implies that it should adopt the measures necessary to prevent the prisoners from committing, directing, or ordering such criminal acts within or from the prisons.

### **1. Consequences of the lack of effective control of prisons**

79. In reality, when the State does not exercise effective control of the prisons at the three fundamental levels mentioned, serious situations arise that put the life and integrity of prisoners and even third persons at risk, such as: systems of "self-government" or "shared government," which is also the result of the corruption endemic in many systems; the high indices of prison violence; and the organization and direction of criminal acts from prisons.

80. The IACHR, in the exercise of its monitoring function, has observed such situations with concern in several countries of the region. Thus, for example, the IACHR was able to determine in its 2006 visit to Bolivia, that:

[I]n practice, internal security in the prisons is generally in the hands of the inmates themselves. In the San Pedro prison, for example, members of the National Police seldom venture within the walls, confining themselves for the most part to external security and inspections of visitors. Within the prison, the men deprived of liberty, their wives or partners and their children are left to their own fate. The prison authorities recognized, and the delegation of the Commission confirmed, that prisoners sell or rent individual cells. This means that an inmate does not have the right to a cell, and that he has to pay to have a place to sleep; or else he will sleep in a corridor or out in the courtyard, exposed to the elements of the weather. In the Chonchocorro prison, the Commission was informed that the sports gymnasium belonged to an inmate, who charged a membership fee of 20 *bolivianos* a month for its use.<sup>99</sup>

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<sup>99</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Ch. III, paras. 201-202.

81. In addition, during its on-site visit to Guatemala in 1998, the IACHR found that at the Pavón and Pavoncito prisons,

The guards do not enter the areas where the inmates live. The disciplinary power within the facilities is exercised by the detainees and prisoners themselves through so-called "Committees of Order and Discipline." Such Committees are headed by an inmate reportedly chosen "unanimously" by the rest of the inmates and who enforces authority mainly through violence and threats.

[...]

In Pavón, the head of the Committee of Order and Discipline himself showed the Commission around the facility at the request of the authorities. When visiting Pavoncito, the Commission found itself constantly escorted by the 140 members of the Committee, armed with long sticks, as part of an intimidating display of authority. When the Commission inquired regarding the purpose of the weapons, one of the leaders of the Committee explained "it is for respect."

The Commission is very concerned by information received which indicates that these committees are used in many cases to abuse and persecute the most vulnerable inmates, and by the open abdication of official custodial authority in certain facilities and its impact on the fair treatment of inmates and the protection of their right to life, physical integrity and non-discrimination.<sup>100</sup>

Subsequently, in the context of a thematic hearing held in 2006, during the 124<sup>th</sup> period of sessions, the IACHR was informed that in most Guatemalan prisons disciplinary functions were still exercised by groups of prisoners known as "committees of order and discipline," (*Comités de Orden y Disciplina*) and that the "sanctions" that they applied went from indefinite isolation to beatings resulting in death. In addition, the organizations that presented in the public hearing indicated the discontent with the committees of order and discipline as a cause of riots.<sup>101</sup>

82. In addition to these situations observed in Bolivia and Guatemala, the IACHR observed similar situations in country reports on Colombia (1999) and Mexico (1998). In the Colombia report, the IACHR referred to the delegation of control over certain areas of some prisons to "internal chiefs", complaints were received which indicated that mini-fiefdoms had been created which possessed *de facto* authority and which charged

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<sup>100</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, paras. 25-27.

<sup>101</sup> IACHR, Public hearing: *Situation of the Penitentiary System in Guatemala*, 124<sup>o</sup> Ordinary Period of Sessions, requested by Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), March 6, 2006.

fees for access to services, protection, etc...”<sup>102</sup> In its Report on the Situation of Human Rights in Mexico, the IACHR noted:

Corruption, inadequate resources and lack of planning have led to frequent situations in which groups of prisoners unlawfully take over management and command functions in what is known as self-government by prisoners. Such situations are inconsistent with the principle of due authority and with the conditions of equality among prisoners that should exist, giving rise to numerous abuses.

These power groups are made up of persons (inmates) who have the economic means or the support of certain officials and who recruit other prisoners. Since the latter are unable to find well-paid work within the prison institution, they prefer to work for another prisoner, even though the activity might be illegal (e.g. selling drugs, prostitution, etc.)<sup>103</sup>

83. The mechanisms of protection under the United Nations have also encountered such situations in countries of the region. Thus, for example, the Subcommittee for the Prevention of Torture, after a 2008 mission to Mexico, referred at length to the regimes of “self-government” or “shared government” in several prisons in Mexico, and so reported in a manner consistent with what was found by the IACHR one decade earlier. The Subcommittee for the Prevention of Torture was able to verify, during its visits to prisons, that these practices were called “internal customs” or “leadership,” and represent a serious risk factor for many persons deprived of liberty who may be subjected, by the “leaders” of each dormitory or wing, to punishment, disciplinary sanctions, and other humiliating acts. In addition, they indicate that in many of these prisons all types of commercial transactions take place, including payment for certain preferential spaces or dormitories and a whole system of privileges that not all persons deprived of liberty can benefit from.<sup>104</sup>

84. The following passage from the above-mentioned report of the Subcommittee for the Prevention of Torture refers to what was observed at the prison known as Centro Penitenciario Santa María Ixcotel in Oaxaca, and is particularly illustrative of the nature of the problems raised here:

Living conditions for prisoners in the facility varied considerably, depending on whether they could afford to pay the fees exacted [...] In the “privileged” area, conditions were extraordinarily comfortable.

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<sup>102</sup> IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102. Doc. 9 rev. 1, adopted on February 26, 1999. (hereinafter “*Third Report on the Human Rights Situation in Colombia*”), Ch. XIV, para. 7.

<sup>103</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, OEA/Ser.L/V/II.100. Doc. 7 rev. 1, adopted on September 24, 1998. (hereinafter “*Report on the Human Rights Situation in Mexico*”), Ch. III, paras. 262-263.

<sup>104</sup> United Nations, Subcommittee for the Prevention of Torture, *Report on the visit of the SPT to Mexico*, CAT/OP/MEX/R.1, adopted on May 27, 2009, para. 167.

Prisoners' families visited daily and the prisoners cooked together, worked and even ran businesses within the institution that enabled them to earn a living [...] They explained that the bosses of each cell block are elected democratically by the prisoners themselves. They emphasized that everyone tries to maintain stability within the prison and that the prisoners respect one another and follow the inside rules [...]

The delegation visited cell block No. 19 in the same prison and was deeply concerned by the poor living conditions of the inmates being held there [...] The cell blocks had no ventilation and all the areas where inmates were held were overcrowded. The delegation observed that, in case of fire, it would be difficult to evacuate these places [...] These people were living in conditions of extreme overcrowding. They had no contact with the "privileged" area [...] The members of the delegation were told confidentially that the prison authorities were aware that this situation of self-rule was occurring inside the prison and that many of the internal rules had been agreed between the inmate bosses and the prison authorities – to the benefit of both sides. The delegation also found that the prison staff was insufficient to be able to stop any conflict that might arise between inmates.

85. The IACHR observes that Honduras is another State in which the existence of such patterns of self-rule and lack of effective control by the authorities was found. In this respect, the Subcommittee for the Prevention of Torture, in its 2010 report on Honduras, referred in detail to the main challenges facing the prison administration in Honduras:

The Subcommittee noted that the shortage of staff assigned to the prisons [Marco Aurelio Soto Penitentiary in Tegucigalpa the Penitentiary of San Pedro Sula] had given rise to a regime of self-governance, under the control of "coordinators" and "subcoordinators" who are prisoners who act as spokespersons in dealings between the authorities and the rest of the prison population [...] From talking with inmates, the Subcommittee learned that the coordinators and subcoordinators are in charge of keeping order and assigning spaces in each wing. This was accepted by the prison staff with whom the Subcommittee spoke, who also revealed that they never enter some wings, such as those where the members of *maras* are held.

The Subcommittee observed that, in the facilities visited, corruption was institutionalized by way of a sophisticated system that included procedures, steps and time frames [...] Through talks with a large number of prisoners, the Subcommittee learned that they must pay a considerable sum of lempiras in order to enjoy benefits of any kind, including a cell or a place to sleep.

[...]

The system of corruption and privileges described above has spread to all aspects of daily prison life, and covers the obtaining of beds, mattresses, food, air conditioning units, televisions and radios. According to repeated and concurring statements by prisoners, weekly fees ranging from 15 to 20 lempiras are to be paid to the coordinators for cleaning and maintaining order in the wing.

The self-governance regime also applies to food; the prison staff admitted that all food portions are handed over directly to the coordinators, who take responsibility for distributing them. According to certain accounts, some of the food is distributed and some is sold to the prisoners.

A number of inmates stated that they had been beaten as punishment by other inmates or by prison staff, on orders from the coordinators, and that sometimes the coordinator himself administered the “punishment”.<sup>105</sup>

86. The *Centro de Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura* (CPTTR), in its response to the questionnaire circulated for the production of this report, indicated that among the main problems facing the Honduran prison system is “the institution of ‘coordinators’ (*coordinadores*) of the modules or households, in all the prisons, who physically punish the other persons deprived of liberty,” and “the illegal charges for being able to remain in a given module or household, by the coordinators of the modules, of up to 250 dollars.”<sup>106</sup>

87. The IACHR and United Nations mechanisms have also identified serious structural problems, including situations of self-government and benefits systems in Paraguay.

88. In this respect, the United Nations Rapporteur on Torture found that in general both in the oldest prisons and in those recently constructed there is an inadequate supply of food, clothes, and medical care, which pushes the prisoners to seek other forms of securing a dignified existence. Thus the detainees who lack external support and financial resources are forced to offer their work to detainees in better economic conditions and are completely at their mercy, resulting in extreme situations of inequality

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<sup>105</sup> United Nations, Subcommittee for the Prevention of Torture, *Report on the visit to Honduras of the SPT*, CAT/OP/HND/1, adopted on February 10, 2010, paras. 205-207, 229 and 236. In addition, the Working Group on Arbitrary Detention noted in the report on its visit to Honduras in 2006 that the authorities do not effectively administer the prisons. And it concluded that the budget limitations the prison system faces “cannot justify the abdication from the public responsibility to provide the detainees with these services, which they currently can obtain only through constant unlawful payments and a bustling network of businesses run by the inmates.”<sup>105</sup> United Nations, Working Group on Arbitrary Detentions, *Report on mission to Honduras*, A/HRC/4/40/Add.4, adopted on December 1, 2006, para. 77.

<sup>106</sup> Response sent by the CPTRT to the questionnaire for this report, received via email dated on May 24, 2010.

between those who have the resources to secure comfortable conditions and those who must resign to living in inhumane conditions.<sup>107</sup>

89. Along the same lines, the Subcommittee for the Prevention of Torture, in the report on its mission to Paraguay, describes how at the National Penitentiary of Tacumbú there is a system in which certain inmates, called “foremen” (*capataces*), along with the prison staff, charge a fee for entering and staying in the various wings of that prison, establishing a system of prices in keeping with the conditions of the respective wing. There are also weekly fees for maintaining order and for cleaning, which, if not paid to the “foreman,” lead to one being expelled from the wing.<sup>108</sup>

90. As made clear in the above examples, the lack of effective control by the authorities of what goes on in the prisons may lead to truly serious and complex situations in which it is impossible for the penalty entailing deprivation of liberty to serve its purposes. The prisons then become, as the IACHR has already said, “schools for crime and anti-social behavior leading to recidivism in place of rehabilitation,”<sup>109</sup> and places in which the human rights of the prisoners and their families – especially those in vulnerable conditions – are systematically violated.

91. The IACHR recognizes the need for the prisoners to have the possibility and the spaces for organizing on their own, sports, religious, cultural, and musical activities, and even to coordinate certain aspects of their living arrangements,<sup>110</sup> which is favorable for attaining the objectives of the penalty, and clearly for maintaining harmony and the sound operation of the prisons. Nonetheless, the Commission emphasizes the fundamental principle that the State, as guarantor of the rights of persons deprived of liberty, should not encourage or allow certain prisoners to have power over fundamental aspects of the lives of other prisoners.

92. For a person deprived of liberty to have to pay or be subjected to other abuses to obtain the basic elements necessary to live in dignified conditions is contrary to international human rights law and inadmissible from any point of view.

93. In addition, the fact that the State allows or tolerates systems of privileges in which a certain class of prisoners with greater purchasing power can monopolize the best spaces and resources of prisons to the detriment of other prisoners – which represent the majority– who are not in the same conditions, is also inadmissible. When this happens, the most vulnerable persons are relegated to overcrowded,

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<sup>107</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. IV: *Conditions of detention*, paras. 67-68.

<sup>108</sup> United Nations, Subcommittee for the Prevention of Torture, *Report on the visit to Paraguay of the SPT*, CAT/OP/HND/1, adopted on June 7, 2010, paras. 158 and 161.

<sup>109</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, para. 69.

<sup>110</sup> See in this regard, the United Nations Standard Minimum Rules for the Treatment of Prisoners (Rule 28.2).

unsanitary, and unsafe places. And clearly, the result is that the patterns of inequality and marginalization in society are reproduced inside the prisons. In addition, the message is sent to the prison population and society in general, that the administration of justice – and clearly the State’s response to crime – does not operate equally for all persons. This perception has a serious detrimental impact on the expectations of rehabilitation and social reinsertion of persons subject to penalties entailing deprivation of liberty. In this respect, the Working Group on Arbitrary Detention has considered:

When police officers, prison administration staff, judicial civil servants, judges, public prosecutors and lawyers approach individuals deprived of their liberty varyingly, depending on whether or not bribes or other irregular payments or favors have been received, then the whole system of guarantees becomes devoid of any content, empty and meaningless; it renders defenseless all those who cannot or refuse to pay the amounts that are asked from them and in turn further reduces the credibility of the entire system of administration of justice.<sup>111</sup>

94. The exercise of effective control of prisons requires that the State adopt the necessary measures for preventing the prisoners, or criminal bands that operate inside the prisons, from organizing, directing, or committing criminal acts in or from the prisons.

95. The IACHR addressed this issue in its Press Release No. 98/10 concerning the existence of a child pornography ring in the National Penitentiary of Tacumbú. According to the information analyzed by the IACHR – and which was widely disseminated in Paraguay and internationally – a group of prisoners from that prison were contacting minors via the Internet and using threats they were able to get them to visit the prison where they forced them to engage in sexual acts that were filmed and photographed – all inside the prison.<sup>112</sup>

96. Similarly, the administration of illegal operations by the prisoners themselves from the prisons, as a result of the lack of capacity and resources to maintain security, was one of the issues of concern to the IACHR in monitoring the human rights situation in Bolivia.<sup>113</sup>

97. In addition, the Rapporteur on the Rights of Persons Deprived of Liberty verified in its visit to El Salvador in October 2010 that one of the main challenges the State faces is precisely preventing criminal activities directed and organized from the prisons, mainly by gang members. The leaders of these groups order and direct, from the prisons, the commission of crimes such as homicide and extortion, using increasingly sophisticated

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<sup>111</sup> United Nations, Working Group on Arbitrary Detentions, report submitted to the Human Rights Council, A/HRC/10/21, adopted on February 16, 2009. Ch. III: *Thematic considerations*, para. 60.

<sup>112</sup> IACHR, Press Release 98/10 - IACHR Expresses Deep Concern over Situation in Paraguayan Jail. Washington, D.C., September 24, 2010.

<sup>113</sup> IACHR, Follow-up Report - *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser/L/V/II.135. Doc. 40, adopted on August 7, 2009, Ch. V, para. 117.



methods and even using their own family members as a vehicle for transmitting or carrying out such orders.

## 2. Prison violence, causes and preventive measures

98. The high indices of prison violence represent one of the main problems facing prisons in the region. This reality, as mentioned earlier has been repeatedly observed with concern by the General Assembly of the OAS.<sup>114</sup>

99. In this respect, one of the points of the questionnaire sent to the member States on occasion of this report referred to the indices of prison violence, including the number of deaths, during the last five years. The official information provided by the States that sent their responses is as follows:

Argentina	From 2006 to 2009, there were 201 deaths in units of the Federal Penitentiary Service, 26 of which are said to have resulted from acts of violence.
Bahamas	In 2008 and 2009, there were 140 acts of violence among inmates (76 described as “assault” and 64 as “personal violence”) and 7 acts of violence by inmates directed against security agents (4 described as “assault” and 3 as “personal violence”). It is noted that on January 17, 2006, there was an escape attempt in which one guard and one inmate lost their lives, and two other security agents were wounded.
Bolivia	From 2005 to May 2010 a total of 85 persons died in prisons (no further details provided).
Chile	From 2005 to 2009 there were in all 873 assaults among inmates; 461 brawls; 94 fires/attempts; 285 disorders; 236 personal assaults; and 29 sexual assaults on inmates. In addition, in that same period 203 inmates died in brawls/assaults, and 5 in events related to escapes.
Colombia	The figures provided by the State with respect to acts of violence that occurred in the 2005-2009 period are as follows: 2005: 30 violent deaths /752 injuries (population 69,365 inmates) 2006: 13 violent deaths /962 injuries (population 62,906 inmates) 2007: 14 violent deaths /811 injuries (population 61,543 inmates) 2008: 29 violent deaths /930 injuries (population 67,812 inmates) 2009: 27 violent deaths /969 injuries (population 74,277 inmates)  Total: 113 violent deaths in that 5-year period.
Costa Rica	From 2005 to 2009 the following critical incidents occurred at the Centers for Institutional Attention of the Penitentiary System: 555 assaults; 71 brawls; 1 riot; 25 homicides; 2 rapes; 4 cases of material damage; 8 cases of assaults of staff; 2 cases of assault against a visitor in conjugal visit; and one rape of a visitor on conjugal visit.

<sup>114</sup> OAS, General Assembly Resolution, AG/RES. 2510 (XXXIX-O/09), adopted on June 4, 2009; OAS, General Assembly Resolution, AG/RES. 2403 (XXXVIII-O/08), adopted on June 13, 2008; OAS, General Assembly Resolution, AG/RES. 2283 (XXXVII-O/07), adopted on June 5, 2007; and OAS, General Assembly Resolution, AG/RES. 2233 (XXXVI-O/06), adopted on June 6, 2006.

Ecuador	From 2005 to June 2010 there were 172 deaths due to prison violence.
El Salvador	From 2006 to May 6, 2010, the following acts of violence occurred: 19 riots, 49 brawls, 8 revolts, and 72 homicides.
Guatemala	The Guatemalan State, in its response, provided the following information on specific events: 12/23/02, Pavoncito Penal Center, riot in which 17 prisoners died, and more than 30 were wounded; 05/19/06, Mazatenango Penal Center, brawl between gang members and " <i>paisas</i> " in which six " <i>paisas</i> " died; 09/25/06, takeover of Pavón by the authorities of the Penitentiary System; 02/26/07/Boquerón Penal Center, assassination of four police officers accused in the homicide of members of the Central American Parliament; 03/07/07, Pavoncito Penal Center, brawl between gang members of the "Mara 18" and the "Mara Salvatrucha"; 03/26/07, Escuintla High Security Prison, brawl in which three prisoners died and seven were wounded; 03/27/07, Pavoncito Penal Center, a riot motivated by the " <i>paisas</i> " in protest over the transfer of gang members from the "Mara Salvatrucha" from the Escuintla High Security Prison; 11/21/08, Boquerón Penal Center, a riot motivated by discontent of the gang members from the "Mara Salvatrucha"; 01/22/08, Pavoncito Penal Center, brawl in which seven inmates were burned and decapitated, and two were wounded; 10/12/09, Progreso Penal Center, riot (no additional information was presented); 04/23/10, acts of violence in several penal centers as reprisal for mistreatment of inmates at the Fraijanes II Penal Center, including riots with hostage-taking at the Fraijanes II Penal Center and in the Preventive facility of Zone 18, in the wake of these events, on 04/24/10, there were also attacks on the guard towers of the Pavón Prison and the C.O.F.
Mexico	The Mexican State reported: "In regard to the Federal Centers for Social Readaptation, to date there have been 313 brawls and two homicides (October and December 2004)."
Nicaragua	The Nicaraguan State reported: "The indices of prison violence are 7.2% annually, which is equivalent to 0.977% of incidents per prison, the most significant being assaults among inmates without serious consequences. As for inmates who have died in the last 5 years in the National Penitentiary System ... 4 have been due to homicide."
Panama	From 2009 to October 2010, there were 168 acts of violence in the prisons, in which 13 persons lost their lives, mostly due to attacks with knives and firearms, and one after a shotgun blast by the police.
Paraguay	From 2004 to 2009, 177 prisoners died and 140 were injured (the causes are not stated).
Peru	The Peruvian State reported: "There have been 42 confrontations among inmates in various prisons of the country, 35 of which were due to brawls known as <i>gresca</i> (confrontations among two or more inmates over personal matters) and seven due to brawls known as <i>reyerta</i> (confrontations among rival groups of inmates seeking to control some sectors of the prison). On December 31, 2009, there was a riot in which hostages were taken and an escape attempt by prisoners at the E.P. Chachapoyas, as a result of which two inmates died from gunshot wounds while attempting to flee the prison."
Trinidad and Tobago	The State of Trinidad and Tobago indicated that during the last five years 2 persons have died in prison due to acts of violence.

Uruguay	From 2005 to 2009 there were a total of 452 assaults among prisoners (2005:141/2006:66/2007:64/2008:75/2009:16); and 57 homicides (2005:6/2006:20/2007:11/2008:10/2009:10).
Venezuela	<p>The figures provided by the State with respect to acts of violence (riots, brawls, and fights) in 2005-2009 are as follows:  2005: 1,102 violent acts (population of 18,218 inmates);  2006: 1,322 violent acts (population of 18,700 inmates);  2007: 1,561 violent acts (population of 21,201 inmates);  2008: 1,250 violent acts (population of 24,279 inmates); and  2009: 988 violent acts (population of 32,624 inmates).</p> <p>In terms of the total number of persons wounded and killed, the State presents the following figures:  2005: 721 wounded and 381 killed;  2006: 934 wounded and 388 killed;  2007: 1,103 wounded and 458 killed;  2008: 876 wounded and 374 killed; and  2009: 724 wounded and 264 killed  Totals: 4,358 wounded and 1,865 killed.</p>

100. Indeed, prison violence is one of the most serious problems faced by the region's prison systems, to a greater or lesser extent depending on the specific context. Prison violence, as a violation of the rights to life and humane treatment, is one and the same in reality, though its manifestations may vary depending on the specific circumstances. It also includes assaults by State agents against persons under their custody, such as the acts of violence among inmates or those committed by inmates against State agents or third persons.

101. The organs of the Inter-American human rights system for the protection of human rights, through the exercise of their various powers and jurisdictions, have ruled on various situations of prison violence in the region.

102. The vast majority of the provisional measures granted by the Inter-American Court with respect to persons deprived of liberty have been based mainly on grave acts of prison violence and lack of effective control by the authorities over the prisons.

103. For example, in the provisional measures on *The Mendoza Prisons*, granted by the Court on November 22, 2004, two fundamental factors were taken into consideration: the high levels of prison violence in the seven months prior to the granting of measures, which had resulted in the deaths or injuries to several persons deprived of liberty, as well as some prison guards, in fires, fights among inmates, and circumstances that were not clarified; and the deplorable conditions of detention in those prisons, characterized by overcrowding, the lack of basic services, and the unhygienic and insalubrious considerations of the facilities.<sup>115</sup> The grave living conditions of persons

<sup>115</sup> I/A Court H.R., Provisional Measures in the matter of the Mendoza Prisons, Order of the Inter-American Court of Human Rights, November 22, 2004, Having seen paragraph 2 and Considering paragraphs 7 and 11.

deprived of liberty, in addition to constituting a violation of the right to humane treatment, was also a factor favoring the climate of violence and the tensions among the prisoners.

104. One of the most serious situations observed at the Provincial Penitentiary of Mendoza, especially during the first years in which the provisional measures were in force, was precisely that the prison staff was by far outnumbered by the prisoners. Accordingly, the guards were not in the wings, and merely observed the prisoners' activities from outside.<sup>116</sup> In this respect, the Court ordered in due course, in addition to the other measures necessary for preserving the life and personal integrity of the prisoners, the following measures: (a) increases in the prison personnel assigned to ensure security in the establishments; (b) the elimination of weapons in the establishments; and (c) that the patterns of surveillance should be varied so as to ensure adequate control and the effective presence of prison personnel in the wings.<sup>117</sup>

105. In addition, the Inter-American Court, from January 2006 to November 2010, granted five provisional measures with respect to prisons in Venezuela. In all these cases the facts that led to the adoption of the measures referred to extremely serious situations of violence in which it was reported that a large number of persons were killed and wounded, as can be observed:

(a) In the matter of *Monagas Judicial Confinement Center ("La Pica")*, the Court was informed that during 2005, 43 persons had died and at least 25 had been seriously injured; that during 2004, 30 prisoners had died in violent incidents; and that the 501 prisoners at that establishment were guarded by 16 guards half of whom worked in each of two 24-hour shifts.<sup>118</sup>

(b) In the matter of *Yare I and Yare II Capital Region Penitentiary Center (Yare Prison)*, it was considered that from January 2005 to March 2006 there had been 59 violent deaths as a result of gunshot wounds, stab wounds, hangings, and decapitations, and at least 67 serious injuries. In addition, the authorities had seized several weapons and grenades. The 679 inmates housed in the Yare I and Yare II prisons, combined, were under the surveillance of a total of 23 guards who worked 24-hour shifts.<sup>119</sup>

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<sup>116</sup> This situation was verified by the IACHR during a visit to the prisons of Mendoza from December 13 to 17, 2004, see, I/A Court H.R., Provisional Measures case of the Mendoza Prisons, Order of the Inter-American Court of Human Rights, June 18, 2005, Having seen paragraph 24(b). See also, I/A Court H.R., Provisional Measures in the matter of the Mendoza Prisons, Order of the Inter-American Court of Human Rights, March 30, 2006. Having seen paragraph 51(a).

<sup>117</sup> I/A Court H.R., Provisional Measures in the matter of the Mendoza Prisons, Order of the Inter-American Court of Human Rights, March 30, 2006. Considering paragraph 12.

<sup>118</sup> I/A Court H.R., Provisional Measures in the matter of Monagas Judicial Confinement Center ("La Pica"), Order of the President of the Inter-American Court of Human Rights, January 13, 2006. Having seen paragraphs 2(c) and (d).

<sup>119</sup> I/A Court H.R., Provisional Measures in the matter of the Yare I and Yare II Capital Region Penitentiary Center (Yare Prison), Order of the Inter-American Court of Human Rights, March 30, 2006. Having seen paragraphs 2(c), (d) and (f).

(c) In the matter of the *Penitentiary Center of the Central Occidental Region (Uribana Prison)*, the Court was informed that from January 2006 to January 2007 there had been a total of 80 violent deaths and 213 persons wounded, most by knives or firearms. Internal security at the prison was entrusted to eight staff for a population of 1,448 prisoners.<sup>120</sup>

(d) In the matter of the *Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, the Court was told that from 2006 to February 1, 2008, there were 139 deaths and 299 persons wounded in various violent incidents. In addition, it was said that only 20 guards on each shift to watch over 2,143 prisoners.<sup>121</sup>

(e) In the matter of *Centro Penitenciario de Aragua "Cárcel de Tocorón,"* the Court was informed that from 2008 to the first quarter of 2010 there were 84 deaths as the result of acts of violence among inmates. In addition, from September 27 to 29, 2010, there was a riot that left 16 inmates dead and 36 to 46 wounded. Firearms were shot and eight grenades were detonated in this riot. The State mobilized 1,800 members of the National Guard to control the prison situation. Subsequently, on October 10, another inmate died from a stab wound.<sup>122</sup>

106. In all these matters, the general context and the causes that gave rise to the acts of violence are fundamentally the same: a general situation of inhumane conditions of detention characterized mainly by considerable overcrowding; lack of basic services; failure to separate inmates by categories; lack of effective control over the internal security situation of these prisons – the prison guards only enter the prisons with the National Guard, which is specifically entrusted with perimeter security; reports of mistreatment and excessive use of force by the National Guard forces; *de facto* control of these establishments by the heads of criminal bands, called "*pranes*"; and the possession of all kinds of weapons by the inmates, including high-caliber firearms and explosives.

107. The fundamental factor behind the escalation in violence in these prisons is the inability of the State to recover internal control, and the failure to adopt effective measures to correct the shortcomings that make it possible for the prison population to rearm, especially the lack of effective controls by the respective officials.

108. In these matters, the Inter-American Court required that the State immediately adopt the necessary measures, fundamentally preventive ones, to efficiently

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<sup>120</sup> I/A Court H.R., Provisional Measures in the matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison), Order of the Inter-American Court of Human Rights, February 2, 2007. Having seen 2(a), (b) and (c).

<sup>121</sup> I/A Court H.R., Provisional Measures in the matter of the Capital El Rodeo I & El Rodeo II Judicial Confinement Center, Order of the Inter-American Court of Human Rights, February 8, 2008. Having seen paragraphs 2(b), (c) and (g), and 9. Indeed, in this case the IACHR reported that the administrative area, the hallways, and even the roof in the prison area were controlled by the prisoners; and that bands known as "Barrio Chino" and "La Corte Negra" are the interlocutors who negotiate with the Ministry of Interior.

<sup>122</sup> I/A Court H.R., Provisional Measures in the matter of Centro Penitenciario de Aragua "Cárcel de Tocorón", Venezuela, Order of the President of the Inter-American Court of Human Rights, November 1, 2010, Having seen paragraphs 2(b) and (d).

and once and for all prevent the violence in these prisons. In some cases, such as *Yare Prison*<sup>123</sup>, and in the *Uribana Prison*<sup>124</sup>, the Court ordered that specific measures be adopted to seize the arms in the hands of the inmates; separate the inmates awaiting trial from the convicts; separate the men from the women; reduce overcrowding and improve the conditions of detention; periodically supervise the conditions of detention and the conditions of the detainees; and provide trained staff in sufficient numbers to ensure the adequate and effective control, custody, and surveillance of the prison. In addition, the Court emphasized the duty of the State to design and implement prison policies to prevent critical situations.<sup>125</sup>

109. The IACHR has closely monitored the prison situation in Venezuela. In this context, in its special report *Democracy and Human Rights in Venezuela*, after analyzing various indicators of prison violence in Venezuela, it concluded: "In comparative terms, Venezuelan prisons are the most violent in the region."<sup>126</sup> In effect, even considering the official data provided by the State, one observes that the figures on acts of violence and deaths of persons deprived of liberty are alarming. As observed *supra* in the State's response to the questionnaire circulated for this report, the figures on prisoners killed and wounded in the 2005-2009 period were as follows: 2005: 721 injured and 381 killed; 2006: 934 injured and 388 killed; 2007: 1,103 injured and 458 killed; 2008: 876 injured and 374 killed; and 2009: 724 injured and 264 killed.

110. In addition, according to the information provided by the NGO *Observatorio Venezolano de Prisiones*, in a hearing held during the 140<sup>th</sup> period of sessions, in the first nine months of 2010, 352 prisoners were killed and 736 wounded in Venezuela in acts of violence.<sup>127</sup>

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<sup>123</sup> I/A Court H.R., Provisional Measures in the matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison), Order of the Inter-American Court of Human Rights of March 30, 2006, Operative paragraph 2.

<sup>124</sup> I/A Court H.R., Provisional Measures in the matter of Penitentiary Center of the Central Occidental Region (Uribana Prison), Order of the Inter-American Court of Human Rights, February 2, 2007, Operative paragraph 2.

<sup>125</sup> I/A Court H.R., Provisional Measures in the matter of the Monagas Judicial Confinement Center ("La Pica"), Order of the President of the Inter-American Court of Human Rights, January 13, 2006, Considering paragraph 15; I/A Court H.R., Provisional Measures in the matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison), Order of the Inter-American Court of Human Rights, March 30, 2006, Considering paragraph 18.

<sup>126</sup> IACHR, *Democracy and Human Rights in Venezuela*, para. 881.

<sup>127</sup> IACHR, Public hearing: *Democratic Institutions and Human Rights Defenders in Venezuela (private hearing)*, 140<sup>th</sup> Ordinary Period of Sessions, requested by the Center for Justice and International Law (CEJIL), Acción Solidaria (ACSOL), COFAVIC, CEJIL, Acción Solidaria, Carlos Ayala Corao, Caritas Los Teques, Vicaría de Derechos Humanos de Caracas, PROVEA, and Observatorio Venezolano de Prisiones (OVP), October 29, 2010.

111. In this context, and after receiving information from various sources,<sup>128</sup> the IACHR spoke out on the practice of “Coliseo” at the Uribana Prison in its press releases 110/10 and 14/11. In those press releases, the IACHR deplored these acts of violence consisting of violent confrontations planned by inmates to “settle accounts”; they are organized and directed by the chiefs of the criminal organizations that control that prison (“*pranes*”). According to the codes established by the inmates themselves, in these struggles the use of knives or blades is allowed, as well as injuring the opponent on certain parts of the body. As of the date of the press release (November 2010) this aberrant practice had already left a total of four deaths and more than 100 wounded. These confrontations take place in the presence of the State agents entrusted with the security of the prison, and are a matter of public knowledge.<sup>129</sup>

112. The IACHR considers the existence of such practices unacceptable, and they constitute a clear breach of the State’s duty to create the conditions necessary for preventing brawls among inmates.<sup>130</sup> In addition, they constitute a breach of the fundamental duty of the State to maintain order and security in the prisons.

113. From 2004 to the date of this report, the IACHR has consistently reported grave acts of violence in the following countries of the region:<sup>131</sup> *Brazil* (in relation to the Urso Branco Prison, the Raimundo Vidal Pessoa Provisional Detention Center, and the events in May 2006 in the city of Sao Paulo in which there were more than 70 riots in different prisons, and many other acts of violence);<sup>132</sup> *El Salvador* (La Esperanza “La Mariona”, Sonsonate, and Cojutepeque prisons);<sup>133</sup> *Dominican Republic* (Higüey Prison);<sup>134</sup> *Guatemala* (31<sup>st</sup> Police Station of the National Civilian Police of Escuintla, Pavón and Pavoncito Prisons, Canadá Farm, and the Mazatenango Preventive Center);<sup>135</sup> *Honduras* (National Penitentiary of Támara and San Pedro Sula Prison);<sup>136</sup> *Venezuela* (the following

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<sup>128</sup> This matter was initially brought before the IACHR in the Public hearing on *Citizen Security, Prisons, Diversity, and Sexual Equality in Venezuela*, 140<sup>o</sup> Ordinary Period of Sessions, Participants: Foro por los Derechos Humanos y la Democracia (Justicia y Proceso Venezuela), Control Ciudadano, DIVERLEX and Una Ventana a la Libertad, October 29, 2010. Information on this matter was also received from other organizations such as Observatorio Venezolano de Prisiones; moreover, this practice of the “Coliseo” has been widely covered by the local press in the state of Lara.

<sup>129</sup> IACHR, Press Release Washington, D.C., November 9, 2010; and IACHR, Press Release 14/11 – IACHR reiterates need to prevent acts of violence in Venezuelan prison. Washington, D.C., February 22, 2011.

<sup>130</sup> See, I/A Court H.R., *Case “Juvenile Reeducation Institute” V. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 184. In this case the Court concluded that in the context of brawls among inmates, even though state agents are not the ones who directly produce the injuries or death of the prisoners, the international responsibility of the state is triggered when it clearly breaches its duty to prevent such incidents.

<sup>131</sup> The press releases of the IACHR organized by year are available at the section for the Press Office of the IACHR, available at: [http://www.oas.org/en/iachr/media\\_center/press\\_releases.asp](http://www.oas.org/en/iachr/media_center/press_releases.asp).

<sup>132</sup> IACHR Press Releases 13/04 and 114/10.

<sup>133</sup> IACHR Press Releases 16/04 and 52/10.

<sup>134</sup> IACHR Press Release 6/05.

<sup>135</sup> IACHR Press Releases 32/05 and 53/08.

<sup>136</sup> IACHR Press Releases 2/06 and 20/08.

prisons: Uribana, Guanare, Yare, Vista Hermosa, Tocarón, Internado Judicial de Reeducación, and Trabajo Artesanal La Planta, Centro Penitenciario de Occidente en Táchira);<sup>137</sup> *Argentina* (Santiago del Estero Prison);<sup>138</sup> and *Mexico* (Social Readaptation Center No. 1 of Durango).<sup>139</sup>

114. In these press releases, the IACHR has consistently reiterated that the States have the nonwaivable duty to guarantee the rights to life and humane treatment of persons deprived of liberty, in light of which they must adopt specific measures to prevent, investigate, and punish acts of violence in the prisons.

115. The IACHR, in the exercise of its different monitoring powers, has observed that the main causes of prison violence in the region are: the lack of effective control of order and internal security of prisons; the lack of sufficient and trained security personnel; corruption; the excessive use of force and humiliating treatment of prisoners by the security agents; the entry and circulation of alcohol, drugs, and money in the prisons; the possession of weapons by inmates; the activity of criminal groups that operate in the prisons, and the constant disputes among these groups for control of them; overcrowding and deficient conditions of detention; the lack of separation of inmates by categories; the lack of protection of vulnerable groups; the absence of productive activities for the prisoners;<sup>140</sup> discriminatory and abusive treatment of prisoners' family members; and the shortcomings in the administration of justice, such as judicial delay.<sup>141</sup>

116. There is not, nor can there be, any reason for the State to abdicate its preemptory duty to protect the life of and ensure humane treatment for persons who are subject to its immediate, complete, and constant control, and who lack any effective capacity for self-determination and defense on their own. The most effective means of ensuring the rights of persons deprived of liberty is to adopt preventive measures. The

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<sup>137</sup> IACHR Press Releases 1/07, 10/10, 27/10, 50/10, 110/10 and 7/11.

<sup>138</sup> IACHR Press Releases 55/07.

<sup>139</sup> IACHR Press Release 9/10.

<sup>140</sup> The representatives of the IACHR who visited the prisons of Mendoza, December 13 to 17, 2004, verified that one of the frequent causes of violence among prisoners was precisely the lack of activities in which to engage themselves during the recreation hours. See, I/A Court H.R., Provisional Measures in the matter of Mendoza Prisons, Order of the Inter-American Court of Human Rights, June 18, 2005, Having seen paragraph 24(b).

<sup>141</sup> This situation is evident to the point that in practice many of the riots, hunger strikes, etc. that occur in the prisons – whether organized by the prisoners or by their relatives – are motivated precisely by situations such as judicial delay or shortcomings in the legal advocacy provided by public defenders. See, for example, IACHR, Annual Report 2008, Chapter IV, Venezuela, OEA/Ser.L/II.134, Doc. 5 Rev.1, adopted on February 25, 2009, para. 428. In addition, in the context of the precautionary measures granted by the IACHR with respect to the Unidade de Internamento Socioeducativo in Brazil, it was observed that one of the causes of the constant riots and disorders at that establishment were the shortcomings of the public defender services offered to the prisoners. Precautionary Measures MC-224-09, *Adolescentes privados de libertad en la Unidad de Internación Socioeducativa (UNIS)*, Brazil. Another example may be seen in the provisional measures for the Uribana prison, in which the petitioners alleged that some of the hunger strikes and other protest actions at that prison are expressions of discontent over procedural delays. See I/A Court H.R., Provisional Measures in the matter of Penitentiary Center of the Central Occidental Region (Uribana Prison), Order of the Inter-American Court, February 2, 2007, Having seen paragraph 2(d).



States should prioritize preventive actions aimed precisely at controlling and reducing the factors of violence in prisons, above and beyond repressive actions. Drawing up and effectively implementing preventive strategies for avoiding the escalation of violence in prisons is essential for ensuring prisoners' lives and personal security. Similarly, it is essential to ensure that persons deprived of liberty have the conditions required for living in dignity.

117. In this regard, the *Principles and Best Practices on the Protection of Persons Deprived of Liberty* establish: "In accordance with international human rights law, appropriate and effective measures shall be adopted to prevent violence amongst persons deprived of liberty, or between persons deprived of liberty and the personnel"; and suggests the following measures, among others, to achieve those ends:

- (a) Separate the different categories of persons deprived of liberty in conformity with the criteria set down in the present document;
- (b) Provide periodic and appropriate instruction and training for the personnel;
- (c) Increase the number of personnel in charge of internal security and surveillance, and set up continuous internal surveillance patterns;
- (d) Effectively prevent the presence of weapons, drugs, alcohol, and other substances and objects forbidden by law, by means of regular searches and inspections, and by using technological and other appropriate methods, including searches to personnel;
- (e) Set up early warning mechanisms to prevent crises or emergencies;
- (f) Promote mediation and the peaceful resolution of internal conflicts;
- (g) Prevent and combat all types of abuse of authority and corruption; and
- (h) Eradicate impunity by investigating and punishing all acts of violence and corruption in accordance with the law.<sup>142</sup>

This list of best practices is not definitive; it is based on the experience of the Inter-American human rights system and on consideration of the main international obligations of States. Accordingly, as can be seen throughout this report, another series of measures need to be adopted, in keeping with the specific context of each State, to effectively respect and ensure the fundamental rights of persons deprived of liberty.

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<sup>142</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XXIII (1).

**C. Judicial oversight of detention as a guarantee of the rights to life and humane treatment**

118. In the context of the Inter-American human rights system this fundamental right is established in Article XXV of the American Declaration and in Articles 7.5 and 7.6 of the American Convention, as follows:

American Declaration

Article XXV: “Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay [...]”.

American Convention

Article 7. (5) Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power [...] (6) Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

Likewise, the Inter-American Convention on Forced Disappearance of Persons<sup>143</sup> establishes that “[e]very person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law” (Article XI).

In addition, the Principles and Best Practices establish:

Principle III. (1) Every person shall have the right to personal liberty and to be protected against any illegal or arbitrary deprivation of liberty. The law shall prohibit, in all circumstances, incommunicado detention of persons and secret deprivation of liberty since they constitute cruel and inhuman treatment. Persons shall only be deprived of liberty in officially recognized places of deprivation of liberty.

Principle V. Every person deprived of liberty shall, at all times and in all circumstances, have the right to the protection of and regular access to competent, independent, and impartial judges and tribunals, previously established by law.

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<sup>143</sup> Which to date has been ratified by the following fourteen countries: Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela.

[...]

All persons deprived of liberty shall have the right, exercised by themselves or by others, to present a simple, prompt, and effective recourse before the competent, independent, and impartial authorities, against acts or omissions that violate or threaten to violate their human rights.<sup>144</sup>

119. Under the rules established by the American Convention, effective judicial oversight of the detention or arrest of a person imposes two fundamental – independent and mutually complementary – obligations on the part of the State: the obligation to bring any detained person promptly before a judge or other officer authorized by law to exercise judicial power (Article 7.5), and the obligation to allow anyone who is deprived of his liberty immediate recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention; that is to say, habeas corpus or personal appearance of the detainee (Article 7.6). Habeas corpus ensures that the detainee is not exclusively at the mercy of the detaining authority, and this protection must always be accessible.<sup>145</sup> The Commission has established that the writ of habeas corpus:

Is the traditional remedy which protects by way of recourse one's physical or corporal liberty or freedom of movement by means of a summary judicial proceeding that takes the form of a trial. As a rule, the writ of habeas corpus protects persons who are already being deprived of their freedom under unlawful or arbitrary circumstances, precisely in order to put an end to the circumstances that extend the deprivation of their freedom. Whether or not this remedy is effective in affording protection depends in large part on whether the petition seeking this remedy is acted on swiftly, thus making it a suitable and effective means of reaching a decision on a matter in as little time as possible.<sup>146</sup>

120. Fulfillment of these obligations by the State is essential for effective protection of such fundamental unrepeatable rights as the right to life and the right to humane treatment.<sup>147</sup> That is why the Commission has argued that “[t]he single most

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<sup>144</sup> Similar provisions could be found in other human rights instruments, like the International Covenant on Civil and Political Rights (Article 9), the European Convention on Human Rights (Article 5), and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 4, 11, 15, 16, 32 y 37); and with regard to the juvenile justice, in the Convention on the Rights of the Child (Article 37), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (Rule 10) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 22).

<sup>145</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VII, para. 24.

<sup>146</sup> IACHR, Report No. 41/99, Merits, Minors in Detention, Honduras, March 10 1999, para. 61.

<sup>147</sup> This protection is particularly relevant in the case of children and adolescents, who by their own condition of vulnerability require strengthened safeguards. This topic is extensively developed by the Commission in: IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 78, adopted on July 13, 2011, (hereinafter “*Juvenile Justice and Human Rights in the Americas*”), paras. 225-226.

important protection of the rights of a detainee is prompt appearance before a judicial authority responsible for overseeing the detention,"<sup>148</sup> and that the right to request a decision on the lawfulness of the detention is the fundamental guarantee of the constitutional and human rights of a detainee deprived of his liberty by agents of the State. This right may not be suspended under any circumstances, and its importance cannot be overestimated.<sup>149</sup>

121. The essential content of Article 7 of the American Convention is protection of the liberty of the individual against interference by the State.<sup>150</sup> To that end, it enshrines guarantees that represent limits to the exercise of authority by State agents.<sup>151</sup> The act of detaining or arresting someone is a manifestation of the exercise of the effective power of the State over a person, which is why both international law and the constitutional and legal systems of democratic States establish a series of guarantees designed to ensure that actions carried out by the authorities abide by certain limits proper to the rule of law and necessary to guarantee the fundamental rights of all citizens.

122. The IACHR has stressed that any deprivation of liberty must be strictly limited to cases or circumstances explicitly contemplated in law and must abide strictly by the procedures established for that purpose. Otherwise, the detainee is, *de facto*, exposed to arbitrariness and abuse by the authority executing the arrest. Therefore, in order to ensure effective judicial oversight of the detention, the competent court must be quickly appraised of the persons who are held in confinement.<sup>152</sup> To avoid risks of this nature, the Commission has suggested that a delay of more than two or three days in bringing a detainee before a judicial authority will generally not be considered reasonable.<sup>153</sup> Similarly, the European Court of Human Rights has considered that a lapse of four days between arrest and appearance before a judge or other judicial officer exceeds the promptness required under Article 5(3) of the European Convention.<sup>154</sup>

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<sup>148</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VII, para. 21. See also, United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 39.

<sup>149</sup> IACHR, Report No. 1/97, Case 10,258, Merits, Manuel García Franco, Ecuador, February 18, 1998, para. 57.

<sup>150</sup> I/A Court H. R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 129; I/A Court H. R., *Case of Juan Humberto Sánchez V. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 84.

<sup>151</sup> I/A Court H.R., *Case of Servellón-García et al. V. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 88.

<sup>152</sup> IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II.104. Doc. 49 rev. 1, October 7, 1999. (hereinafter "*Report on the Situation of Human Rights in the Dominican Republic*"), Ch. VI, para 219; IACHR, Report No. 2/97, Cases 11.205, 11.236, 11.238, 11.239, 11.242, 11.243, 11.244, 11.247, 11.248, 11.249, 11.251, 11.254, 11.255, 11.257, 11.258, 11.261, 11.263, 11.305, 11.320, 11.326, 11.330, 11.499, and 11.504; Jorge Luis Bronstein *et al.*, Merits, Merits, Argentina, March 11, 1997, para. 11.

<sup>153</sup> IACHR, *Report on Terrorism and Human Rights*, para. 122.

<sup>154</sup> European Court of Human Rights, *Case of Brogan and others v. The United Kingdom*, (Application no. 11209/84; 11234/84; 11266/84; 11386/85), Judgment of November 29, 1988, Grand Chamber, para. 62.

123. When a detention is not ordered or promptly supervised by a competent judicial authority, when a detainee is not fully informed of the reason for the detention, or when he or she has no access to legal counsel, and when the detainee's relatives have been unable to locate him or her promptly, the legal rights of a detainee as well as his or her personal integrity are clearly jeopardized.<sup>155</sup> The relationship between illegal or arbitrary detention and the violation of an individual's other fundamental rights is not a function of circumstance. Rather, in some cases it may be the logical consequence of a relationship of dependency between the security forces, and administrative and judicial authorities.<sup>156</sup>

124. The Inter-American Court has similarly and consistently maintained, since the *Loayza Tamayo* and *Street Children (Villagrán Morales et al)* cases, that "a person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated".<sup>157</sup> Indeed, there are numerous instances in the Inter-American human rights system in which completely unlawful detentions were the first step leading to extrajudicial executions, forced disappearances, and the carrying out of individual acts or systematic practice of torture.

125. The IACHR has ascertained that prolonged periods of detention before charges are brought and before trial, and lack of access to justice, pose a really serious problem in several countries of the region. Thus, to cite one example, in its 2005 Country Report on Haiti, the IACHR confirmed that detainees spent several months, and even years, in detention cells before seeing a judge. Frequently, pretrial detention periods exceeded the prison sentences they would have received, if convicted.<sup>158</sup> During a visit to the National Penitentiary in April 2005, the IACHR discovered that only nine of the 1,052 inmates held there had been convicted of any crime. And, according to information provided by the Ministry of Justice, only four of the 117 women held in the Petionville women's prison had been sentenced.<sup>159</sup>

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<sup>155</sup> See, IACHR, *Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the international community*, OEA/Ser/L/V/II.123 doc. 6 rev 1, adopted on October 26, 2005, (hereinafter "*Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the international community*"), Ch. III, para. 113; and IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VII, para. 37; IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser.L/V/II.110 Doc.52, adopted on March 2001, (hereinafter "*Third Report on the Situation of Human Rights in Paraguay*"), Ch. IV, para. 30; IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, Ch. VI, para.219..

<sup>156</sup> See, e.g., IACHR, *Report on the Situation of Human Rights in Mexico*, Ch. III, para. 219.

<sup>157</sup> I/A Court H.R., *Case of The "Street Children" V. Guatemala (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 166; /A Court H.R., *Case of Loayza Tamayo V. Peru*. Judgment of September 17, 1997. Series C No. 33, para. 57.

<sup>158</sup> A clear example of this situation is observed in the case *Yvone Neptune*, in which the victim did not appear before a judge until eleven months after his arrest. I/A Court H.R., *Case of Yvon Neptune V. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, paras. 102-103.

<sup>159</sup> IACHR, *Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the international community*, Ch. III, para. 165.

126. Following a closer review of this situation, the IACHR concluded that the principal factors that have contributed to making prolonged pre-trial detention a systemic and widespread problem in Haiti included: (a) en masse arrests of people who are then kept in police detention cells pending possible investigations; (b) structural shortcomings in the administration of justice system that have led to alarming backlogs on the judges' dockets and failure to meet legal deadlines for judicial proceedings; (c) the lack of free legal representation for indigent defendants, who, as a result, are often unable to submit writs of habeas corpus; and (d) the lack of operational capacity of police departments, especially in the Central Department of the Judicial Investigation Police and among preliminary investigation officers.<sup>160</sup>

127. In its report on its 2007 visit to Haiti, the IACHR followed up on the question of judicial oversight of detention and included a number of additional factors in its analysis, such as reports on mistreatment and torture by police at police detention centers and the appalling conditions in those detention facilities, which are not designed to hold inmates for prolonged periods of time; which by itself constitutes another form of cruel, inhuman, and degrading treatment. Furthermore, the IACHR analyzed the tension between pressure on the police force to produce concrete results in fighting crime and the lack of resources available for complying with its mandate.<sup>161</sup> That, too, is another factor heightening the risk of detainees being mistreated and subjected to arbitrary misuse of authority.

128. Another State in which the IACHR has encountered a chronic problem of ineffective oversight of the lawfulness of detentions is Guatemala; particularly with regard to arrests without a judicial warrant and failure to place detainees promptly under judicial supervision. For that reason, in its Fifth Special Report on the Human Rights Situation in Guatemala (2001), the IACHR underscored the fact that, in practice, according to the information analyzed, over half the people being held in pre-trial detention centers had been taken there by police officers, without having been first taken before a judge. The IACHR was especially alarmed by reports that, in many cases, judges simply approve pre-trial detention on the basis of police reports, without further investigation or inquiry.<sup>162</sup> Subsequently, during a thematic hearing in 2006, the IACHR received information indicating that the patterns of police abuse and arbitrariness and lack of effective judicial oversight of detentions continued in Guatemala.<sup>163</sup>

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<sup>160</sup> IACHR, *Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the international community*, Ch. III, paras 166-172.

<sup>161</sup> IACHR, *Observations of the Inter-American Commission on Human Rights upon conclusions of its April 2007 visit to Haiti*, OEA/Ser.L/V/II.131. Doc. 36, adopted on March 2, 2008, paras 19-35.

<sup>162</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VII, paras. 4, 16, 21-24.

<sup>163</sup> IACHR, Public hearing: *Situation of the Penitentiary System in Guatemala*, 124<sup>o</sup> Ordinary Period of Sessions, requested by Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), March 6, 2006.

129. In addition, in its General Comments on Guatemala, issued in 2006, the United Nations Committee against Torture voiced its concern regarding reports of women being subjected to acts of sexual violence in police stations. It therefore stressed that the State party should “take steps to ensure that all arrested women are brought immediately before a judge and then transferred to a detention center for women, if so ordered by the judge.”<sup>164</sup> This comment by the Committee against Torture shows how important effective judicial oversight of detentions is as a mechanism for preventing torture and cruel, inhuman, and degrading treatment.

130. Worth noting, too, is the fact that, in its 2003 report on Argentina, the United Nations Working Group on Arbitrary Detention pointed out that a major cause for concern was the lack of effective remedies against detention. Most of the detainees interviewed by the Working Group said they had been placed in pre-trial detention without a proper hearing before a judge. They said they had simply been taken before a “sumariante” (preliminary proceedings examining officer) or court clerk, who had ordered pre-trial detention by signing on behalf of the judge. According to the Working Group’s report, detention orders are communicated to prisoners through the prison authorities, without the accused being taken before a judge to be notified properly in person.<sup>165</sup>

131. For its part, in its 2010 Concluding Observations Report on Argentina, the United Nations Human Rights Committee reiterated its concern regarding the detention by police of persons, including minors, “whom they have not apprehended in the act of committing an offense, and to do so without a warrant or subsequent judicial review, for the sole stated purpose of verifying their identity.” On that subject, during his visit to Buenos Aires province in 2010, the Rapporteur on the Rights of Persons Deprived of Liberty met with several ombudspersons (*Defensores Públicos*) who stated that the detention of children, for up to 12 hours without any judicial oversight, for the purpose of verifying their identity, was a widespread practice in that part of the country.

132. The IACHR emphasizes that the requirement that detention not be left to the sole discretion of the state agents responsible for carrying it out is so fundamental that it cannot be overlooked in any context.<sup>166</sup>

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<sup>164</sup> United Nations, Committee against Torture, Consideration of Reports Submitted by State Parties under Article 19 of the Convention, *Conclusions and recommendations on Guatemala, CAT/C/GTM/CO/4*, adopted on July 25, 2006, para. 17.

<sup>165</sup> United Nations, Working Group on Arbitrary Detention, *Report on Mission to Argentina, E/CN.4/2004/3/Add.3*, adopted on December 23, 2003, para. 37. On this visit, the Work Group was in the Federal capital and the provinces of Buenos Aires, Mendoza and Salta, and held individual interviews, in private and without witnesses with 205 detainees. With regard to the systematic application of preventive detention as a policy of public security in the province of Buenos Aires, see, Center for Legal and Social Studies (CELS), *Derechos Humanos en Argentina Informe 2010*, 2010, Ch. IV.

<sup>166</sup> In this regard the Commission has said that “[w]here the procedures provided by law are not followed – where arrest and detention are effectuated absent a judicial order, where detainees are not properly registered, where they are held in facilities not authorized for detention or are transferred to detention facilities absent judicial authorization – prompt judicial supervision is not possible, and the detainee is defenseless against the potential abuse of his or her rights.” IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VII, para. 23.

133. Likewise, the Inter-American Court has established that:

[T]he judge is responsible for guaranteeing the rights of the detained person, authorizing the adoption of precautionary or coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner in keeping with the presumption of innocence, as a guarantee that tends to avoid arbitrariness or illegality of the detentions, as well as guaranteeing the right to life and humane treatment.<sup>167</sup>

[...]

[I]n order to satisfy the requirement of Article 7(5) of “being brought” without delay before a judge or other officer authorized by law to carry out the judicial functions, the competent authority must hear the detained person personally and evaluate all the explanations that the latter provides, in order to decide whether to proceed to release him or to maintain the deprivation of liberty.<sup>168</sup> Otherwise, it would be tantamount to stripping the judicial review established in Article 7(5) of the Convention of its effectiveness.<sup>169</sup>

The immediate judicial revision of the arrest has particular relevance when it is applied to captures *infraganti* and it is a State duty in order to guarantee the detainee’s rights.<sup>170</sup>

134. Therefore it is essential that a detainee really be brought before a judge or other official authorized by law to perform judicial functions. In other words, that official must be competent, independent, and impartial, legally empowered to exercise effective judicial protection of fundamental rights that may have been violated. That requirement is not met when a detainee is brought before an official or court clerk who is not vested with such legal powers or when he or she is brought before administrative authorities

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<sup>167</sup> I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 105; I/A Court H.R., *Case of Yvon Neptune V. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para.. 107; I/A Court H.R., *Case of Chaparro-Álvarez and Lapo-Íñiguez V. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 81; I/A Court H. R., *Case of García Asto and Ramírez Rojas V. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 109.

<sup>168</sup> I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 109; I/A Court H.R., *Case of Bayarri V. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, párr. 65; I/A Court H.R., *Case of Chaparro-Álvarez and Lapo-Íñiguez V. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 85.

<sup>169</sup> I/A Court H.R., *Case of Bayarri V. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, párr. 65.

<sup>170</sup> I/A Court H. R., *Case of López Álvarez V. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 88.



pertaining, for example, to the Executive Branch.<sup>171</sup> Nor is that requirement of the Convention met, when the presentation of a detainee before a judicial authority is a mere formality.<sup>172</sup>

135. At the same time, the Inter-American Court has established that habeas corpus, as a guarantee against arbitrary and unlawful detention, is reinforced by the State's role as guarantor of the rights of persons deprived of liberty. By virtue of that function, the State has the responsibility to guarantee the rights of individuals under its custody as well as that of supplying information and evidence pertaining to what has happened to the detainee.<sup>173</sup> The Court has further established that "habeas corpus performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment."<sup>174</sup> From what has been said before, it follows that writs of habeas corpus and of *amparo* are among those judicial remedies that are essential for the protection of various rights whose derogation is prohibited by the American Convention and that serve, moreover, to preserve legality in a democratic society.<sup>175</sup>

136. Regarding the scope of the judicial review, the IACHR has established that:

The review of the legality of a detention implies confirming, not only formally but also substantively, that the detention conforms to the requirements of the judicial system and that it does not violate any of the detained person's rights. That such confirmation is carried out by a judge, invests the proceeding with certain guarantees that are not duly protected if the decision is in the hands of an administrative authority.<sup>176</sup>

Accordingly, the Inter-American Court has laid down the basic principle that "The analysis by the competent authority of a judicial recourse that debates the legality of the imprisonment can not be reduced to a mere formality, instead it must examine the reasons

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<sup>171</sup> As in the previously cited case of Mr. Tranquilino Vélez Loo, who after his arrest for violating the immigration laws of the Republic of Panama was "transferred" or placed at the disposal of the Immigration and Naturalization Office of the province of Darien by the National Police.

<sup>172</sup> See also, European Court of Human Rights, *Case of Baranowski v. Poland*, (Application no. 28358/95), Judgment of March 28, 2000, First Section, para. 57.

<sup>173</sup> I/A Court H. R., *Case of Tibi V. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 129.

<sup>174</sup> I/A Court H.R., *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 35.

<sup>175</sup> I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 33; I/A Court H.R., *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 42.

<sup>176</sup> IACHR, Report No. 66/01, Case 11.992, Merits, Dayra María Levoyer Jiménez, Ecuador, June 14, 2001, para. 79.

invoked by the claimant and make express statements regarding the same, according to the parameters established by the American Convention.”<sup>177</sup>

137. Article 7(6) provides for a habeas corpus remedy being sought “by the interested party or another person in his behalf,” which implies that the State must ensure the conditions needed for access to that remedy. For that, it is essential that a detainee be informed in a language he/she understands of the reasons for his/her detention, of the time and place of his detention, and of the identity of the authority carrying the detention out. In addition, he/she must be allowed to communicate with another person, so that the latter can query the lawfulness of the detention.<sup>178</sup> In this regard, the Inter-American Court has established that:

[W]hen the detainee is deprived of his liberty and before making his first statement before the authorities, the detainee must be informed of his right to establish contact with another person, for example, a next of kin, an attorney, or a consular official, as appropriate, to inform this person that he has been taken into custody by the State. Notification to a next of kin or to a close relation is especially significant, for this person to know the whereabouts and the circumstances of the accused and to provide him with the appropriate assistance and protection. In case of notification to an attorney, it is especially important for the detainee to be able to meet privately with him, which is inherent to his right to benefit from a true defense.<sup>179</sup>

138. The United Nations Standard Minimum Rules for the Treatment of Prisoners establish, with regard to the right of any detainee to establish contact with another person, that an untried prisoner:

[S]hall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution” (Rule 92).<sup>180</sup>

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<sup>177</sup> I/A Court H. R., *Case of López Álvarez V. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 96.

<sup>178</sup> See also, United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, paras. 30-32.

<sup>179</sup> I/A Court H. R., *Case of Tibi V. Ecuador*. Judgment of September 7, 2004. Series C No. 114. para. 112; I/A Court H. R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, paras. 129-130.

<sup>180</sup> On this matter, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment lays down that: “Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.” (Principle 16.1). Likewise, the International Convention for the Protection of All Persons from Enforced Disappearance establishes that: “[...] each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of  
Continues...

139. Thus, in the *Bulacio* case, the Inter-American Court ruled that the right to establish contact with another person was especially important in the case of the detention of children. “In this scenario, the authority carrying out the detention and in charge of the detention place for the minor must immediately notify the next of kin or, otherwise, their representatives for the minor to receive timely assistance from the person notified.”<sup>181</sup>

140. This right of any child deprived of liberty is established in Article 37(d) of the Convention on the Rights of the Child and is developed in greater detail in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), which provide that “[u]pon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter” (Rule 10.1). Similar provisions are found in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 16.3)) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Rule 22).

141. Thus, for both juveniles and adults, practices such as the prolonged incommunicado or secret detention of persons constitute in themselves violation of the right to judicial oversight of the detention or apprehension of a person, and of other fundamental rights.

142. In the specific case of solitary confinement for criminal investigation purposes, the Inter-American Court established, in the *Suárez Rosero* case, as a fundamental principle that:

Incommunicado detention is an exceptional measure the purpose of which is to prevent any interference with the investigation of the facts. Such isolation must be limited to the period of time expressly established by law. Even in that case, the State is obliged to ensure that the detainee enjoys the minimum and non-derogable guarantees established in the Convention and, specifically, the right to question the lawfulness of the detention and the guarantee of access to effective defense during his incarceration.<sup>182</sup>

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...continuation

the person deprived of liberty, their representatives or their counsel, access to at least the following information: (a) The authority that ordered the deprivation of liberty; (b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty; (c) The authority responsible for supervising the deprivation of liberty; (d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer; (e) The date, time and place of release; (f) Elements relating to the state of health of the person deprived of liberty; (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.” (Article 18.1).

<sup>181</sup> I/A Court H. R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 130.

<sup>182</sup> I/A Court H.R., *Case of Suárez Rosero V. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 51.

[...]

[A] detained person must be guaranteed the right of habeas corpus at all times, even when he is being held in exceptional circumstances of incommunicado detention established by law.<sup>183</sup>

143. Incommunicado detention is indeed an exceptional measure, which must meet the criteria of legality, necessity, and proportionality, and pursue a legitimate purpose in a democratic society. When such a measure exceeds those parameters and becomes a real obstacle to judicial oversight of detention, it violates the rights established in Articles 7.5, 7.6, and 25 of the American Convention.<sup>184</sup>

144. Secret or clandestine detention of a person constitutes an even graver violation of the aforementioned rights.<sup>185</sup> According to international law, by definition, “secret detention” occurs when:

State authorities acting in their official capacity, or persons acting under the orders thereof, with the authorization, consent, support or acquiescence of the State, or in any other situation where the action or omission of the detaining person is attributable to the State,<sup>1</sup> deprive persons of their liberty; where the person is not permitted any contact with the outside world (“incommunicado detention”); and when the detaining or otherwise competent authority denies, refuses to confirm or deny or actively conceals the fact that the person is deprived of his/her liberty hidden from the outside world, including, for example family, independent lawyers or non-governmental organizations, or refuses to provide or actively conceals information about the fate or whereabouts of the detainee.

[...]

Secret detention does not require deprivation of liberty in a secret place of detention [...] [It] may take place not only in a place that is not an officially recognized place of detention, or in an officially recognized place of detention, but in a hidden section or wing that is itself not officially recognized, but also in an officially recognized site. Whether detention is secret or not is determined by its incommunicado character and by the

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<sup>183</sup> I/A Court H.R., *Case of Suárez Rosero V. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 59.

<sup>184</sup> IACHR, Report No. 66/01, Case 11.992, Merits, Dayra María Levoyer Jiménez, Ecuador, June 14, 2001; IACHR, Report No. 1/97, Case 10,258, Merits, Manuel García Franco, Ecuador, February 18, 1998.

<sup>185</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 38; United Nations, Working Group on Arbitrary Detention, Report to the [former] UN Commission on Human Rights, E/CN.4/2006/7, adopted on December 12, 2005, Ch. III:(A) Secret Prisons, paras. 58-59.

fact that State authorities, do not disclose the place of detention or information about the fate of the detainee.

[...] It can be a prison, police station, governmental building, military base or camp, but also, for example, a private residence, hotel, car, ship or plane.<sup>186</sup>

145. Secret detention is in itself the denial of all the guarantees established in Article 7 of the American Convention, given that the person involved is materially prevented from triggering any procedure contemplated in law for verifying the legality of his or her detention.<sup>187</sup> Generally speaking, the victim can ascertain very little regarding his whereabouts, or his kidnappers, and is not in a position to identify anyone. Not only is it impossible for the victim to exercise his/her legal rights while being detained; it will also be extremely difficult to challenge the authorities afterwards, even if the victim is released alive.<sup>188</sup> Given that this practice is designed precisely to leave no trace of the victim's whereabouts, and given the intense maltreatment and even acts of torture to which victims are subjected, they find it very difficult to meet the conditions of a party to a suit required to obtain justice.<sup>189</sup>

#### **D. Intake, registration, and initial medical examination**

146. Keeping records of persons held in prisons, initial medical exams, and appropriate checks and protocols upon admission are not just sound penitentiary practices but also effective ways to protect the fundamental rights of detainees. For that reason, international human rights law regards them as essential measures to be implemented by States with all due diligence and seriousness. Tailored to the particular circumstances of each case, these procedures must be observed in all centers in which the State holds people in custody, in the broad sense of deprivation of liberty used in this report.

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<sup>186</sup> United Nations, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism; the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Working Group on Arbitrary Detention; and the Working Group on Enforced or Involuntary Disappearances, A/HRC/13/42, adopted on February 19, 2010 and re-issued for technical reasons on May 20, 2010, paras. 8-10.

<sup>187</sup> IACHR, Report No. 1/97, Case 10,258, Merits, Manuel García Franco, Ecuador, February 18, 1998, para. 58.

<sup>188</sup> IACHR, Report No. 31/96, Case 10.526, Merits, Diana Ortiz, Guatemala, October 16, 1996, para. 113.

<sup>189</sup> In the past the Commission has widely referred to the issue of secret detentions in the context of several military dictatorships that existed in the region. In this regard, see for example: IACHR, *Report on the Situation of Human Rights in Chile*, OEA/Ser.L/V/II.66. Doc. 17, adopted on September 9, 1985, Ch. V; IACHR, *Report on the Situation of Human Rights in Panama*, OEA/Ser.L/V/II.44. Doc. 38, rev. 1, adopted on June 22, 1978, Ch. III, section 4; IACHR, *Report on the Situation of Human Rights in El Salvador*, OEA/Ser.L/V/II.46 doc. 23 rev. 1, adopted on November 17, 1978, Ch. IV; IACHR, *Report on the Status of Human Rights in Chile*, OEA/Ser.L/V/II.34 doc 21 corr. 1, adopted on October 25, 1974, Ch. VI.

### *Admission*

147. Referring to the admission of persons to prisons, the Principles and Best Practices establish:

Principle IX (1): The authorities responsible for places of deprivation of liberty shall refuse the admission of any person, unless this is authorized by a commitment order or an order of deprivation of liberty issued by a judicial, administrative, medical or other competent authority, in accordance with the requirements set out by law.

Upon admission, the persons deprived of their liberty shall be informed clearly and in a language they understand, either in writing, verbally, or by other means, of their rights, duties, and prohibitions in their place of deprivation of liberty.<sup>190</sup>

148. Proper oversight of the admission of people to detention centers, which entails appropriate verification of the existence of an order of deprivation of liberty issued by a competent authority, is an added element reinforcing the legality of the deprivation of liberty itself. Detention center or prison personnel must make sure that each admission is duly authorized, as manifested by a valid commitment order.<sup>191</sup> Responsibility for complying with this requirement lies with both the central administration and the director and staff of each detention center.<sup>192</sup> Notwithstanding that requirement, in each such case, the person admitted must be brought immediately before a competent judicial authority.

149. It is also essential that the authorities ensure that each detainee or prison inmate has been correctly identified and is in fact the person referred to in the arrest warrant or sentence. In April and May 2010, for instance, the IACHR learned that in Colombia at least 4,907 prison inmates, or 6.17% of the prison population, had not been fully identified.<sup>193</sup> They allegedly include inmates referred to in proceedings under several names or “alias” who carry no identity documents or whose I.D.s in fact pertain to other people (including deceased persons or women).<sup>194</sup> That being so – in Colombia and in other

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<sup>190</sup> In the same vein, see, the Standard Minimum Rules for the Treatment of Prisoners (Rules 7.2 and 35); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 13 and 14); and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rules 20 and 24).

<sup>191</sup> In the region, this guarantee is stated, for example, in the Constitutions of Bolivia Article 23 (VI) and Chile Article 19.7.

<sup>192</sup> See in this regard, Penal Reform International (PRI), *Manual de Buena Práctica Penitenciaria: Implementación de las Reglas Mínimas de Naciones Unidas para el Tratamiento de los Reclusos*, 2002, p. 26.

<sup>193</sup> According to an official statement release by the head of the Department of Correctional Services (*Instituto Nacional Penitenciario* - INPEC), release on April 19, 2010.

<sup>194</sup> See in this regard, *El INPEC Desconoce la Identidad de 28 mil Presos Bajo su Custodia*, an article issued by *Diario El Tiempo* on April 18, 2010. See also, *El INPEC Pidió brazaletes para Reos Muertos, Libres o llocalizables*, and article issued by *Diario El Tiempo* on May 26, 2010.

countries in the region – it is incumbent on all the authorities involved with the custody of a person to check and effectively ascertain that person’s identity.

150. At the same time, persons admitted to a detention center, of any kind, must be informed immediately and in a language they understand of their rights, the way to exercise them, and the rules in force in the detention center. If people are ignorant of their rights, their ability to exercise them is seriously diminished. Providing persons deprived of their liberty with information on their rights constitutes a fundamental element in the prevention of torture and ill-treatment.<sup>195</sup> In particular, they must be informed of their right to contact another person and inform that person that they have been detained in that center. It is recommended that this information be posted prominently in a language that detainees can understand. Thus, in the case of detention centers in areas in which other languages are spoken, in addition to the official language of the State, this information should also be posted in those other languages.

#### *Registration*

151. In the Inter-American human rights system, the Inter-American Convention on Forced Disappearance of Persons establishes that “[t]he States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.” (Article XI)

152. Likewise, the Principles and Best Practices establish:

Principle IX (2): The personal data of persons admitted to places of deprivation of liberty shall be recorded into an official registry, which shall be made available to the person deprived of liberty, his or her representative, and the competent authorities. The registry shall include, as a minimum the following information:

- a. Personal information including, at least, the following: name, age, sex, nationality, address and name of parents, family members, legal representatives or defense counsel if applicable, or other relevant data of the persons deprived of liberty;
- b. Information concerning the personal integrity and the state of health of the persons deprived of liberty;
- c. Reason or grounds for the deprivation of liberty;
- d. The authority that ordered or authorized the deprivation of liberty;

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<sup>195</sup> United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, para. 148; United Nations, CAT/OP/PRY/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Paraguay*, June 7, 2010, para. 75. See also, United Nations, Committee against Torture, General Comment No. 2: Application of the Article 2 by the States parties, adopted at the 39<sup>th</sup> session (2007), para. 13. In *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies*, Volume I, HRI/GEN/1/Rev.9 (Vol. I) adopted on May 27, 2008, p. 127.

- e. The authority that conducted the person deprived of liberty to the institution;
- f. The authority legally responsible for supervising the deprivation of liberty;
- g. Time and date of admission and release;
- h. Time and date of transfers to another place and the destination;
- i. Identity of the authority who ordered the transfer and of the one who is responsible for it;
- j. Inventory of personal effects; and
- k. Signature of the persons deprived of liberty, or where this is impossible, an explanation about the reasons thereof.<sup>196</sup>

153. Regarding the crucial importance of keeping records of arrests, the IACHR stated in its Fifth Special Report on Human Rights in Guatemala (2001) that:

One of the most essential components of a properly functioning criminal justice system is an effective system for registering arrests and detentions. This obviously provides a crucial protection for the rights of the detainee, as well as facilitating a myriad of other functions, including, inter alia, the tracking of accurate statistics for use in policy development and implementation. [...] Such a registry must contain information identifying the detainee, the reasons for the detention and legal authority therefore, the precise time of admission and release, and information as to the order of commitment. A centralized, accurate and promptly accessible registry is a fundamental minimum safeguard.<sup>197</sup>

154. In fact, the IACHR discovered that there is no effective central registry system for keeping track of detainees in Guatemala.<sup>198</sup> Thus, in connection with the “*White Van*” (*Paniagua Morales et al*) case, the Inter-American Court ruled that the Guatemalan State had to adopt legislative, administrative, and any other necessary measures to guarantee the accuracy and disclosure of the registry of detainees, in the understanding that it would include the identity of each detainee, the grounds for detention, the

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<sup>196</sup> In the Universal System of Human Rights there are correlative provisions in the International Convention for the Protection of All Persons from Enforced Disappearance (Article 17.3); the Standard Minimum Rules for the Treatment (Rule 7.1); the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Principle 12); and particularly, with regard to children and adolescents, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 21). Moreover, the *Handbook on Prisoner File Management* (2008), published by the United Nations Office for Drug and Crime (UNODC) has a practical guide for maintaining efficient systems for the registry of prisoners. That document is available at: [http://www.unodc.org/documents/justice-and-prison-reform/Prison\\_management\\_handbook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/Prison_management_handbook.pdf).

<sup>197</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VII, para. 18. Furthermore, this States' duty to keep registries of the detentions is also consecrated in the Constitutions of Bolivia (Article 23), Chile (Article 19.7), and Mexico (Article 16).

<sup>198</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VII, paras. 18-19.



competent authority, time of admission and release, and information regarding the arrest warrant.<sup>199</sup>

155. In addition, in its *Report on Terrorism and Human Rights*, the Inter-American Commission on Human Rights emphasized that:

An effective system for registering arrests and detentions and making that information available to family members, counsel and other persons with legitimate interests in the information has also been widely recognized as one of the most essential components of a properly functioning justice system, as it provides crucial protection for the rights of the detainee and reliable information for the accountability of the system.<sup>200</sup>

156. The Working Group on Arbitrary Detention considers that keeping proper records is a fundamental safeguard against disappearances, misuse of authority for corrupt purposes, and detentions far exceeding the authorized term, which are equivalent to arbitrary arrests with no legal basis.<sup>201</sup> In the same vein, the Subcommittee against Torture argues that “keeping proper records of the deprivation of liberty is one of the fundamental safeguards against torture and ill-treatment and a prerequisite for the effective exercise of due process rights.”<sup>202</sup>

157. Whether electronic or manual, a reliable registration and file management system enables the authorities to know who is being held and for how long. That information is essential for classifying inmates and, ultimately, for complying with the principle of individualized treatment. The compilation, systematization, and classification of data on prisoners and penitentiaries and the development of information management systems are key elements for devising penitentiary policies and the actual management of

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<sup>199</sup> I/A Court H.R., *Case of The “Panel Blanca” V. Guatemala (Paniagua Morales et al.)*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, paras. 195, 203 and 209 (Operative paragraph 4). See also, I/A Court H.R., *Case of Bámaca-Velásquez V. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 27, 2003 Operative paragraph 3. To date, the Commission has no information indicating that this record of arrests has been implemented by the State.

<sup>200</sup> IACHR, *Report on Terrorism and Human Rights*, para. 122.

<sup>201</sup> United Nations, Working Group on Arbitrary Detention, Report submitted to the Human Rights Council, A/HRC/7/4, adopted on January 10, 2008, Ch. II(D): Detention registries and power to release prisoners, para. 69.

<sup>202</sup> United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, para. 144; United Nations, CAT/OP/PRY/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Paraguay*, June 7, 2010, para. 73. See also, United Nations, Committee against Torture, General Comment No. 2: Application of the Article 2 by the States parties, adopted at the 39<sup>th</sup> session (2007), para. 13. In *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies*, Volume I, HRI/GEN/1/Rev.9 (Vol. I) adopted on May 27, 2008, p. 127.

detention centers. In that sense, accurate knowledge of the prison inmate population is vital, for instance, for controlling levels of overcrowding.<sup>203</sup>

158. Proper management of inmate records and files requires that data be handled systematically and efficiently in each prison and that they be made available to centralized information systems which can be consulted by the prison administration authorities looking for reliable data and statistics or trying to locate individual inmates. Moreover, the State has a duty to act with due diligence in transferring and filing documents sent by the courts to the detention centers. This is especially important in the case of judgments, release orders, judicial summonses, and other key documents relating to prisoners.

159. In addition to the essential information listed in Principle IX (2) of the Principles and Best Practices, the IACHR considers it a good practice when the authorities in charge of penitentiaries also keep records of visits by family members, attorneys, and monitoring organizations, and even of complaints lodged by the inmates themselves concerning the correctional authorities. Furthermore, in prisons, it is important to have precise information on file regarding the location of each inmate, by section, block, and cell.

160. To ensure proper maintenance of the roster and filing and handling of the information on detainees and detention centers, all the authorities involved need to be adequately trained and provided with the tools and technology required to perform those functions. In addition, suitable oversight and monitoring mechanisms need to be developed to ensure compliance with these admission and registration procedures.

161. Recognizing the importance attached in international human rights law to the existence and proper administration of detainee records, the recent International Convention for the Protection of All Persons from Enforced Disappearance contains a provision whereby the States Parties commit to prevent and impose sanctions for failure to record the deprivation of liberty of any person or the recording of any information which the official responsible for the official registry knew or should have known to be inaccurate (Article 22). This was the first international treaty to contain a safeguard of this kind.

*Initial medical exam*

162. The Principles and Best Practices establish

Principle IX (3): All persons deprived of liberty shall be entitled to an impartial and confidential medical or psychological examination, carried out by idoneous medical personnel immediately following their admission to the place of imprisonment or commitment, in order to verify their state of physical or mental health and the existence of any mental or physical injury or damage; to ensure the diagnosis and

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<sup>203</sup> I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 89.

treatment of any relevant health problem; or to investigate complaints of possible ill-treatment or torture.<sup>204</sup>

163. Initial medical examination of a person deprived of liberty constitutes an important safeguard for determining whether the detainee has been subjected to torture or ill-treatment during arrest or detention and, in the case of persons admitted to penitentiaries, for detecting whether they have suffered ill-treatment of that kind during their prior stay in temporary deprivation of liberty centers.<sup>205</sup> The initial medical examination of people who are deprived of their liberty is a way to prevent torture; it represents the ideal way of evaluating their state of health, the type of medical care they may need, and even an opportunity to convey information regarding sexually transmitted diseases.<sup>206</sup>

164. As with the procedures for the admission and registration of persons deprived of their liberty, the practice of initial medical inspection is not limited to penitentiaries; it also includes other places of deprivation of liberty, such as police posts and stations and provisional detention centers. Said inspection should be compulsory and repeated regularly, and required upon transfer to another place of detention.<sup>207</sup>

165. According to the Subcommittee on Prevention of Torture, the initial medical examination should take place as soon as possible after a person deprived of his or her liberty enters a place of detention and it should be conducted under conditions of privacy and confidentiality by an independent physician, without the presence of police or prison officers. In exceptional cases, if the doctor considers that a detained person poses a danger, the presence of a police officer nearby may be necessary. These examinations should not be superficial observations conducted as a mere formality. They must diligently ascertain the condition of the person examined, allowing that person to freely communicate to the physician anything he or she considers relevant. It is also important

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<sup>204</sup> Similar standards are set forth by: the Standard Minimum Rules for the Treatment of Prisoners (Rule 24); the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Principle 24), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 50).

<sup>205</sup> According to the Special Rapporteur on Torture of the UN, one of the basic safeguards against ill-treatment is an independent medical examination performed without any delay after the admission of a person in the place of detention. This medical examination should be mandatory and must be repeated regularly, and should be mandatory when a person is transferred to another place of detention. United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 36.

<sup>206</sup> United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, paras. 130-131 and 172.

<sup>207</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 36

that records be kept of these medical examinations and that they include any traumatic injuries detected.<sup>208</sup>

166. This medical inspection must not be regarded as a mere formality or conducted superficially. On the contrary, a proper clinical examination of the detainee must be carried out, during which the detainee can inform the health professional of everything he or she considers relevant. Among other reasons, this examination is important because there are forms of torture that leave, no or very few, visible signs, such as blows to the soles of the feet, asphyxiation, and position tortures, like suspension.<sup>209</sup> In addition, the examination must be good enough to detect the psychological sequels of torture or propensity to commit suicide, so as to be able to prescribe the correct treatment and refer the patient to a specialist.

167. According to the SPT, these examinations must adequately describe:

1) the treatment received, (2) the source of any injuries, or (3) the type, location and characteristics of all injuries, details that could serve not only to determine the consistency of reports or complaints of torture, thereby constituting a useful tool for the prevention of torture, but also to preclude false complaints against the police alleging behavior of this kind.<sup>210</sup>

168. This initial medical examination is also crucial for detecting contagious diseases (for instance, skin or sexually transmitted), which are easily propagated in closed, overcrowded and insalubrious environments, such as prisons, and pose a serious threat to the health not only of the prison population but also of prison personnel. If persons are discovered to have the aforementioned kind of diseases, the proper procedure is to adequately treat them for the disease and take appropriate preventive measures before placing these persons in contact with the rest of the population in the prison. Thus, the initial medical examination is a key mechanism for preventing epidemics in prisons and for detecting traces of torture.

169. According to the World Health Organization, observance of Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners implies that the initial medical examination of a prisoner must essentially determine whether he represents a danger to himself or others. To that end, the main issues to be explored are: (a) Do they have a serious illness, or are they withdrawing from a dependence or medication? (b) Are they at risk of self-harm or suicide? (c) Do they have a disease that is easily transmitted that puts

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<sup>208</sup> United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, paras. 132-33, 135 and 172-173.

<sup>209</sup> See, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, Office of the United Nations High Commissioner for Human Rights, paras. 203-214.

<sup>210</sup> United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, para. 153.

others at risk? (d) Is their mental state causing them to be a threat or are they likely to be violent?<sup>211</sup>

170. Furthermore, it is important to stress that the health professionals carrying out these examinations must be allowed to perform their functions independently and impartially. In order for a medical inspection of a detained person to constitute a genuine safeguard for fundamental rights, it is essential that health personnel be free from any interference, pressure, intimidation or orders from police or prison officers and even from personnel involved in the judicial proceedings or the attorney general's office. For that independence to be real, it is vital that health professionals not be subordinate in rank to those authorities and that they enjoy institutional autonomy.

**E. Prison personnel: suitability, training, and working conditions<sup>212</sup>**

171. Principle XX of the Principles and Best Practices is based on the view that "[t]he personnel responsible for the direction, custody, care, transfer, discipline and surveillance of persons deprived of liberty shall at all times and under any circumstances respect the human rights of persons deprived of liberty and of their families."

172. At the same time, effective implementation of any correctional policy definitely depends on the officials directly in charge of administering detention facilities (be they from penitentiary, administrative, or police establishments); on the multidisciplinary teams performing treatment functions; and on the judicial authorities.

173. After considering the importance of the personnel, one of the most recurrent problems identified by the Inter-American Commission on Human Rights over the years has been precisely the existence of a number of shortcomings of the personnel running the centers of deprivation of liberty.

*Suitability*

174. With regard to the suitability and the minimum qualifications that should be met by personnel in detention centers, Principle XX of the Principles and Best Practices establishes that

The personnel shall be carefully selected, taking into account their ethical and moral integrity, sensitivity to cultural diversity and to gender issues, professional capacity, personal suitability for the work, and sense of responsibility.

The personnel shall comprise suitable employees and officers, of both sexes, preferably with civil service and civilian status [...].

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<sup>211</sup> World Health Organization (WHO), *Health in Prisons: a WHO guide to the essentials in prison health*, 2007, pp. 24-25.

<sup>212</sup> In the Americas, the texts of the Constitutions of Ecuador (Article 202), Guatemala (Article 19.b) and Venezuela (Article 272) make specific reference to the quality of prison staff.

Sufficient and qualified personnel shall be available to ensure security, surveillance, and custody, as well as to attend to medical, psychological, educational, labor, and other needs.<sup>213</sup>

175. The suitability of penitentiary personnel comprises the skills, competence and abilities of the individuals concerned; thus:

Every penitentiary system must be based on shared values that constitute an ethical and moral framework for public activity. Values such as respect for the dignity of the person, including gender equity, respect for the diversity of cultures, religions, and political and social opinion, solidarity, respect for the law, honesty, and transparency. Without a strong ethical context, that situation in which one group of people is granted considerable authority over another can easily turn into an abuse of power.<sup>214</sup>

176. One of the most serious problems observed by the IACHR with regard to the suitability of penitentiary personnel is that custody is exercised by members of the police or armed forces trained under anti-democratic regimes or by instructors or higher-ranking officers educated under such regimes. This state of affairs, typical of young democracies, is detrimental because certain practices that impede the respect for fundamental rights tend to persist in these security forces, abetting the maintenance of an institutional culture of violence.

177. On that subject, the IACHR considered, in its Third Report on the Human Rights Situation in Paraguay (2001), that one of the reasons why the practice of torture in both prisons and police stations was such a recurrent problem was precisely that individuals trained in the Stroessner school had stayed on as members of the police and armed forces. The IACHR commented:

[A] thoroughgoing reform is needed of the police and military in Paraguay that includes as part of police and military training instruction in the principles related to democracy and the observance of human rights. At the same time, a profound change is needed in these institutions, which to date maintain an intricate structure based on chains of command that often makes it difficult to determine individual liability when abuses are committed by their members.<sup>215</sup>

178. The Commission emphasizes that a key element in the suitability of penitentiary personnel is precisely the ethical and moral integrity of the individuals

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<sup>213</sup> In the same vein, the Standard Minimum Rules for the Treatment of Prisoners (Rules 46.1, 46.3, 48 and 51) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 82).

<sup>214</sup> United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), *Crime, Criminal Justice and Prison in Latin America and the Caribbean*, 2009, p. 272.

<sup>215</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, Ch. IV, para. 36.

comprising it. For that reason, it is essential to eradicate all those practices that help to maintain or foster a culture of violence among the staff responsible for the custody of persons deprived of their liberty.

179. The IACHR observes with concern in some countries in the region certain practices that continue in which law enforcement officers themselves are subjected to various forms of violence as part of their training or as initiation or admission rites upon entering certain forces. Thus, during a working visit to Buenos Aires province in June 2010, the Rapporteur on the Rights of Persons Deprived of Liberty of their Liberty was informed that a member of the Buenos Aires Penitentiary Service had been subjected to various forms of physical ill-treatment as a ritual to “welcome” him to that department’s Special Intervention Group (GIE). The assault on that official was recorded on the cell phone of one of the agents present at the time and then leaked to the media which disseminated the recording extensively.<sup>216</sup>

180. Another similar instance was registered by the Subcommittee on Prevention of Torture during its visit to Mexico, when it found out that policemen in the Municipality of León, Guanajuato are subjected to inhumane and degrading conditions as part of their “training.”<sup>217</sup>

181. The IACHR considers that when State agents responsible for the custody of persons deprived of their liberty are themselves subjected to torture or cruel, inhumane and degrading treatment by their own colleagues, the system itself is being turned on its head and distorted. This distortion means that there is no guarantee that those officers will not subject those in their custody to similar or even worse violence, as indeed happens.

182. Another grave and deep-seated problem in the prisons of the region is corruption. Corruption is not an abstract or diffuse concept but a concrete, current reality belying the ethical integrity, and hence suitability, of the officials responsible for running detention centers. As this Report has already pointed out, prisons have traditionally been isolated spheres that have largely managed to shield themselves from public scrutiny and from States’ monitoring and auditing activities. This lack of institutional controls and transparency, in conjunction with the dearth of funds to cover their operating expenses and the shortage of trained, motivated and well paid staff, has led to a situation in which, in most countries in the region, prisons have become breeding grounds for corruption.

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<sup>216</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010. See among others, the following press articles: *Denuncian por malos tratos en el Servicio Penitenciario bonaerense*, issued by Diario Página/12 on September 3, 2009, available at: <http://www.pagina12.com.ar/imprimir/diario/ultimas/20-131109-2009-09-03.html>; *El video con la cruel y violenta “bienvenida” a un agente penitenciario*, issued by 26noticias, available at: <http://www.26noticias.com.ar/el-video-con-la-cruel-y-violenta-bienvenida-a-un-agente-penitenciario-95727.html>. In this address there is an excerpt of that video. Furthermore, as shown in the video and according to the reports given to the delegation by the CELS, Mr. Maidana would have been handcuffed, hung from the bars of a window, hooded, beaten in different parts of the body, dry shave their genitals and subjected to mock incineration, among other things.

<sup>217</sup> United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, paras. 93-94.

183. Corruption in prisons comes in many guises, depending on the specific context, and may involve authorities at different levels. It may have to do, for instance, with transfers to particular prisons or to more comfortable sections of the same prison; with the sale of certificates of good behavior, psychologists' reports, or certification of participation in labor or study activities; with the sale of places to take part in such activities; with the marketing of food earmarked for inmates; with the sale of permits for conjugal visits; and with the collection of small quotas from prisoners for such common services as phone calls or access to health care among the many manifestations of corruption.

184. These patterns of corruption and illegality are much more blatant and systematic in prisons under "self-government" or "shared government" regimes (described in Chapter II.B of this Report), in which inmates have to pay for access to almost everything, including the right not to be assaulted. In such a setting, it is particularly worrisome to find the authorities themselves participating –by deed or omission– in criminal acts committed by the inmates themselves acting from inside prisons, as in the case of real or virtual extortions and kidnappings, in addition to the trafficking of arms, drugs, and other illicit items inside the detention centers and prisons.

185. In some prisons there is even a deep-seated, routine and daily "culture of corruption," which is regarded by both inmates and officers as "normal." This institutionalized corruption may be manifested in such basic ways as leasing cells according to size and comfort criteria, or charging inmates for access to public phones and patios or for more comfortable arrangements and privacy for family visits. There are even charges for access to clinics and pharmacies; for conducting administrative or legal formalities; and for protection from assault.

186. Corruption exacerbates real inequalities among inmates, adding to the vulnerability of the weakest and triggering imbalances in the distribution of the scant resources available in prisons.

187. Therefore, the IACHR sees a close tie between fighting corruption and advancing respect and guarantees for human rights. The United Nations Convention against Corruption –which entered into force on December 14, 2005 and which has been ratified by 27 OAS member States<sup>218</sup>– declares in its preamble, *inter alia*, that "the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law."<sup>219</sup>

188. Corruption in the region's prisons has been amply documented, by both the Inter-American Commission on Human Rights and United Nations bodies with a

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<sup>218</sup> These are: Antigua and Barbuda, Argentina, Bahamas, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, the United States of America, Uruguay and Venezuela.

<sup>219</sup> United Nations Convention against Corruption, adopted by the General Assembly by its resolution 58/04 of October 31, 2003, and entered into force on December 14, 2005.



mandate to conduct monitoring visits to penitentiaries. Thus, the IACHR has voiced its concern at situations such as the following, described in the Bolivia Country Report for 2007:

Within the prison, the men deprived of liberty, their wives or partners and their children are left to their own fate. The prison authorities recognized, and the delegation of the Commission confirmed, that prisoners sell or rent individual cells. This means that an inmate does not have the right to a cell, and that he has to pay to have a place to sleep; or else he will sleep in a corridor or out in the courtyard, exposed to the elements of the weather. In the Chonchocorro prison, the Commission was informed that the sports gymnasium belonged to an inmate, who charged a membership fee of B. 20 a month for its use.<sup>220</sup>

In the Report on its mission to Mexico, the Subcommittee on Prevention of Torture wrote:

Members of the delegation observed during their visits to prisons that [...] in many of these facilities, all manner of commercial transactions take place, including payment for certain spaces or sleeping areas, and a whole system of privileges to which not all persons deprived of their liberty are entitled. Some of the people interviewed explained to the delegation how payments are required in order to maintain certain rights in the prison.<sup>221</sup>

For his part, the United Nations Special Rapporteur on Torture had the following to say regarding a similar situation in Paraguay:

Corruption is endemic. [...] It is a common practice that prisoners have to pay bribes in order to secure the supply of necessary articles to which they are entitled and which the State is obligated to provide. Some inmates enjoy spacious and clean cells equipped with a TV set, radio and books, while others are locked up in filthy and overcrowded ones. The lack of transparency in the allocation of quarters adds to the suspicion that better-off inmates bribe prison authorities to receive better treatment. Furthermore, the payment of a bribe of 1,000 guaraní for the most everyday and normally available goods and activities, i.e. sitting under a tree, appears to be so widespread that it virtually constitutes an independent, grey economy within the prison walls, run by gangs of inmates and facilitated by the active or passive participation of some of the prison authorities. This leads to further marginalization of the poor. The Special Rapporteur also received allegations of sexual harassment by

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<sup>220</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Ch. III, para. 201.

<sup>221</sup> United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 167.

prison guards who demand sexual services from female prisoners in exchange for food, hygiene products or other goods.<sup>222</sup>

In its 2006 Report on its mission to Honduras, the Working Group on Arbitrary Detention also discovered “that in the detention centers detainees have to make payments to the prison police in order to exercise their most basic rights [...] for instance in order to see the judge, to be handed the judgment in their case, to file an appeal.”<sup>223</sup>

189. These instances, and others cited in this report, not only reveal a generalized and institutionally embedded pattern of corruption throughout the region that completely contravenes the function of a penitentiary. They also testify to a lack of effective State control over prisons that, as we saw above, poses a real threat to the fundamental rights of detainees.

190. There are also instances in which acts of corruption prevent the implementation of measures adopted by States themselves to address specific situations. For example, in his visit to El Salvador, the Rapporteur on the Rights of Persons Deprived of Liberty was told of cases in which the authorities had ascertained that prison personnel had deactivated mechanisms for preventing phone calls that had been installed to prevent gang members from organizing and directing criminal acts from inside prisons.<sup>224</sup> The same thing happens with security arrangements to prevent the smuggling of arms or drugs into detention centers, when, in fact, it is the security officers themselves who tolerate or participate in the smuggling.<sup>225</sup>

191. Corruption in penitentiaries always thwarts fulfillment of the essential purposes of prison sentences, especially when it impairs those mechanisms designed to promote rehabilitation and the reintegration into society of persons deprived of their liberty.

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<sup>222</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. IV: *Conditions of detention*, para. 68.

<sup>223</sup> United Nations, Working Group on Arbitrary Detentions, *Report on mission to Honduras*, A/HRC/4/40/Add.4, adopted on December 1, 2006, para. 85.

<sup>224</sup> See in this regard, *Nunca imaginé a profesores o personal de clínica involucrado: Director de Centros Penales*, an article issued by El Faro, available at: <http://elfaro.net/es/201005/noticias/1747>.

<sup>225</sup> In this respect, during the proceedings of the four accumulated provisional measures regarding Venezuelan prisons, the petitioners argued that, “the main cause of the extreme violence existing in the Venezuelan prisons, is the entry of firearms [...] [coming from what they called] prison mafia, composed of officers of the National Guard as well as of the Ministry of the Interior and Justice, who have the capacity to trade and traffic [...] weapons [with] the inmates that are inside the prisons”. I/A Court H.R., Provisional Measures in the matters of the Monagas Judicial Confinement Center (“La Pica”), Yare I and Yare II Capital Region Penitentiary Center (Yare Prison); the Penitentiary Center of the Central Occidental Region (Uribana Prison); and the *Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, Venezuela, Order of the Inter-American Court of November 24, 2009, Whereas 12 (c).

192. In this regard, in a hearing held in March 2008, the IACHR was informed that in Panama's main prisons inmates had to pay to get permission to work or study.<sup>226</sup> Likewise, when the Rapporteur on the Rights of Persons Deprived of Liberty visited Buenos Aires province, the IACHR urged the provincial government to "establish objective criteria to ensure a transparent, fair way of allowing participation in such programs," referring to access to workshops, education, and other resocialization programs."<sup>227</sup> In this context, another factor conducive to lack of transparency and to irregularities in determining who has access to these programs is precisely the shortage of programs compared to the large number of inmates.

193. At the same time, States need to guarantee that penitentiaries are ran and guarded by qualified, civilian staff, with civil servant status. That is to say, those functions must be entrusted to an independent security body independent of the military and police forces, and educated and trained in penitentiary issues. Those professionals must have been trained in programs, schools, or penitentiary academies established specifically for that purpose and pertaining to the institutional structure of the authority responsible for administering the penitentiary system.

194. In this respect, one of the questions in the questionnaire, written with the motive of writing this report was to inquire about the entity in charge of maintaining security in the penitentiary centers and, in situations where it was more than one body, indicate the functions of each and how they interacted. The States responded with the following information:

Argentina	In the federal prisons, the <i>Servicio Penitenciario Federal</i> is in charge of maintaining the security; in the province of Buenos Aires, the security of prisons is in charge of the <i>Servicio Penitenciario Bonaerense</i> .
Bahamas	<i>Her Majesty's Prison Officers</i>
Bolivia	In conformity with Law No. 2298, the National Police is in charge of both, internal and external security of prisons at the national and local level.
Brazil	Public civil servants (penitentiary agents), selected by an open competition. In some cases, members of the Military Police can act as external guards for penitentiary centers and in critical conditions, such as a rebellion can enter to support the containment of the crisis and can help transfer inmates. In the commissaries or delegations of police, and in centers of deprivation of liberty, the security can also be run by civil police.

<sup>226</sup> IACHR, Public hearing: *Human Rights Violations in Prisons in Panama*, 131<sup>o</sup> Ordinary Period of Sessions, requested by: State of Panama, Comisión de Justicia y Paz de la Conferencia Episcopal de Panamá, Centro de Iniciativas Democráticas (CIDEM), Harvard University. March 7, 2008. In this regard, see the report: *Del Portón para Acá se Acaban los Derechos Humanos: Injusticia y desigualdad en las cárceles panameñas*, presented in the said hearing available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HarvardClinicPanamaprison.pdf>. In the same sense, the Justice and Peace Commission in its response to this report, indicated that one of the major challenges facing the penitentiary management in Panama is precisely the failure to investigate corruption in prisons. Response received by e-mail on May 20, 2010.

<sup>227</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

Chile	In accordance with D.L. 2.859, of 1979, <i>Gendarmería de Chile</i> is in charge of the security in the penitentiaries of the Nation. Additionally, in conformity with Law No. 20.084, <i>Gendarmería de Chile</i> is also in charge of the external security of the prisons centers for juveniles; however, they are only authorized to enter in case of revolt or other situations or grave risk.
Colombia	In accordance with the Law 65 of 1993 the internal vigilance of detainment centers will be the charge of the Custodial Body and the National Penitentiary Watch Guard; the external relies on the Public Force and the security bodies. When the Public Force isn't available for these ends, the external vigilance will be taken over by the Custodial Body and the National Penitentiary Watch. The Public Force requires prior authorization from the Ministry of Justice or the General Director of INPEC, or in urgent situations, the permission of the director of the establishment where the acts are occurring, they can enter to prevent or stop extreme altercations affecting public order.
Costa Rica	In conformity with what is established by Law No. 7410 and the Regimen of the Penitentiary Police Executive Decree No. 26061, the security and the custody of the persons deprived of liberty is in the charge of the Penitentiary Police.
Ecuador	The internal security of prisons is in the hands of the Penitentiary Security Corp. and the external security relies on the National Police.
El Salvador	"According to the information given by the General Inspector Unit that, by law, is in charge of guaranteeing the security of the Penitentiary Centers, for the effective completion of judicial orders of the restriction of individual liberty of inmates with respect to their fundamental rights and the function of said centers".
Guatemala	"The internal security of the prison centers is the responsibility of the prison guard. The security structure is in three circles for the guard of the prisons: <ul style="list-style-type: none"> <li>▪ First Circle, Penitentiary Guard (entry boxes and towers).</li> <li>▪ Second Circle, National Civil Police (perimeter patrol).</li> <li>▪ Third Circle, detachment of the Guatemalan Army (support in emergency situations. They have no contact with the prison population, but for cases of extreme necessity)".</li> </ul>
Guyana	The security in all of the prisons in the country is directed and maintained by the Directors of the prison centers and by the Prison Officials. In cases of emergencies like riots, revolts, fires and violent outbreaks, the Guyana Police, the Fire Service and the Defense Force can intervene.
Nicaragua	"The security of the Penitentiary Centers is in the charge of the Special Penal Security which is part of the structure of the National Penitentiary System, created specifically for these means, to attend the internal and external security of the Penal Centers, and to supervise the transfer of inmates to hospitals and the criminal courts".
Panama	In accordance with Law 55 of 2003, the external security of prisons is the charge of the National Police, and the internal security is run by a Penitentiary Security Corp. In the Penitentiary Centers where there are no penitentiary agents, both functions are performed by the National Police.
Peru	The State of Peru declared that "currently there exists a deficit in security personnel, the penitentiary school has not produced any new personnel, the penitentiary population continues to grow, creating overpopulation." Moreover, the State has signaled that "INPE has found itself in charge of the internal and external security in 27 penitentiary centers. Under Law 29358

	there is room for INPE to assume the integral security of the penitentiary centers, the Penitentiary Security Directorate contributed to the creation of a Transfer Plan, but the date has not yet been set.”
Suriname	Only the Prison Officials are in charge of the security in the prisons.
Trinidad y Tobago	The Prison Service is the body in charge of maintaining the security in the prisons, however, in some cases of major problems with order, such as revolts, a joint force, which includes the army, may enter.
Uruguay	In Uruguay, the 8 penitentiaries located within the metropolitan area, plus the San Jose regional prison, depend on the National Directorate of Prisons and Rehabilitation Centers. The remaining 20 jails of the country depend on the local Police. By Decree 378/1997 the Ministry of National Defense was put in charge of the external security of the Santiago Vazquez Prison Complex, the Libertad Penitentiary Center, and the Regional Prison of Canelones. By subsequent decrees, military presence has been allowed in the perimeter of these complexes and by a recent agreement of the Ministry of National Defense this plan has been extended to the Regional Prison of Maldonado
Venezuela	According to the information given by the State normally in the prison centers of Venezuela, the external security is in the charge of a detachment of the National Guard (the army) and the internal security, by civil servants.

195. In this regard, the IACHR has addressed the situation in countries like Bolivia<sup>228</sup>, Paraguay<sup>229</sup>, Honduras<sup>230</sup>, Haiti<sup>231</sup> and Uruguay<sup>232</sup> that do not have specialized correctional agencies, these functions are exercised by the police forces. Likewise, in the case of *Montero-Aranguren et al (Detention Center of Catia) v. Venezuela*, the Inter-American Court ordered the Venezuelan State, as a measure of satisfaction and guarantee that the violations established would not be repeated, to implement an eminently civilian penitentiary surveillance service.<sup>233</sup>

196. Indeed, it is essential that the States establish autonomous penitentiary administration systems, managed by professional penitentiary personnel and administrators independent of the police. However, the mere existence of those institutions does not suffice. Existing penitentiary personnel must be sufficient to cover the

<sup>228</sup> IACHR, Follow-up Report - *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser/L/V/II.135. Doc. 40, adopted on August 7, 2009, Ch. V, paras. 116 and 119.

<sup>229</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. IV: *Conditions of detention*, para. 70

<sup>230</sup> United Nations, Working Group on Arbitrary Detentions, *Report on mission to Honduras*, A/HRC/4/40/Add.4, adopted on December 1, 2006, paras. 76 and 101.

<sup>231</sup> IACHR, *Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the international community*, Ch. III, para. 206.

<sup>232</sup> IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011, Annex, para. 51.

<sup>233</sup> I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 144.

labor demand of the different penitentiaries.<sup>234</sup> A shortage of penitentiary personnel creates, inter alia, internal security problems in the prisons.

### *Training*

197. For the Inter-American human rights system, the Principles and Best Practices establish:

Principle XX: [...] The personnel of places of deprivation of liberty shall receive initial instruction and periodic specialized training, with an emphasis on the social nature of their work. Such instruction and training shall include, at least, education on human rights; on the rights, duties, and prohibitions in the exercise of their functions; and on national and international principles and rules regarding the use of force, firearms, and physical restraint. For these purposes, the member States of the Organization of American States shall promote the creation and operation of specialized education and training programs with the participation and cooperation of social institutions and private enterprises.<sup>235</sup>

198. The IACHR reiterates the principle that the effective observance of human rights requires a system in which all law enforcement officers are trained in the principles of a participatory and well-informed democracy.<sup>236</sup> Accordingly, enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training.<sup>237</sup> In particular, personnel assigned to work with specific groups of persons deprived of their liberty, such as foreign nationals, women, children, older persons and the mentally ill, among others, must receive training specifically tailored to their specialized tasks.

199. Training for personnel working in facilities for persons deprived of their liberty is not just an essential precondition for appropriate penitentiary management; it is also a key mechanism to ensure respect for and to guarantee the fundamental rights of persons deprived of liberty. The training of all staff must include study of international and regional instruments for the protection of human rights.

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<sup>234</sup> For example, in the public hearing on the *Situation of the Penitentiary System in Guatemala* (March 6, 2006), the participants mentioned that of the 41 prisons in the country, 17 are run by the correctional administration, and 24 by the National Civil Police.

<sup>235</sup> In the same vein, the Standard Minimum Rules for the Treatment of Prisoners (Rules 47 and 52.1), and specifically with regard to children and adolescents, the Beijing Rules (Rule 12) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 85).

<sup>236</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, Ch. IV, para. 36.

<sup>237</sup> United Nations, Human Rights Committee, General Comment No. 20: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (Article 7), adopted at the 44<sup>th</sup> session (1992), para. 10. In *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies*, Volume I, HRI/GEN/1/Rev.9 (Vol. I) adopted on May 27, 2008, p. 240.

200. Thus, the Inter-American Convention to Prevent and Punish Torture establishes that the States Parties “shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest.” (Article 7)<sup>238</sup>

201. In the case of *Antonio Ferreira Braga*, the IACHR established a violation of Article 7 of the Inter-American Convention to Prevent and Punish Torture when it reached the conclusion that the State agents who tortured the victim did not have the proper training required by that Convention.<sup>239</sup>

202. Generally speaking, torture, cruel, inhuman and degrading treatment can take place when a person is deprived of his or her liberty and in the custody of the State, which is why it is necessary to prevent such acts, to ensure that public officials who have contact with potential victims of torture at all stages in the custody chain have proper training in and awareness of human rights, due process and legal safeguards.<sup>240</sup> It is also important to clearly point out the legal consequences of acts of torture so that law enforcement officers are fully aware of them.

203. Furthermore, the Inter-American Convention on Forced Disappearance of Persons establishes the obligation for States Parties to “ensure that the training of public law-enforcement personnel or officials includes the necessary education on the offense of forced disappearance of persons.” (Article VII). This provision applies also to the training of police and penitentiary personnel, especially because one of the risks incurred by an illegally detained person is precisely that he or she may become a victim of forced disappearance. Even without that hypothesis, it is necessary that penitentiary personnel be trained to prevent possible forced disappearances. Hence the need to keep adequate records in detention centers and to exercise effective control of order and internal security.

204. For its part, the Convention of Belém Do Pará also provides – as a measure for preventing, punishing and eradicating violence against women – for the gradual adoption by States Parties of specific measures, including programs to foster education and training for justice administration, police, and other personnel charged with enforcing the law (Article 8.c). This includes personnel responsible for the detention centers holding women and girls.

205. Another vital aspect is the training, independence, and suitability of management-level staff. The directors of penitentiaries must be suitably qualified for the

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<sup>238</sup> In the same vein, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 10) and the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 5).

<sup>239</sup> IACHR, Report No. 35/08, Case 12.019, Merits, Antonio Ferreira Braga, Brazil, July 18, 2008, paras.121-122.

<sup>240</sup> United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, paras. 93-95.

job, in terms of their character, administrative ability, suitable training, and experience in the field.<sup>241</sup> The IACHR stresses that the appointment of directors of penitentiaries and of management-level staff in prison systems must be conducted using transparent and equitable processes, in which the candidates' suitability is evaluated on the basis of objective selection criteria. Furthermore, once these authorities have been appointed, they need to enjoy the functional independence required for the performance of their duties, subject only to pertinent legal and regulatory requirements.

206. Training the staff responsible for running detention centers of all kinds must definitely be construed as an investment, not as a cost, and it should therefore be planned and crafted to match the needs of the institution concerned. Training is not just transformation or knowledge; it is also about developing skills and an aptitude for change.<sup>242</sup> Moreover, the State must take all necessary steps to ensure that all the detention centers in its territory –and not just those located in urban centers– are endowed with professional and well-trained staff.

207. In addition to ensuring the proper training of the correctional staff, the public administration should also endorse the belief, in the minds of its members and in the community as a whole, that the work at the correctional institutions is an important service to the community.<sup>243</sup> Generally speaking, penitentiaries are hostile, difficult, poorly funded environments, in which the work of prison officers can be, not just routine, but also highly stressful and exhausting. Such is why everything possible must be done to keep penitentiary staff motivated and conscious of the importance of the work they do.

#### *Working conditions*

208. Regarding working conditions, the Principles and Best Practices establish the following:

##### Principle XX.

The personnel shall comprise suitable employees and officers, of both sexes, preferably with civil service and civilian status [...].

The personnel of places of deprivation of liberty shall be provided with the necessary resources and equipment so as to allow them to perform their duties in suitable conditions, including fair and equitable remuneration, decent living conditions, and appropriate basic services.<sup>244</sup>

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<sup>241</sup> See, the Standard Minimum Rules for the Treatment of Prisoners (Rules 50-51).

<sup>242</sup> United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), *Crime, Criminal Justice and Prison in Latin America and the Caribbean*, 2009, p. 275.

<sup>243</sup> See, the Standard Minimum Rules for the Treatment of Prisoners (Rule 46.2).

<sup>244</sup> In the same vein, the Standard Minimum Rules for the Treatment of Prisoners (Rule 46.3).



209. Essentially, penitentiaries must be guarded and run by professional prison staff, who should be civilian, enjoy civil service status, have legal and regulatory ties to the administration that establish their rights and duties, and be subject to a labor regime established by law. In other words, a penitentiary service career needs to be implemented.<sup>245</sup>

210. Penitentiary career staff must enjoy labor stability, promotions, and progressive improvements in their working conditions based on years of service and other merit-based criteria contemplated by law. Conditions must be such as to ensure that a career in the prison service is regarded as a viable option for obtaining a decent, well-paid job. Job stability must depend solely on performance and compliance with the law.

211. The law must establish the internal disciplinary procedures needed to ensure due administrative process, specifying the conducts for which prison officials will be sanctioned; establishing the authorities competent to render these decisions, the procedures for the internal investigations and the disciplinary sanctions that may be imposed, along with the remedies available to the official involved to challenge the rulings. All of which must, naturally, be without prejudice to any criminal liability the official may have incurred, which will be dealt with in the regular court system. In the Commission's view, a properly functioning prison discipline system (with internal investigation bodies responsible for trying and, where applicable, punishing conduct previously classified as a breach or violation of the rules) is an essential feature of a modern, professional, and democratic security force.

212. Penitentiary career civil servants should receive a fair salary that is sufficient to ensure them and their families a decent standard of living and that takes into account the dangers, responsibilities, and stress proper to their functions, as well as the technical skills required by the profession.<sup>246</sup> Moreover, as has often been ascertained, paying low or ridiculously low salaries to officers (of any kind, including police officers) responsible for the detention or custody of persons may make them prone to corruption or to seek "bonuses."<sup>247</sup>

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<sup>245</sup> In general, the working conditions of these corrections officers, including their remuneration, should be commensurate with the nature of the functions they perform. It is important that there is no perception that prison officials are "second class" or "category below" the security agencies of the State, such as the police or army. This is relevant because in practice it is common for prison officers to interact with these security sectors, in such situations it is important that the latter conduct themselves with respect and professionalism in their dealings with the prison officials.

<sup>246</sup> In a similar sense, see also, IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc.57, adopted on December 31, 2009, para. 92.

<sup>247</sup> See e.g., United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 102; United Nations, Working Group on Arbitrary Detentions, *Report on mission to Honduras*, A/HRC/4/40/Add.4, adopted on December 1, 2006, para. 77. In this regard, is particularly illustrative the following statement of the UN Rapporteur on Torture on the situation on Paraguay:

The low wages of prison wardens, which were in some cases below the minimum wage and in other instances more than three months overdue, the pivotal role of the personnel in the distribution of resources, combined with the inmates' dependency, constitute a situation highly susceptible to the abuse of power. It is a common practice that prisoners have to pay

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213. With regard to other working conditions for penitentiary personnel, the IACHR considers that they must have (1) safety and hygiene on the job;<sup>248</sup> (2) respect for working hours and the required psychological and physical support; (3) time off for relaxation and vacation that is proportionate to the toll that the constant stress of the job exacts; (4) a duty to obey the orders of superiors when those orders are lawful, and if not, the right to challenge the orders without having to face criminal or disciplinary sanctions for refusal to follow an unlawful order or one that violates human rights; (5) constant training that enables the officer to perform his or her functions, and a police career service that will provide academic-professional underpinning for a cultural transformation.<sup>249</sup>

214. In practice, structural defects in prisons affect both the inmates and their guards, who in some cases work under really bad deplorable conditions that they can impair their work, security, and even physical and mental health. Regarding this matter, in the report on his mission to Uruguay, the Rapporteur on the Rights of Persons Deprived of Liberty took into consideration a study done by that country's Ministry of the Interior, which established, inter alia, that poor working conditions over a long period of time led to "discouragement, frustration, despair, resignation, work done on automatic pilot, reluctance to present proposals or initiatives for change, and a reduction in creativity. In short, a physical-emotional deterioration with sustained progression of psychosomatic and psychopathological diseases..."<sup>250</sup> The IACHR therefore recommends paying the necessary heed to the physical and mental health of personnel working in detention centers.<sup>251</sup>

*Personnel exercising direct custody of persons deprived of their liberty*

215. As mentioned above, the staff in charge of the administration and internal security of detention centers must comprise appropriately qualified civilian employees and officials: that is to say, professional penitentiary personnel specifically trained for the job. Here, the Principles and Best Practices establish that as a general rule,

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bribes in order to secure the supply of necessary articles to which they are entitled and which the State is obligated to provide. United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. IV: *Conditions of detention*, para. 68.

<sup>248</sup> See also, Penal Reform International (PRI), *Manual de Buena Práctica Penitenciaria: Implementación de las Reglas Mínimas de Naciones Unidas para el Tratamiento de los Reclusos*, 2002, p. 151.

<sup>249</sup> In a similar sense, see also, IACHR, *Report on Citizen Security and Human Rights*, para. 92.

<sup>250</sup> IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011, Annex, para. 50. With regard to this matter, in Chile, a study by the National Association of Correctional Officers (ANFUP, according to its Spanish acronym) showed that between 2009 and July 2010 there were twenty-four suicide attempts by officials, and four officials managed to kill themselves. Those who survived had to undergo expensive psychiatric treatments. This study also revealed that during this period there were 1,500 absences for health reasons, of which 14% were of psychiatric medical appointments and diagnoses of depression. Universidad Diego Portales, Centro de Derechos Humanos de la Facultad de Derecho, *Informe Anual sobre Derechos Humanos en Chile 2010*, pp. 130-131.

<sup>251</sup> For example, the World Health Organization has a number of recommendations and guidelines that States may follow. See, WHO, *Health in Prisons: a WHO guide to the essentials in prison health*, 2007, pp. 171-179.

members of the Police or Armed forces shall be prohibited from exercising direct custody of persons deprived of liberty, unless it is a police or military institution” (Principio XX).<sup>252</sup>

216. Accordingly, with respect to the employment of police officers in penitentiary functions, the Commission has consistently held that:

International standards on detention contemplate that, as a general rule, the authority responsible for the investigation of a crime and arrest should not be the authority responsible for administering detention centers. This is a safeguard against abuse, and an essential basis for prompt judicial supervision of detention centers.<sup>253</sup>

Furthermore, United Nations protection mechanisms have also pointed to the State’s duty to employ well-trained and well-equipped prison guards and professional penitentiary administrators who are independent of the police.<sup>254</sup>

217. At the same time, the deployment of members of the armed forces to control security in prisons must be exceptional, commensurate with the gravity of the situation prompting it, and restricted to exceptional cases explicitly contemplated by law and geared to achieving legitimate goals in a democratic society. In such cases, the actions of the armed forces must be subject to the scrutiny and control of the civilian authority, in particular as regards the establishment of the corresponding legal liabilities.<sup>255</sup>

218. During his visit to El Salvador, for instance, the Rapporteur on the Rights of Persons Deprived of Liberty learned that members of the armed forces were being used to control the security perimeter of certain prisons and to detect the admission of illicit items. He was also informed by various sources that soldiers allegedly engaged in certain abuses and arbitrary acts against inmates and the family members and other visitors. The Rapporteurship was able to ascertain that neither the prison authorities nor any other civilian authorities monitored or supervised in any way the searches of persons carried out by the army. Additionally, no procedures have been established for complaining or appealing to prison directors in cases in which inmates’ relatives consider that they were the victims of the powers that the army exercises without restrictions of any kind.<sup>256</sup>

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<sup>252</sup> In the same vein the European Penitentiary Rules laid down that, “[p]risons shall be the responsibility of public authorities separate from military, police or criminal investigation services” (Rule 71).

<sup>253</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Cha. III, para 199; IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, para. 14.

<sup>254</sup> See in this regard, United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Mission to Uruguay, A/HRC/13/39/Add.2, adopted on December 21, 2009. Ch. IV: *Administration of criminal justice: underlying causes for collapsing administration of justice and penitentiary systems*, paras. 43 and 105; United Nations, Working Group on Arbitrary Detentions, *Report on mission to Honduras*, A/HRC/4/40/Add.4, adopted on December 1, 2006, paras. 76 and 101.

<sup>255</sup> IACHR, *Democracy and Human Rights in Venezuela*, Ch. VI, para. 683; IACHR, *Report on Citizen Security and Human Rights*, para. 104.

<sup>256</sup> IACHR, Press Release 104/10 - IACHR Office of the Rapporteur Attests to Structural Deficiencies in Prison System of El Salvador. Washington, D.C., October 20, 2010.

219. The IACHR underscores the fundamental importance of the States taking steps in the short, medium, and long term, to establish a penitentiary career service, and training and hiring sufficient prison officers to cover the personnel needs of the penitentiaries. In this way, they will gradually replace the police or military personnel currently performing those functions and limit their intervention to exceptional cases and circumstances.

#### **F. Use of force by security personnel in prisons**

220. In the Inter-American human rights system, it has been established as a guiding principle of State activity that “regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality.”<sup>257</sup> This criterion applies fully to the actions, policies, and means used by States to maintain control and internal security in detention centers.

221. Accordingly, the Inter-American Commission on Human Rights has established that the use of force “is a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that caused by the State’s reaction.”<sup>258</sup> And that:

The legitimate use of public force entails, among other factors, that it is both necessary and proportional to the situation; that is to say that it must be exercised with moderation and in proportion to the legitimate objective being pursued while simultaneously trying to reduce to a minimum personal injury and the loss of human life. The degree of force exercised by state agents, to be considered within international parameters, must not exceed what is “absolutely necessary.” The State must not use force disproportionately and immoderately against individuals who, because they are under its control, do not represent a threat; in such cases, the use of force is disproportional.<sup>259</sup>

222. Thus, regarding the use of force by State agents, the IACHR’s Principles and Best Practices establish as follows:

#### Principle XXIII (2).

The personnel of places of deprivation of liberty shall not use force and other coercive means, save exceptionally and proportionally, in serious, urgent and necessary cases as a last resort after having previously

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<sup>257</sup> I/A Court H.R., *Case of Velásquez Rodríguez V. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 154.

<sup>258</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev. 1, adopted on March 7, 2006, (hereinafter “*Report on the Situation of Human Rights Defenders in the Americas*”), para. 64.

<sup>259</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 65.

exhausted all other options, and for the time and to the extent strictly necessary in order to ensure security, internal order, the protection of the fundamental rights of persons deprived of liberty, the personnel, or the visitors.

The personnel shall be forbidden to use firearms or other lethal weapons inside places of deprivation of liberty, except when strictly unavoidable in order to protect the lives of persons.

In all circumstances, the use of force and of firearms, or any other means used to counteract violence or emergencies, shall be subject to the supervision of the competent authority.<sup>260</sup>

223. For detention centers for children and adolescents, there are certain separate standards according to which the use of force or of coercive methods is only permitted by order of the director of the center, aimed specifically at preventing a minor harming others or himself or wreaking major material damage. In addition, as a general rule, personnel should be prohibited from carrying and using firearms.<sup>261</sup>

224. Both the Inter-American Court and the Commission have referred to these standards in a number of cases and scenarios in which the State's security forces have made excessive use of force in places of deprivation of liberty.

225. Thus, in the *Neira Alegría* and *Durand y Ugarte* cases, the Inter-American Court referred to the excessive use of force in suppressing a riot that began on June 18, 1986 in the Blue Block of the San Juan Bautista (formerly El Frontón) prison in Peru, in which prisoners tried and convicted of terrorism were being held. Through two supreme decrees issued by the President of the Republic, the prison was placed under the absolute material control of the Peruvian armed forces. In an operation that began at 3 a.m. on June 19, they used artillery to demolish the Blue Block, killing at least 111 inmates.<sup>262</sup>

226. In these cases, the Court considered that the characteristics of the riot, the dangerousness of the rioting prisoners, and the fact that they were armed, did not constitute sufficient grounds to warrant the degree of force used and concluded that the disproportionate use of lethal force violated Article 4.1 of the American Convention.<sup>263</sup>

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<sup>260</sup> There are similar provisions in the Standard Minimum Rules for the Treatment of Prisoners (Rules 33-54); the Code of Conduct for Law Enforcement Officials (Article 3); and specially in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>261</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rules 63-65).

<sup>262</sup> I/A Court H.R., *Case of Durand and Ugarte V. Peru*. Judgment of August 16, 2000. Series C No. 68, paras. 59 and 68; I/A Court H.R., *Case of Neira Alegría et al. V. Peru*. Judgment of January 19, 1995. Series C No. 20, para. 69.

<sup>263</sup> I/A Court H.R., *Case of Durand and Ugarte V. Peru*. Judgment of August 16, 2000. Series C No. 68, paras. 70-72; I/A Court H.R., *Case of Neira Alegría et al. V. Peru*. Judgment of January 19, 1995. Series C No. 20, paras. 74-76.

227. In the *Miguel Castro Castro Prison* case, the Inter-American Court found the Peruvian State internationally liable for Transfer Operation 1 (“Operativo Mudanza 1”), which began in that prison on May 6, 1992 and lasted several days. At the start of the operation, members of the security forces penetrated Block 1A, demolishing part of a wall with explosives. Simultaneously, police officers opened holes in the roof and fired shots from there. During the first day of the operation and the following three days, military weaponry was used, such as grenades, rockets, bombs, artillery helicopters, mortars, and tanks, as well as shells containing tear, emetic, and paralyzing gases. Taking part in these actions were members of the police, the army, and other special forces, who even took up sharpshooter positions on the roof of the prison and fired at prisoners from there. On the last day of the “operation,” State agents fired on the inmates coming out of Block 4B, after having asked not to be shot at and some inmates under the control of the authorities were taken aside and executed. After the actions had concluded, the authorities took hours and even days to provide medical care to survivors, as a result some of them died and others suffered permanent physical injuries. Even some of the wounded who were later taken to hospitals did not receive the medical care they needed.<sup>264</sup>

228. In this case, the Inter-American Court concluded that there was no riot or other situation warranting legitimate use of force by State agents. On the contrary, it was a direct and deliberate attack on the lives and personal integrity of the male and female prisoners held in Blocks 1A and 4B, in the course of which 41 prisoners died and 190 were wounded.<sup>265</sup>

229. Essentially, the Court reiterated the standards set in Principles 4 and 9 of the United Nations *Basic Principles of the Use of Force and Firearms by Law Enforcement Officials*, according to which “the State police forces may only recur to the use of lethal weapons when it is ‘strictly inevitable to protect a life’ and when less extreme measures turn out to be ineffective.”<sup>266</sup> Furthermore, it emphasized the State’s duty to ensure that all the deceased inmates were properly identified and their remains delivered to family members. The unwarranted delay in handing over the already decomposing bodies caused additional suffering to family members of the victims that could have been avoided.<sup>267</sup>

230. Likewise, in the *Montero Aranguren et al (Detention Center of Catia) v. Venezuela* case, the complaint alleged that between November 27 and 29, 1992 there was a massive intervention by members of the National Guard and Metropolitan Police in the Flores de Catia Judicial Detention and Confinement Center, in which these security forces fired indiscriminately on the inmates, using firearms and tear gas, killing approximately 63

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<sup>264</sup> I/A Court H.R., *Case of Miguel Castro-Castro Prison V. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paras. 211, 216, 222-223.

<sup>265</sup> I/A Court H.R., *Case of Miguel Castro-Castro Prison V. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paras. 215 y 217.

<sup>266</sup> I/A Court H.R., *Case of Miguel Castro-Castro Prison V. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 239.

<sup>267</sup> I/A Court H.R., *Case of Miguel Castro-Castro Prison V. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paras. 251 y 339.

prisoners, and wounding 52. Another 28 were described as disappeared. Moreover, the State did not ensure the timely medical care needed to treat those inmates wounded in this security operation.

231. The *Montero Aranguren et al (Detention Center of Catia) v. Venezuela* case is vital in the development of Inter-American Court jurisprudence on the use of force by members of security forces. In its analysis, the Court took into consideration its own precedents, as well as the Universal human rights system and European human rights system standards and established the following:<sup>268</sup>

- (a) States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; to establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right of life of the people under their jurisdiction.
- (b) The use of force by governmental security forces must be grounded on the existence of exceptional circumstances and should be planned and proportionally limited by the government authorities. In this aspect, [...] force or coercive means can only be used once all other methods of control have been exhausted and failed. The use of firearms and lethal force against people by law enforcement officers -which must be generally forbidden- is only justified in even more extraordinary cases. The exceptional circumstances under which firearms and lethal force may be used shall be determined by the law and restrictively construed, so that they are used to the minimum extent possible in all cases, but never exceeding that use "absolutely necessary" in relation to the force or threat to be repealed.
- (c) Domestic law must establish standards clear enough to regulate the use of lethal force and firearms by members of the State security forces.<sup>269</sup>
- (d) States must educate and train the members of their armed forces and security agencies pursuant to the principles and provisions on protection

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<sup>268</sup> I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006. Series C No. 150, paras. 61-84.

<sup>269</sup> At this point the Inter-American Court held, following the Principles on the Use of Force and Firearms by Law Enforcement Officials Enforcing the Law, this regulation should include guidelines that: a) specify the circumstances in which such officers would be authorized to carry firearms and prescribe the types of firearms and ammunition permitted; b) ensure that firearms are used only in appropriate circumstances and in a manner that diminishes the risk of unnecessary harm; c) prohibit the use of firearms and ammunition that cause unwarranted injury or present an unwarranted risk; d) regulate the control, storage and distribution of firearms, including procedures to ensure that officials responsible for enforcing the law are accountable for the weapons firearms or ammunition issued to them; e) provide the corresponding warnings, if appropriate, when a firearm is to be used, f) establish a reporting system where law enforcement officials resort to the use of firearms in the performance of their duties.

of human rights and the limits to which the use of weapons by law enforcement officials is subject to, even under a state of emergency.

- (e) Adequate control and verification of the legality of use of force. Upon learning that members of the security forces have used firearms causing lethal consequences, the State must immediately initiate a rigorous, impartial and effective investigation *ex officio*. This requires not only hierarchical or institutional independence, but actual independence.

232. For its part, in its Report on the Merits No. 34/00 in the *Carandirú* case, the IACHR analyzed the proportionality of the actions carried out by the State security forces, taking as its fundamental premise the principle that a riot “must be suppressed through such strategies and actions as are needed to bring it under control with minimal harm to the life and physical integrity of the inmates and minimal risk to law enforcement officials.”<sup>270</sup> In this case, the IACHR also took into consideration the fact that the State failed to take appropriate measures to prevent outbreaks of violence, and that the security forces involved in the actions did not attempt to exhaust other less violent options for dealing with the situation brought about by the inmates.

233. The Commission reiterates that it is essential that States first take steps to prevent violence in prisons, so as to reduce to a minimum the need to resort to the use of force. Accordingly, as already mentioned, measures adopted should include the following: separate the different categories of persons deprived of liberty; increase the number of, and train, personnel; effectively prevent the presence of weapons, drugs, and money; dismantle criminal gangs; maintain appropriate detention conditions; introduce productive activities for prisoners; establish and enforce internal prison rules; and develop other nonviolent means of resolving conflicts. All these measures help to preserve internal order in places of deprivation of liberty.<sup>271</sup>

234. Indeed, when the State fails to adopt appropriate preventive measures and does not exercise effective control over internal security in prisons, it opens the door to, for instance, the rearming of the prison population and situations in which it then sees itself forced to use security forces whose nature and functions bear no relation to the maintenance of internal security in prisons. For example, in the decision of the provisional measures adopted on the matter of the *Aragua Penitentiary (Tocoron Prison)* regarding Venezuela, the Court noted that, following a three days riot in that prison, on September, 2010, in which 16 inmates died, more than 36 people were wounded, 8 grenades were detonated and shots were fired, the State mobilized, among other forces, 1,800 members of the National Guard, an army tank, and 6 armored cars.<sup>272</sup>

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<sup>270</sup> IACHR, Report No. 34/00, Case 11.291, Merits, Carandirú, Brazil, April 13, 2000, para. 62.

<sup>271</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, (Principle XXIII.1).

<sup>272</sup> I/A Court H.R., Provisional Measures in the matter of Centro Penitenciario de Aragua “Cárcel de Tocorón,” Venezuela, Order of the Inter-American Court of Human Rights, November 24, 2010, Having seen: 2.d and 9.e.



235. Furthermore, in connection with the provisional measures of the Socio-Educational Internment Facility (*UNIS*) case, the Commission advised the Court that one of the reasons why there were constant complaints of assaults by the security forces on the children and adolescents deprived of liberty in that center was precisely the lack of internal controls and failure to adopt measures to prevent the frequent occurrence of disorderly conduct, escapes, and riots. In other words, there was a causal link between the – often disproportional – use of force by the State and its own inability to maintain internal order and prevent outbreaks of violence and disturbances.<sup>273</sup>

236. At the same time, in a thematic hearing in 2006 on the situation of persons deprived of their liberty in Honduras, the IACHR received information that in recent years several people had died in prisons during attempts to flee, given that the usual procedure among police guarding the prisons was to open fire.<sup>274</sup> In that regard, in its recent report on Honduras, the Subcommittee on Prevention of Torture referred to the existence of the so-called “dead zone” at the Marco Aurelio Soto prison in Tegucigalpa, which consists of a part of the perimeter area in which guards are under order to shoot at any inmate found there.<sup>275</sup>

237. Regarding such situations, the IACHR considers that law enforcement officers in penitentiaries may only use lethal force when strictly necessary to protect a life. In cases of flight or escape of persons deprived of their liberty, the State must employ all non-lethal means at its disposal to recapture the offenders and may only use lethal force in cases of imminent danger in which prisoners attempting to escape react against prison guards or third parties with violent means that threaten their lives.<sup>276</sup> Therefore, there is no ethical or legal justification for a so-called “escape law” legitimizing or empowering prison guards to automatically fire on prisoners attempting to escape.<sup>277</sup>

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<sup>273</sup> I/A Court H.R., Provisional Measures in the matter of the Unidad de Internación Socioeducativa, Brasil, Order of the Inter-American Court of Human Rights, February 25, 2011, Having seen: 14 (c) and 15 (f).

<sup>274</sup> IACHR, Public hearing: *Situation of the Persons Deprived of Liberty in Honduras*, 124<sup>o</sup> Ordinary Period of Sessions, requested by: State of Honduras, Center for Justice and International Law (CEJIL), Comité para la Defensa de los Derechos Humanos en Honduras (CODEH), Comité de Familiares de Detenidos y Desaparecidos de Honduras (COFADEH) and Centro para la Prevención, Tratamiento y Rehabilitación de las Víctimas de Tortura (CPTRT). March 7, 2006. In this regard, see the report: *Situación del Sistema Penitenciario en Honduras*, drafted by CPTRT and COFADEH, p. 14, presented in the said hearing available at: <http://www.cptrt.org/pdf/informesistemapenitenciarioCIDH.pdf>.

<sup>275</sup> United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, paras. 198-200.

<sup>276</sup> See in this regard, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 4, 9 and 16).

<sup>277</sup> For example, during the work visit of the Rapporteur of Persons Deprived of Liberty, as well as in its follow-up, the Ecumenical Human Rights Commission (CEDHU, according to its Spanish acronym) provided information that reported that the country still practices the “Escape Law” (*ley de fuga*). In this regard, it is noted as an example the case of an inmate of 25 years of age who received three shots while trying to escape from the Babahoyo prison along with two other inmates who were recaptured in September 2010; it also mentions the case of another inmate that died after an escape attempt recorded in August 2011 at the Social Rehabilitation Center of Santo Domingo.

238. Furthermore, the IACHR observes that States have a duty to equip law enforcement officials in prisons with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. This includes the provision of non-lethal weapons. Moreover, these officials and agents should be equipped with the self-defense equipment they need,<sup>278</sup> and, in short, with the tools and training needed to comply with the objectives of appropriate use of non-lethal force.

239. At the same time, during his visit to Buenos Aires province, the Rapporteur on the Rights of Persons Deprived of Liberty received information regarding the disproportionate use of rubber bullets against detainees. According to the Committee against Torture of the Provincial Truth Commission, rubber bullets were used by the Buenos Aires Penitentiary Services on at least 1,487 occasions in 2008.<sup>279</sup> According to the Committee against Torture:

Generally speaking, the rules in force and the teachings in prison training manuals are not respected during the suppression of riots. Rubber bullets should not be fired from a range of less than ten meters because they can cause highly serious injuries or even death. Moreover, they should be aimed to hit below the waistline. In most cases, however, the shots are at close range and aimed at the face or chest. In other instances, aim is taken at the lower part of the body, but with the detainees on the floor. Numerous cases have been registered of people losing an eye or suffering other irreparable harm. It is also common to find detainees with rubber pellets lodged in their bodies for long periods of time.<sup>280</sup>

Similarly, the IACHR has received information regarding the disproportionate use and misuse of tear gas and irritant sprays in Panamanian prisons *La Joya* and *La Joyita*, the nation's largest.<sup>281</sup>

240. On this issue, the IACHR stresses that even non-lethal or incapacitating weapons such as rubber bullets or tasers must be used in accordance with the principles of

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<sup>278</sup> See in this regard, see Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 2).

<sup>279</sup> See, IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010. This practice has also been reported by the Comité Contra la Tortura de la Comisión Provincial por la Memoria, Annual Report 2009: *El Sistema de la Crueldad IV* [The System of Cruelty IV], pp. 18-71.

<sup>280</sup> Comité Contra la Tortura de la Comisión Provincial por la Memoria, Annual Report 2010: *El Sistema de la Crueldad V* [The System of Cruelty IV], pp. 54-55.

<sup>281</sup> IACHR, Public hearing: *Human Rights Violations in Prisons in Panama*, 131<sup>o</sup> Ordinary Period of Sessions, requested by: State of Panama, Comisión de Justicia y Paz de la Conferencia Episcopal de Panamá, Centro de Iniciativas Democráticas (CIDEM), Harvard University. March 7, 2008. In this regard, see the report: *Del Portón para Acá se Acaban los Derechos Humanos: Injusticia y desigualdad en las cárceles panameñas*, pp. 98-102 presented in the said hearing available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HarvardClinicPanamaprison.pdf>.

necessity and proportionality, after first attempting to use other dissuasive methods.<sup>282</sup> Repression cannot be the only tool used by the authorities to preserve order. Moreover, “[i]n all circumstances, the use of force and of firearms, or any other means used to counteract violence or emergencies, shall be subject to the supervision of the competent authority.”<sup>283</sup> And, in the event that people are killed or injured in the course of such actions, the State is obliged, under Articles 8 and 25 of the American Convention, to carry out, *ex officio*, serious, exhaustive, impartial, and prompt investigations to uncover the causes, identify those responsible, and impose the corresponding legal punishments.<sup>284</sup>

**G. Right of persons deprived of their liberty to lodge judicial remedies and complaints to the Administration**

241. Deprivation of freedom frequently affects, as a necessary result, the enjoyment of other human rights in addition to the right to personal liberty. Although such restrictions must be subject to strict limitations, the rights to privacy and family intimacy may, for instance, be restricted. However, other rights—such as the right to life, to humane treatment, and to due process—cannot be restricted on account of internment, and any restriction of those rights is prohibited by international human rights law.<sup>285</sup> Therefore, persons deprived of liberty maintain and have the right to exercise their fundamental rights recognized under domestic and international law, regardless of their legal situation or the stage of the proceedings against them, and in particular, they maintain the right to humane treatment and due respect for their dignity as human beings.<sup>286</sup>

242. Accordingly, the IACHR reiterates that the State acts as a guarantor vis-à-vis of the persons in its custody and therefore has a special duty to guarantee their fundamental rights and to ensure that the conditions of their detention are consistent with the dignity inherent to all human beings. The guaranteeing of those conditions by the State means that it must establish the judicial remedies to ensure that the jurisdictional organs effectively protect such rights. Furthermore, alongside judicial remedies, the State must create other mechanisms and channels of communication to enable inmates to inform the prison administration of their petitions, claims, and complaints regarding matters relating to the conditions under which they are detained and life in prison, which by their very nature are not competence of the judiciary.

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<sup>282</sup> See in this regard, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 3 and 4).

<sup>283</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XXIII (2). See also, the Standard Minimum Rules for the Treatment of Prisoners (Rule 54.1); and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 6-7 and 22).

<sup>284</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle XXIII.3).

<sup>285</sup> IACHR, *Democracy and Human Rights in Venezuela*, Ch. VI, para. 851.

<sup>286</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Ch. III, para. 176.

243. In order for the right to submit appeals, denunciations, and complaints not to be illusory, it is essential that the State adopt the necessary measures to guarantee effectively that both inmates and third parties acting on their behalf will not be subjected to reprisals or acts of retaliation for exercising those rights.<sup>287</sup> This is especially important in a detention or prison context in which the inmate is ultimately under the custody and control of the very authorities against which his appeals, complaints, or petitions may be lodged. Such inmates are therefore susceptible to reprisals and acts of retaliation. Persons deprived of their liberty must not be punished for filing appeals, petitions, or complaints.

*Judicial remedies*

244. International law establishes two basic remedies that must be available for the protection of the fundamental rights of persons deprived of liberty: on the one hand, the habeas corpus, established in Article 7.6 of the American Convention,<sup>288</sup> which constitutes the fundamental guarantee safeguarding everyone's right not to be subjected to unlawful or arbitrary detention, and which must also provide an opportunity for the judicial authority to ascertain the physical integrity of the detainee; and, on the other, a prompt, suitable and effective legal remedy that guarantees those rights that may be violated by the very conditions of detention or imprisonment. The existence of the later remedy is grounded in Article 25.1 of the American Convention, which establishes:<sup>289</sup>

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

245. In this connection, in its Principles and Best Practices, the IACHR set standards regarding the nature and scope of such a recourse:

Principle V. [...] All persons deprived of liberty shall have the right, exercised by themselves or by others, to present a simple, prompt, and effective recourse before the competent, independent, and impartial authorities, against acts or omissions that violate or threaten to violate their human rights. In particular, persons deprived of liberty shall have

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<sup>287</sup> On this matter see, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 33.4).

<sup>288</sup> In the same vein, the International Covenant on Civil and Political Rights (Article 9.4); and the European Convention on Human Rights (Article 5.4).

<sup>289</sup> In the same sense, the Article 2.3 of the International Covenant on Civil and Political Rights lays down that each State Party undertakes (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. Likewise, Article 13 of the European Convention on Human Rights says that, everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

the right to lodge complaints or claims about acts of torture, prison violence, corporal punishment, cruel, inhuman, or degrading treatment or punishment, as well as concerning prison or internment conditions, the lack of appropriate medical or psychological care, and of adequate food.<sup>290</sup>

246. The Commission observes that, generally speaking, the OAS member States establish remedies of this kind, although they may have different names for it. In some, this function is performed by *amparo* or protection writs; in others, by habeas corpus itself, in one guise or other. The important thing, regardless of what the remedy is called, is that it be effective, that is to say, capable of producing the result for which it was designed,<sup>291</sup> have a useful effect, and not be illusory. For a remedy to be effective, it must be truly suitable for establishing whether a violation of human rights has been committed and for providing the means for remedying the violation.<sup>292</sup>

247. This implies, pursuant to Article 25.2 of the American Convention, that the competent authority shall rule on the claim to the remedy by pronouncing on the merits of that claim and shall guarantee the enforcement of any decision granting that remedy.

248. It is important that the State guarantee that persons deprived of their liberty, or third parties acting on their behalf, have access to the competent courts for protecting their rights. These tribunals are should decide those matters on the merits within a reasonable period of time and in accordance with the general standards of due process. And that the judicial decisions resulting from these proceedings are effectively executed by the competent authorities. This last requirement is essential if judicial protection is to be capable of bringing about real changes in the concrete conditions experienced by persons deprived of their liberty.

249. Both the American Convention (Article 25.2.c.), and the International Covenant on Civil and Political Rights (Article 2.3.c.) expressly establish the duty of the competent authorities to comply with any decision in which a recourse for protecting human rights was granted.<sup>293</sup> Therefore, it is not enough for there to be a judgment recognizing the existence of certain rights and ordering the adoption of particular measures or structural reforms; it is also necessary that those decisions be complied with and produce the effects granted by law.

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<sup>290</sup> In the same vein, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 33).

<sup>291</sup> I/A Court H.R., *Case of Velásquez Rodríguez V. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 66.

<sup>292</sup> I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

<sup>293</sup> See in this regard, I/A Court H. R., *Case of "Juvenile Reeducation Institute" V. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paras. 245-251; and IACHR, Report No. 35/96, Case 10.832, Merits, Luis Lizardo Cabrera, Dominican Republic, April 7, 1998, paras. 107-108.

250. The Commission notes that the judicial decisions handed down in these remedies often refer to improvement of such aspects as the physical or security conditions in prisons; the provision of basic services, such as food, potable water, medical care, hygiene facilities, or other kinds of measures that require funding. In such cases, it is vital that the corresponding authorities, executive or legislative, take steps within a reasonable period of time to set aside the funds required and to give effect to judicially protected rights and freedoms, thereby complying with the general obligation of States, contemplated in Article 2 of the American Convention, to adopt the necessary measures under domestic law.

*Petitions and complaints*

251. It is a fundamental right of any person deprived of his or her liberty to file respectful petitions and complaints and to receive a timely answer from the prison authorities. Consideration of this right is particularly important if one takes into account the wide range of matters relating to prison conditions, the services provided by penitentiary institutions, the relations between inmates and personnel or among the inmates themselves.

252. On this, the Principles and Best Practices establish:

Principle VII. Persons deprived of liberty shall have the right of individual and collective petition and the right to a response before judicial, administrative, or other authorities. This right may be exercised by third parties or organizations, in accordance with the law.

This right comprises, amongst others, the right to lodge petitions, claims, or complaints before the competent authorities, and to receive a prompt response within a reasonable time. It also comprises the right to opportunely request and receive information concerning their procedural status and the remaining time of deprivation of liberty, if applicable.

Persons deprived of liberty shall also have the right to lodge communications, petitions or complaints with the national human rights institutions; with the Inter-American Commission on Human Rights; and with the other competent international bodies, in conformity with the requirements established by domestic law and international law.<sup>294</sup>

253. The effective exercise of this right essentially implies that the State must adopt the institutional and legal measures needed to establish ways of communication between persons deprived of their liberty or, where applicable, third parties, and the prison administration; and, that the latter have the necessary means and resources to

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<sup>294</sup> In a similar sense, the Standard Minimum Rules for the Treatment of Prisoners (Rules 35 and 36) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 33).

undertake actions in response to those complaints in accordance with applicable legal provisions.

254. This rights entails, for instance, informing persons deprived of their liberty of the possibility of exercising this right; ensuring that they really are able to file their complaints and petitions without intervention or “filtering” by prison officials or other inmates; providing appropriate systems for handling, examining, and distributing this information; ensuring that prison officers are properly trained to receive and process complaints and petitions; providing persons deprived of their liberty to access, if they so request, to legal aid and information regarding the exercise of this right; and taking steps to prevent any complaint being filed by the legal representative or a third party on behalf of an inmate, if the inmate opposes that filing. In addition, prison and administrative authorities involved in these processes must be properly trained to notify the competent judicial and investigative authorities of cases in which they detect information regarding possible crimes that must be prosecuted *ex officio*.

255. The reception and examination of complaints and petitions is an effective mechanism for addressing specific needs of persons deprived of their liberty and for detecting structural deficiencies or abuses committed by prison officials. It can also serve to identify patterns of negligence or flaws in the services provided by public defenders, physicians, or the members of technical boards. Such shortcomings are not always revealed by the regular external mechanisms for monitoring prisons, but can be detected by analyzing consistent and coinciding information received via complaints made to the administration.

256. In practice, a lack of channels through which inmates can address the administration could trigger a collective sense of frustration and impotence that might then manifest itself in disturbances or other forms of protest.

257. There is a particularly important mention, in the second paragraph of Principle VII of the Principles and Best Practices, of the right of persons deprived of liberty “to opportunely request and receive information concerning their procedural status and the remaining time of deprivation of liberty.” In practice, this information is essential as it allows a detainee to begin a number of procedures related to execution of his or her sentence. This is the case, for instance, of requests for probation and for permission to work or study. For persons deprived of their liberty in a State other than their own, such information is essential for requesting a transfer to their country of origin. Responsibility for issuing and delivering these documents that are vital for detainees lies jointly with the competent judicial authority and the prison administration. Under no circumstances should an inmate have to pay for them.

258. The third paragraph of Principle VII is grounded in Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR. It is a fact that many of the petitions received and processed by international protection mechanisms, such as the IACHR, are lodged by persons held in places of deprivation of liberty. That being so, State authorities should not prohibit or obstruct the exchange of correspondence between inmates and international organizations, nor should they prohibit inmates from

possessing or receiving jurisprudence, reports, or other documents and materials produced by the Commission, the Inter-American Court or other international human rights protection agencies.

#### **H. Recommendation**

259. With regard to effective control of places of deprivation of liberty and to preventing acts of violence, the Commission makes the following recommendations:

1. Eradicate corruption by adopting preventive measures, judicial actions, and public programs for evaluating and guaranteeing governance in prisons, while eliminating self-government mechanisms in prisons in which the authorities do not exercise effective control.
2. Ensure that the prison authorities control the allocation of cells and beds and that each inmate has a decent place in which to sleep, sufficient food, recreation, access to a lavatory and other facilities for the satisfaction of basic needs without having to pay for them.
3. Accord equal and fair treatment for all persons deprived of their liberty, in such a way that the deprivation of liberty is the same for all detainees, without differences in treatment or discrimination with respect to individuals for economic or any other reasons.
4. Evaluate and regulate trade in places of deprivation of liberty and exercise effective control over the admission of merchandise and the circulation of money derived from these activities.
5. Adopt the following measures to prevent violence:
  - a. Train prison personnel in ways to prevent violence among inmates;
  - b. Keep different categories of inmate separate, based on age, sex, type of crime, procedural situation, level of aggressiveness, or need for protection. For the effective implementation of this measure, it is necessary to address major structural deficiencies in the jails;
  - c. Increase the number of guards and other internal surveillance personnel and establish continuous surveillance systems within establishments;
  - d. Effectively prevent the admission of weapons, drugs, alcohol, and other substances or objects forbidden by law, through periodic searches and inspections and the use of technological



devices or other appropriate methods, including the searching of personnel;

- e. Establish early warning systems to preempt crises or emergencies;
  - f. Promote mediation and peaceful resolution of internal conflicts;
  - g. Avoid and combat any kind of misuse of authority and acts of corruption;
  - h. Get rid of impunity, by investigating and punishing each and every act of violence or corruption, in accordance with the law;
  - i. Maintain proper prison conditions, so that overcrowding and lack of access to basic services do not trigger friction and fights among inmates;
  - j. Implement cultural, sports, and recreational activities to keep inmates occupied. This specific recommendation is made in accordance with the Conclusion of this report.
3. Boost measures to prevent inmates from possessing weapons and to prevent the admission of drugs into places of deprivation of liberty, by detecting how they get in and punishing both the inmates and the officials involved in smuggling them in.
  4. Run campaigns to dissuade inmates from using illicit substances and introduce individual detoxification programs and treatment for addictions.
  5. Ensure that there are sufficient prison officers to guarantee security in prisons.

260. With respect to judicial oversight of detention, the Commission makes the following recommendations:

1. Make sure that all detainees are immediately informed of their rights, especially their right to communicate with an attorney or a third party and including their right to lodge complaints in the event of ill-treatment.
2. Ensure that any detention or arrest is subject to prompt judicial supervision; in particular, ensure that persons deprived of their liberty are brought before the competent judicial authorities within the time established by law and the Constitution.

3. Guarantee the effectiveness and undetachable nature of the action of habeas corpus and adopt any measures needed to ensure that it constitutes in practice an effective safeguard of liberty, life, and physical and mental integrity, in order to prevent torture or other cruel, inhuman or degrading punishment or treatment. Judges must take full advantage of the possibilities provided for by law in respect of this procedure. In particular, they should endeavor to interview detainees and ascertain their physical condition.
4. Punish authorities who deny detaining persons in their custody who have been deprived of their liberty or who knowingly give false information regarding their whereabouts.
5. Eliminate the practice of mass arrests without a prior court order and without people being caught *in flagrante delicto*.
6. Endow public defenders' offices with sufficient funding and personnel, in such a way as to enhance their operating capacity and ability to provide legal assistance to anyone deprived of liberty as soon as he or she is detained and before the detainee makes a statement; to act effectively to verify the legality of the detention; and to act according to law when they observe harm done to a detainee's physical or mental integrity.

261. With regard to the admission, registration and initial medical examination of persons deprived of their liberty, the IACHR makes the following recommendations:

*Admission and registration*

1. Inform anyone admitted to a place of deprivation of liberty of his or her duties, rights, and how to exercise them. In particular, persons deprived of liberty must be informed of their right to contact another person.
2. Ensure that records are kept of all admissions of persons into places of deprivation of liberty and train the personnel working in such places in the appropriate and consistent handling of those records. Mechanisms should be established to verify and supervise management of said records.
3. Keep complete and transparent records in all detention centers, indicating the legal grounds for detention. In particular, police stations must have a single registry containing all relevant information on each person held on police premises, certification of the duration of each phase of each detention, and certification by a competent authority of any transfer of the detainee.
4. Implement and guarantee the operating capacity of a centralized registry containing, inter alia, the total number of detainees, the reason for their

detention and where it took place, when it began, and the judicial authority that ordered it. Family members of detainees, their attorneys, judges and other pertinent authorities, as well as other parties with a legitimate interest, must have prompt access to this registry.

5. Ensure that police officers and other authorities empowered to make arrests and detentions receive training in how to inform detainees of their rights and the way to exercise them.
6. Adopt the measures needed to ensure that in all places of deprivation of liberty there are posters, leaflets, and other materials containing clear and simple information on the rights of persons deprived of their liberty.

*Initial medical examination*

7. Ensure that anyone admitted to a penitentiary is examined by a health professional qualified to ascertain whether that person: (a) is ill, injured, at risk of harming himself or herself, or in need of special medical care, so as to make sure that he or she receives the necessary supervision and treatment; and (b) is suffering from one or more infectious diseases, so as to ensure isolation from the rest of the prison population and access to medical care.
8. Said examination must be conducted in accordance with a questionnaire that should include, in addition to the general state of health, a record of any recent violence involving the detainee. All parts of the body must be examined. If the patient states that he or she was subjected to violence, the physician shall assess the compatibility of those claims and the findings of his examination. If the physician has grounds for presuming the existence of torture and ill-treatment, he must notify the competent authorities.
9. Ensure that a sufficient number of physicians are available to examine all detainees, not just those admitted to prisons. Physicians must be independent in the performance of their duties and receive training in the examination and documentation of cases of torture and ill-treatment, in accordance with the Istanbul Protocol.
10. Keep a record of the submission of every detainee to a medical examination, the identity of the physician, and the findings of that examination. The Istanbul Protocol should be applied as a way of improving the drafting of medical and psychological reports and as a deterrent to torture.
11. Promote specialized courses on current detention-related topics, such as infectious diseases, epidemiology, hygiene, forensic medicine, including the description of injuries, and medical ethics for doctors working in

prisons. Physicians should be obliged to take part in specialized courses that include a module on human rights policy in general and, in particular, on the obligations of health personnel in detention facilities.

262. With regard to the personnel working in places of deprivation of liberty, the IACHR makes the following recommendations:

1. Organize specialized educational and training programs for all personnel responsible for administration, supervision, operation, and security in prisons and other detention centers. They should include instruction regarding international human rights standards relating to maintenance of security, proportional use of force, and the humane treatment of persons deprived of their liberty.
2. Pay special attention to the process of selecting or promoting possible members of the security forces responsible for persons deprived of their liberty. Review and structure educational and training programs for members of such security units in order to forge an institutional culture of knowledge of and respect for human rights provisions.
3. Take the necessary steps to establish penitentiary schools for training a civilian body to work in prisons and to establish a prison service career as a way of guaranteeing the stability and professional advancement of prison personnel.
4. Furnish the means and resources needed for officials in charge of detainees to perform their functions. Pay them in accordance with the nature of those functions and with what is enough for them and their families to meet their needs in a decent manner, without having to resort to irregular practices. Likewise, ensure a decent salary and working conditions for the doctors, psychologists, social workers, and other professionals working in places of deprivation of liberty.
5. Inform all personnel responsible for persons deprived of their liberty, clearly, categorically, and on a regular basis, of the absolute and imperative ban on any kind of torture or ill-treatment; and include that prohibition in any rules and general instructions published in connection with the duties and functions of police personnel.
6. Train and properly instruct the authorities in charge of detention centers regarding the execution of rulings and decisions handed down by the corresponding judicial authorities, especially decisions taken by courts in *amparo* and habeas corpus proceedings.
7. Adopt such training and supervisory measures as are needed to ensure that the authorities empowered to carry out arrests or detentions abide by the corresponding procedures laid down in the law. It is particularly

necessary to ensure that arrests are only made by virtue of a court order or in legitimate *in flagrante delicto* cases. The Commission especially underscores the need to establish or, where applicable, strengthen internal systems for monitoring and supervising the authorities empowered to make arrests or carry out detentions.

8. Thoroughly investigate complaints of corruption and influence-peddling inside prisons, punish those responsible, and take steps to avoid a recurrence of the same.

263. With regard to guards in direct contact with persons deprived of their liberty, the IACHR makes the following recommendations:

1. Adopt all necessary measures to ensure that personnel responsible for direct custody of persons deprived of their liberty are civilian. Make provisions for replacing the police or military personnel performing those direct custody functions in places of deprivation of liberty.
2. Pay particular heed to specialized programs for recruiting and training personnel assigned to work in direct contact with inmates.
3. Establish independent and effective monitoring and control mechanisms of the activity of the prison authorities, which serve to prevent patterns of violence and abuse against prisoners.
4. Ensure that police personnel responsible for making arrests or detentions, or who have persons deprived of liberty in their custody, identify themselves at all times and that due records are kept of their actions. This identification criterion shall also apply to those members of special units that enter the cells to make requisitions.
5. In cases in which the army is involved in establishing security in detention centers, ensure that their deployment abides by the principles of legality, exceptionality, proportionality, and civilian authority oversight.

264. With regard to the use of force by the authorities in charge of places of deprivation of liberty, the IACHR makes the following recommendations:

1. Take all necessary steps to ensure that personnel working in prisons only use force and coercive methods exceptionally and proportionately, in serious, urgent and necessary cases, as a last resort having previously exhausted all available options, and for the duration and to the extent essential for guaranteeing security, internal order, and the protection of the fundamental rights of the population deprived of liberty, penitentiary personnel, and visitors.

2. Effectively prevent, investigate, and punish all cases in which the authorities responsible for the custody of persons deprived of their liberty are accused of resorting to disproportionate use of force. Furthermore, adopt such measures as are required to ensure that police or prison officers indicted of crimes involving the unlawful or disproportionate use of force are assigned to tasks other than direct custody of persons deprived of their liberty until the criminal proceedings have concluded.
  3. Keep records of incidents in which authorities responsible for the custody of persons deprived of their liberty have had to resort to the use of force (whether lethal or not). Those records must contain information on the identity of the prison officer, the circumstances under which use was made of force, the outcome, the names of the persons who were wounded or who died, and the corresponding medical reports.
  4. Equip officers responsible for internal security in prisons with non-lethal arms and control devices and other equipment needed for their self-defense.
  5. Establish clear rules and protocols to regulate the circumstances and conditions for legitimate use of force, expressly listing the factors that must be in place and the manner in force shall be used.
  6. Develop policies, strategies, and special training for prison and police personnel for the negotiation and peaceful settlement of disputes and for restoring order, using techniques for putting down riots with minimal risks to the lives and bodily integrity of both the inmates and the police.
265. Regarding the right of persons deprived of their liberty to lodge appeals, complaints, and petitions, the IACHR makes the following recommendations:
1. Have suitable and effective, individual and collective judicial remedies available for judicial control of overcrowding and violence in detention facilities, facilitating access to such remedies by detainees, their family members, their private or court-appointed attorneys, nongovernmental organizations, and other State institutions competent in this sphere.
  2. Adopt the measures needed to embark on a review of habeas corpus and *amparo* laws and the practical problems posed by those legal instruments, so as to ensure that their use effectively meets the needs of persons deprived of their liberty.
  3. Endow the judiciary with the resources it needs to ensure adequate judicial protection of the rights of persons deprived of their liberty. Provide proper training for officials in charge of detention centers

regarding compliance with court decisions, and take all necessary steps to effectively execute decisions issued by jurisdictional organs.

4. Guarantee that conditions of detention are effectively monitored by judges responsible for ensuring execution of sentences in the case of convicted inmates and by the respective trial judges in the case of persons in pre-trial detention. In this sense, it is important that judges of criminal sentencing execution, whose legal mandate includes visits to prisons, practice such functions effectively, and in the course of such visits, effectively and directly verify the reality of persons deprived of liberty.
5. Ensure that the personnel assigned to places of deprivation of liberty systematically provide information regarding the right to lodge a petition or appeal regarding treatment received while in custody. All petitions and appeals must be promptly examined and answered without undue delay and care must be taken to ensure that there is no retaliation against detainees for having lodged them.
6. Activate effective, confidential, and independent complaint mechanisms in all places of deprivation of liberty. Keep records of complaints with information on the identity of the complainant, the nature of the complaint, how it was dealt with, and the outcome.
7. Adopt all necessary measures to ensure that persons deprived of their liberty or third parties acting on their behalf with their consent will not be subjected to reprisals or acts of violence for having exercised their right to file appeals, complaints, or petitions.

### III. THE RIGHT TO LIFE

#### A. Basic standards

266. The most fundamental human right provided for in the instruments of the Inter-American and other human rights systems is the right to life. Without its full respect, no other human right or fundamental freedom may be effectively guaranteed or enjoyed.<sup>295</sup> The exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning,<sup>296</sup> because the bearer of those rights ceases to exist.<sup>297</sup>

267. Continuous violations of the right to life of persons deprived of liberty are currently one of the main problems in prisons in the region. Every year hundreds of inmates in the Americas die of different causes, particularly as a result of prison violence. This chapter examines the factors that give rise to these alarming levels of violence among inmates, as well as other reasons why a significant number of people annually lose their lives in detention centers in the region.

268. In the Inter-American human rights system the right to life is enshrined in Article I of the American Declaration of the Rights and Duties of Man and in Article 4 of the American Convention, in the following terms:

#### American Declaration

Article I. Every human being has the right to life, liberty and the security of his person;

#### American Convention

Article 4. (1) Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. [...]

269. Similar protections are found in other international human rights instruments, including Article 3 of the Universal Declaration of Human Rights;<sup>298</sup> Article 6 of the International Covenant on Civil and Political Rights;<sup>299</sup> Article 2 of the European

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<sup>295</sup> IACHR, *Report on Terrorism and Human Rights*, para. 81.

<sup>296</sup> I/A Court H.R., *Case of The "Street Children" Case (Villagrán Morales et al.) V. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 144.

<sup>297</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute" V. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 156.

<sup>298</sup> Universal Declaration of Human Rights: Article 3. Everyone has the right to life, liberty and security of person.

<sup>299</sup> International Covenant on Civil and Political Rights: Article 6(1). Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.



Convention on Human Rights,<sup>300</sup> and Article 4 of the African Charter on Human and Peoples' Rights.<sup>301</sup>

270. With respect to persons deprived of liberty, the State is in a special position of guarantor, under which its duty to ensure this right is all the greater. Indeed, as guarantor of the right to life of detainees, the State has the duty to prevent those situations that might lead, by action or omission, to the suppression of this right. In this regard, if a person was detained in good health conditions and subsequently died, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility, through valid evidence,<sup>302</sup> bearing in mind that the responsibility of the State must be presumed regarding what happens to those who are under its custody.<sup>303</sup> Accordingly, the obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies.<sup>304</sup>

271. Furthermore, as an effective guarantee of the right to life of persons deprived of liberty, the IACHR reiterates that in cases of deaths occurring in State custody - including death from natural causes or suicide- the State has the duty to initiate *ex officio* and without delay a serious, impartial, and effective investigation, which must be conducted within a reasonable time and not as a mere formality.<sup>305</sup> This duty of the State arises from the general obligations to observe and ensure rights set forth in Article 1(1) of the American Convention, as well as from the substantive duties established at Articles 4(1), 8, and 25 of that treaty.

## **B. Deaths resulting from prison violence**

272. As mentioned, most of the deaths of persons deprived of liberty that occur in the region's prisons are the result of prison violence. In light of this reality, the OAS member States, in the framework of the General Assembly, have observed with concern "the critical situation of violence and overcrowding in places of deprivation of freedom in the Americas" and have stressed "the need to take concrete measures to prevent this

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<sup>300</sup> Convention for the Protection of Human Rights and Fundamental Freedoms: Article 2(1). Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law

<sup>301</sup> African Charter on Human and Peoples' Rights: Article 4. Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of his life.

<sup>302</sup> I/A Court H.R., *Case of Juan Humberto Sánchez V. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 111.

<sup>303</sup> I/A Court H.R., Provisional Measures, Matter of Urso Branco Prison regarding Brazil, Order of the Inter-American Court of Human Rights of June 18, 2002, Whereas, para. 8. ECtHR, *Case of Salman v. Turkey*, Judgment of 27 June 2000 (Grand Chamber), para. 100.

<sup>304</sup> ECtHR, *Case of Salman v. Turkey*, Judgment of 27 June 2000 (Grand Chamber), para. 99.

<sup>305</sup> IACHR, *Democracy and Human Rights in Venezuela*, paras. 907, 909-912; IACHR, Report No. 34/00, Case 11.291, Merits, Carandiru, Brazil, April 13, 2000, paras. 99-101; I/A Court H.R., *Case of Ximenes Lopes V. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 148.

situation and to ensure the exercise of the human rights of persons deprived of freedom.”<sup>306</sup>

273. In this sense, one of the questions in the questionnaire published for the purposes of this report concerned levels of prison violence; those States that responded to this question provided the following information:

Country	Period	Number of violent deaths
Argentina (Federal Penitentiary Service)	2006-2010	26
Chile	2005-2009	203
Colombia	2005-2009	113
Costa Rica	2005-2009	25
Ecuador	2005 and June 2010	172
El Salvador	2006 and May 6, 2010	72
Guyana	2006-2010	10
Nicaragua	2006-2010	4
Trinidad and Tobago	2006-2010	2
Uruguay	2005-2009	57
Venezuela	2005-2009	1,865

274. These official figures clearly show that at present the State with the highest recorded number of violent deaths as a result of prison violence is Venezuela.<sup>307</sup> According to information supplied by the Venezuelan State, the total figure of 1,865 persons killed in prisons includes data for the last five years: in 2005, 381 inmates died violently; in 2006, 388; in 2007, 458; in 2008, 374; and in 2009, 264.<sup>308</sup> In this context, based on the figures of inmates killed and injured, the IACHR has found that in comparative terms, Venezuelan prisons are the most violent in the region.<sup>309</sup>

275. At a thematic hearing on the situation of persons deprived of liberty in Venezuela, held at the 141<sup>st</sup> regular session of the IACHR, the *Observatorio Venezolano de*

<sup>306</sup> OAS General Assembly resolutions AG/RES. 2510 (XXXIX-O/09), adopted on June 4, 2009; AG/RES. 2403 (XXXVIII-O/08), adopted on June 13, 2008; AG/RES. 2283 (XXXVII-O/07), adopted on June 5, 2007; and AG/RES. 2233 (XXXVI-O/06), adopted on June 6, 2006.

<sup>307</sup> The IACHR has monitored the prison situation in Venezuela via different mechanisms, using the same to voice its concern and made recommendations to the State. In this context, the IACHR adopted on 2009 a report entitled *Democracy and Human Rights in Venezuela*, Chapter VI of which contains an extensive analysis of the situation of prison violence; it held five public hearings between November 2009 and March 2011 (at its 137<sup>th</sup>, 138<sup>th</sup>, 140<sup>th</sup> and 141<sup>st</sup> regular sessions), which dealt with the situation of the rights of persons deprived of liberty; it requested and has been monitoring seven provisional measures granted by the Inter-American Court between January 2006 and November 2010; it has issued at least seven press releases between 2007 and the first quarter of 2011, in which it reiterates the State's duty to adopt concrete measures to protect the lives and right to humane treatment of individuals in its custody; and it has been consistently making clear its position in this connection in Chapter IV of all its annual reports adopted since 2005.

<sup>308</sup> Response received by note No. 000291 from the Ministry of Foreign Affairs.

<sup>309</sup> IACHR, *Democracy and Human Rights in Venezuela*, para. 881.

*Prisiones* [Venezuelan Prisons Observatory] (OVP) presented the following figures on the recorded number of inmates killed and injured in the last 12 years:<sup>310</sup>

Year	Number of deaths	Number of injured
1999	390	1,695
2000	338	1,255
2001	300	1,285
2002	244	1,249
2003	250	903
2004	402	1,428
2005	408	727
2006	412	982
2007	498	1,023
2008	422	854
2009	366	635
2010	476	967
<b>Total</b>	<b>4,506</b>	<b>12,518</b>

276. The OVP suggested that the extreme violence in the prisons also affects the families of inmates,<sup>311</sup> and provided information according to which, in 2010, four relatives (all women) of inmates were killed with firearms in incidents that occurred at the following prisons: Carabobo Judicial Confinement Center (“Tocuyito”), Los Teques Judicial Confinement Center, and the Venezuela General Penitentiary (PGV).

277. A significant number of provisional measures concerning persons deprived of liberty which the IACHR has requested and pursued before the Inter-American Court –and which the latter has granted– have been based on the existence of serious and urgent situations arising from patterns of prison violence with alarmingly high numbers of persons killed and injured. During these incidents, States were unable or unprepared to ensure internal security or adopt the necessary preventive measures to avert or minimize the effects of violence.

<sup>310</sup> IACHR, Public hearing: *Situation of Persons Deprived of Liberty in Venezuela*, 141<sup>o</sup> Ordinary Period of Sessions, Participants: State of Venezuela, Center for Justice and International Law (CEJIL), Observatorio Venezolano de Prisiones (OVP), Comisión de Derechos Humanos de la Federación de Abogados de Venezuela, March 29, 2011. The OVP also stated in this hearing that in 2010 there had been prison riots in which several people had been killed and injured at the following detention facilities: Aragua Penitentiary Center (“Tocorón”); Capital Region Penitentiary Center (“Yare”); Centro Occidental Penitentiary Center (“Uribana”); El Paraíso Reeducation and Craftwork Center (“La Planta”); Occidente Penitentiary Center (“Santa Ana”); the Venezuela General Penitentiary (PGV); Maracaibo National Prison (“Sabaneta”); Los Teques Judicial Confinement Center; and San Antonio Judicial Confinement Center (“Margarita”). The first three prisons mentioned above are currently under provisional measures ordered by the Inter-American Court.

<sup>311</sup> See in this regard, I/A Court H.R., Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison) regarding Venezuela, Order of the Inter-American Court of Human Rights of February 2, 2007, Having seen, para. 2(g).

278. Thus, for example: (a) in the matter of *Centro Penitenciario de Aragua "Cárcel de Tocorón,"* the Court was told that between 2008 and the first quarter of 2010, 84 inmates were killed in acts of prison violence; and that between September 27 and 29, 2010, there was a riot in which 16 inmates died, firearms were discharged, and eight grenades were detonated;<sup>312</sup> (b) in the matter of *Capital El Rodeo I & El Rodeo II Judicial Confinement Center* it was established that between 2006 and February 1, 2008, there were 139 deaths in various incidents of violence;<sup>313</sup> (c) in the matter of the *Penitentiary Center of the Central Occidental Region (Uribana Prison),* the Court was informed that between January 2006 and January 2007 there were 80 violent deaths in total, most of them caused by stabbing weapons and firearms;<sup>314</sup> (d) in the matter of the *Mendoza Prisons,* it was brought to the attention of the Inter-American Court that between March and October 2004, 11 inmates and 1 prison official lost their lives in violent circumstances, mostly as a result of fights involving sharp instruments used as weapons;<sup>315</sup> (e) and in the matter of *Urso Branco Prison,* the Court found that between January and June 2002 at least 56 inmates were brutally murdered in acts of prison violence in that corrections facility. According to the information presented to the Court, most of these deaths occurred amid inaction on the part of the authorities and their negligence in taking steps to control situations of violence.<sup>316</sup>

279. By the same token, in several of its decisions granting precautionary measures, the IACHR has requested States to take steps to protect the lives of persons deprived of liberty who were considered to be at risk based on clear evidence and strong reasons to believe that their lives and physical integrity might be in danger of attack.

280. In its press releases, the IACHR has repeatedly stated its position<sup>317</sup> with respect to serious acts of prison violence that have taken place in the region in recent years in Brazil,<sup>318</sup> El Salvador,<sup>319</sup> Guatemala,<sup>320</sup> Honduras,<sup>321</sup> Mexico,<sup>322</sup> and Venezuela.<sup>323</sup> The

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<sup>312</sup> I/A Court H.R., Provisional Measures, Matter of *Centro Penitenciario de Aragua "Cárcel de Tocorón"* regarding Venezuela, Order of the President of the Inter-American Court of Human Rights of November 1, 2010, Having seen, para. 2.

<sup>313</sup> I/A Court H.R., Provisional Measures, Matter of *Capital El Rodeo I & El Rodeo II Judicial Confinement Center* regarding Venezuela, Order of the Inter-American Court of Human Rights of February 8, 2008, Having seen, paras. 2 and 9.

<sup>314</sup> I/A Court H.R., Provisional Measures, Matter of the *Penitentiary Center of the Central Occidental Region (Uribana Prison)* regarding Venezuela, Order of the Inter-American Court of Human Rights of February 2, 2007, Having seen, para. 2.

<sup>315</sup> I/A Court H.R., Provisional Measures, Matter of the *Mendoza Prisons* regarding Argentina, Order of the Inter-American Court of Human Rights of November 22, 2004, Having seen, paras. 2 and 11.

<sup>316</sup> I/A Court H.R., Provisional Measures, Matter of *Urso Branco Prison* regarding Brazil, Order of the Inter-American Court of Human Rights of June 18, 2002, Having seen, paras. 1-2.

<sup>317</sup> The Inter-American Commission's press releases, organized by year, are available from the IACHR Press and Outreach Office, and can be accessed at: [http://www.oas.org/en/iachr/media\\_center/press\\_releases.asp](http://www.oas.org/en/iachr/media_center/press_releases.asp).

<sup>318</sup> With respect to *Brazil*, the acts of violence that occurred in the state of São Paulo between May 12 and 15, 2006, in which, apart from a serious public security situation involving confrontations in the streets of that state, there were more than 70 riots at different detention centers throughout São Paulo. During these events, at least 128 people were killed, including members of the security forces, civilians, and inmates. The riot on  
Continues...

facts on which the IACHR has expressed its opinion are examples of the reality of prison violence that exists in the region. In these press releases, the IACHR has consistently reiterated that the State is in a position of guarantor with respect to persons deprived of liberty and, as such, it has the absolute obligation to guarantee the rights to life and to humane treatment of those in its custody. This means that the State not only must ensure that its agents exercise appropriate control over security and order in prisons; it must also adopt such measures as might be necessary to protect individuals in custody from possible attacks by third parties, including other inmates.<sup>324</sup> As a function of this fundamental obligation, States have the duty to take concrete steps to prevent acts of violence from occurring in prisons.

281. Therefore, based on what it has observed in the exercise of its various functions, the IACHR has determined that, fundamentally, prison violence is caused by the following factors: (a) corruption and a lack of preventive measures on the part of the authorities; (b) the existence of prisons with systems of self-government in which the prisoners effectively control what happens inside the walls, where some prisoners have

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...continuation

November 10, 2010, at Raimundo Vidal de Pessoa Remand Center, in Manaus, in which three people were killed; and the riot on November 9 at Pedrinhas Prison Complex, in San Luis, Marañón State, which went on for more than 27 hours and in which at least 18 people died. See in this regard, IACHR press releases 18/06 and 114/10.

<sup>319</sup> As regards to *El Salvador*, the riot that erupted on August 18, 2004, at La Esperanza Prison (La Mariona) between ordinary prisoners and members of gangs (or *maras*), in which 30 people were killed and 23 were injured. And the fighting on April 26, 2010, at Sonsonate and Cojutepeque Prisons, in which 2 inmates died and more than 25 were injured. See in this regard, IACHR press releases 16/04 and 52/10.

<sup>320</sup> In the case of *Guatemala*, the fighting between members of gangs which occurred almost simultaneously on August 15, 2005, at four detention centers (PNC Precinct 31 in Escuintla, Pavón Prison, Canadá Farm, and Mazatenango Remand Center) in which 30 were people killed and 80 wounded. And the violence that broke out on November 22, 2008, at Pavoncito Jail, in which 7 inmates lost their lives and several others were injured. See in this regard, IACHR press releases 32/05 and 53/08.

<sup>321</sup> As for *Honduras*, the fighting among inmates that occurred on January 5, 2006, at Támara National Penitentiary, in which 13 prisoners died as a result of being attacked with firearms, machetes, and other cutting and stabbing weapons<sup>321</sup>. And the riots that occurred on April 26 at San Pedro Sula Prison and on May 3, 2008, at Támara National Penitentiary, in which 9 and 18 inmates, respectively, were killed<sup>321</sup>. See in this regard, IACHR press releases 2/06 and 20/08.

<sup>322</sup> With respect to *Mexico*, the events that occurred on January 20, 2010 at Social Rehabilitation Center (CERESO) No. 1 in the city of Durango. That day three riots broke out simultaneously between rival factions in three different parts of the facility, leaving 23 dead. Another incident occurred on July 25, 2011, at the Adult Social Rehabilitation Center (CERESO) in Ciudad Juárez, Chihuahua state, in which 17 inmates died and another 20 were injured. See in this regard, IACHR press releases 9/10 and 79/11.

<sup>323</sup> As for *Venezuela*, the violence that occurred on January 2 at Uribana Prison, and on January 3, 2007, at Guanare Prison, in which 16 and 6 inmates were killed, respectively; on January 27, 2010, at La Planta Judicial Confinement Center for Reeducation and Craftwork ("El Paraíso"), in which 8 inmates died and 17 were injured; on March 9, 2010, at Yare Prison, in which 6 inmates lost their lives and 15 were injured; on April 12 and May 4, at Occidente Penitentiary Center, where 7 and 8 inmates, respectively, died; from January 30 to February 2 at Tocarón Prison, and on February 1, 2011, at Vista Hermosa Prison, in which 2 and 5 inmates, respectively, were killed; and on June 12, 2011, at El Rodeo I Prison in which 19 inmates died and at least 25 were seriously injured. See in this regard, IACHR press releases 1/07, 10/10, 27/10, 50/10, 7/11, and 57/11.

<sup>324</sup> IACHR, Report 41/99, Case 11.491, Merits, Minors in Detention, Honduras, March 10, 1999, para. 136.

power over the lives of others; (c) the existence of systems in which the State delegates authority for maintaining discipline and order to certain groups of inmates; (d) power struggles between inmates or criminal groups for the control of prisons or of space, drugs, and other criminal activities; (e) the possession of all kinds of weapons by inmates; (f) drug and alcohol use among inmates; and (g) overcrowding, precarious conditions of confinement, and lack of essential basic services for prisoners, which worsens tensions among inmates and prompts the strongest to fight for the space and resources available.

282. Therefore, the Commission considers it crucial that States adopt all the necessary measures to reduce levels of violence in prisons to a minimum by countering the above-mentioned causal factors. This entails designing and instituting prison policies aimed at preventing crisis situations, such as outbreaks of prison violence. These policies should include plans of action for seizing weapons—in particular lethal ones—in the possession of prisoners and preventing the population from rearming. Furthermore, States should introduce—in keeping with mechanisms characteristic of a State governed by the rule of law—strategies for dismantling criminal structures that have taken root in prisons and that control various criminal activities, such as trafficking in drugs and alcohol or extortion of other inmates, which usually occur with the complicity of prison authorities and other security forces.

283. These violence prevention policies should be made part of the overall framework of comprehensive prison policies that also address other structural problems in prisons. In this regard, the housing of inmates in adequate conditions of confinement, as well as their segregation according to basic criteria, such as sex, age, procedural status, and type of offense, are in themselves ways to prevent prison violence. In addition, prison guards should be provided with the necessary training and equipment to allow them to intervene effectively in the event of riots or fighting among inmates so that timely action on their part can, if possible, forestall any loss of human life.

284. Another basic prevention measure is the investigation, prosecution, and punishment of those responsible for deaths that occur in incidents of prison violence. The IACHR reiterates that allowing acts of this nature to go unpunished sends the prison population the message that such deeds can be perpetrated without further legal consequence, thus creating a climate of impunity. The only possible response on the part of the State to inmates who are responsible for attacks on the lives of other inmates is criminal prosecution and imposition of appropriate disciplinary and prevention measures. Therefore, the authorities in charge of such investigations must be independent of the body or force whose acts are under investigation.

**C. Deaths resulting from the lack of prevention and timely actions of the authorities**

285. The IACHR notes that a significant number of deaths of persons deprived of liberty in the region's prisons come about as a result of a lack of prevention and timely care on the part of the authorities. This includes, for example, deaths as a result of fires or cases of persons suffering from serious diseases or whose condition warranted urgent care, and who died because they failed to receive assistance. In situations of this type the State

may bear international responsibility for its failure to take preventive steps or for manifest negligence in situations that could have been avoided or mitigated, had the appropriate authorities adopted adequate prevention measures and/or responded effectively to the threats or risks that arose.

#### *Fires*

286. The risk of fire at centers of deprivation of liberty is inherently high. This is particularly so in the case of facilities that are overpopulated, dilapidated, and/or were not originally built as centers of confinement. For greater comfort or privacy, prisoners very often install curtains, hammocks, annexes, and improvised electrical connections that are not properly supervised or controlled by the authorities. Coupled with this is the fact that centers of deprivation of liberty contain a large amount of flammable materials and other items belonging to inmates, such as cigarette lighters, matches, cigarettes, mattresses, and paper, which can catch fire at any time.

287. Thus, for instance, in the case of *Rafael Arturo Pacheco Teruel et al.*<sup>325</sup> the IACHR pronounced a decision on the fire of May 17, 2004, in communal cell 19 at San Pedro Sula Prison, in which 170 inmates died and another 26 were seriously injured. The fire was caused by a short circuit as a result of the large number of electrical appliances connected by the inmates in an improvised manner, and it spread rapidly thanks to the conditions of the place and the presence of flammable objects, such as curtains, mattresses, sheets, and inmates' clothing. In that proceeding, it was established that communal cell 19 was a space approximately 200 m<sup>2</sup>, built of cinderblocks and a corrugated zinc roof, in which 183 inmates linked to the *Mara Salvatrucha* gang were living when the fire broke out. The cell only had one door and a narrow ventilation slit in the roof; there were no openings for natural light or running water. The interior was crammed with bunk beds and inmates' possessions; the only free space was a narrow corridor between the beds. In such a small and overcrowded space inmates had connected 62 fans, 2 refrigerators, 10 television sets, 3 air-conditioners, 3 mini split compressors, 3 electric irons, 5 loudspeakers, 1 sound system, 1 VHS video recorder, 1 microwave oven, 1 blender, and 1 electric heater.

288. In its analysis on the merits in that case, the IACHR determined that the authorities were aware in advance of the shortcomings of the electrical system at San Pedro Sula Prison, and in particular in cell 19; that there was no control over the ingress and connection of electrical appliances; and that there was no supervision or monitoring whatsoever of the conditions of the electrical system in communal cell 19. Furthermore, there were no fire extinguishers or any measures in place to deal with an emergency of this type. In fact, the prison director himself stated afterwards that the only protocol to follow in the event of a fire was to shoot into the air to raise the alarm and secure the area until the firefighters arrived. It was also determined that one of the reasons why the inmates had connected so many fans and air conditioners was precisely that cell 19 lacked proper ventilation and the conditions in it created an extremely hot and suffocating atmosphere.

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<sup>325</sup> IACHR, Report No. 118/10, Case 12.680, Merits, *Rafael Arturo Pacheco Teruel et al.*, Honduras, October 22, 2010, paras. 2, 15, 31, 33, 34, 35, 36, 43, 72, 73, 74, 76, and 77.

289. For its part, in the case of the *Juvenile Reeducation Institute*, which also exemplifies the situation described above, the Inter-American Court found, *inter alia*, that the Paraguayan State bore international responsibility for three fires that broke out between 2000 and 2011 at “Panchito López” Juvenile Reeducation Institute, in which a total of nine youths died and at least 41 were injured. In its analysis, the Court found that the State had failed to adopt sufficient preventive measures to respond to the possibility of a fire, despite warnings from different organizations and international agencies. The facility was not originally built as a confinement facility, was not equipped with either fire alarms or fire extinguishers, and the security staff were not trained to deal with emergencies of that type.<sup>326</sup>

290. In carrying out its monitoring functions, the Inter-American Commission on Human Rights, in its press releases,<sup>327</sup> has often reiterated its position with respect to especially serious fires that have occurred in recent years at prisons in different countries in the region, such as the Dominican Republic,<sup>328</sup> Argentina,<sup>329</sup> Uruguay,<sup>330</sup> El Salvador,<sup>331</sup> Chile,<sup>332</sup> and Panama.<sup>333</sup>

291. Furthermore, in the context of a recent thematic hearing, the IACHR received information that on May 22 2009, seven girls died in a fire at Armadale Juvenile Center in Jamaica. According to the organizations that requested the hearing, this detention center does not have fire evacuation routes or extinguishers, despite three previous fires at the facility.<sup>334</sup>

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<sup>326</sup> I/A Court H.R., *Case of the “Juvenile Reeducation Institute” V. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paras. 134.29-134.43 and 177-179.

<sup>327</sup> The Inter-American Commission's press releases, organized by year, are available at: [http://www.oas.org/en/iachr/media\\_center/press\\_releases.asp](http://www.oas.org/en/iachr/media_center/press_releases.asp).

<sup>328</sup> In the case of the *Dominican Republic*, the Commission refers to the fire at Higüey Prison on March 7, 2005, in which 134 people died. See in this regard IACHR press release 8/05.

<sup>329</sup> In the case of *Argentina*, the IACHR refers to the fires that broke out at Unit 28 of the Buenos Aires Prison Service (“La Magdalena”), October 16, 2005, in which 32 prisoners were killed; and at Santiago del Estero Men’s Prison on November 4, 2007, in which 34 inmates died. See in this regard IACHR press releases 33/05 and 55/07.

<sup>330</sup> With respect to *Uruguay*, the Commission refers to the fire that broke out at Rocha Regional Prison on July 8, 2010, in which 12 inmates died. See in this regard IACHR press release 68/10.

<sup>331</sup> As regards *El Salvador*, the IACHR refers to the blaze at the Alternative Center for Juvenile Offenders in Ilobasco, on November 10, 2010, in which at least 16 inmates lost their lives. See in this regard IACHR press release 112/10.

<sup>332</sup> With respect to *Chile*, the IACHR refers to the fire at San Miguel Prison on December 8, 2010, in which at least 83 prisoners died. See in this regard IACHR press release 120/10.

<sup>333</sup> In the case of *Panama*, the IACHR recalls the fire that broke out at the Juvenile Detention Center in Tocumen on January 9, 2011, in which five youths were killed. See in this regard IACHR press release 2/11.

<sup>334</sup> IACHR, Public hearing, *Situation of Children in Juvenile Detention Centers in Jamaica*, 137<sup>th</sup> Ordinary Period of Sessions, requested by: State of Jamaica, Jamaicans for Justice, November 3, 2009. See also, *The Gleaner*, May 24, 2009, *Fire claims 5, 10 in hospital as FIRE destroys sections of Armadale Juvenile Center*, available at: <http://jamaica-gleaner.com/gleaner/20090524/lead/lead1.html>.



292. The IACHR considers that regardless of whether the initial cause of these fires was an outbreak of violence (*e.g.* a riot or an escape attempt) or whether they started spontaneously for other reasons, the majority occurred in overpopulated prisons in a state of physical disrepair where there were no mechanisms or protocols for dealing with these situations, and/or in circumstances where the authorities acted with manifest negligence in controlling the emergency. In most cases the authorities were already aware of the conditions and the level of risk that existed.

293. In light of the foregoing considerations, the IACHR reiterates that the act of imprisonment carries with it a specific and material commitment to protect the prisoner's human dignity so long as that individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health and personal integrity, among other rights. The State, being responsible for prisons, has a specific obligation to maintain and preserve its electrical installations in such a way that they pose no threat to anyone (either inmates or administrative, judicial, or security personnel, visitors and other persons who frequent the prisons). The State must also ensure that prisons have early warning systems to detect threats and proper equipment to react to emergencies of this kind. Furthermore, prison personnel must be trained in evacuation procedures, first aid and how to respond to events of this type.<sup>335</sup>

294. In the case of minors deprived of liberty, the applicable international standards expressly provide that:

[...] The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.<sup>336</sup>

295. The IACHR also underscores that States have the obligation to conduct meaningful, diligent, and impartial investigations into fires that occur at centers of deprivation of liberty, in order to impose appropriate criminal and administrative penalties on any authorities that bore some measure responsibility for the events and, furthermore, to provide effective reparation to victims.

*Lack of urgent medical care*

296. Another of the reasons why a significant number of persons deprived of liberty die in prisons in the region is lack of urgent medical care. Thus, for instance:

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<sup>335</sup> IACHR, Report No. 118/10, Case 12.680, Merits, Rafael Arturo Pacheco Teruel *et al.*, Honduras, October 22, 2010, para. 63.

<sup>336</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 32).

297. In the case of *Pedro Miguel Vera Vera*, In which the Court recently adopted a decision, the IACHR found that the victim, who has sustained a gunshot wound in the course of his arrest, died 10 days later while in the custody of the authorities because he failed to undergo surgery in time.<sup>337</sup>

298. Similarly, in the case of *Juan Hernández Lima*, the IACHR found that the victim, who was arrested for an administrative offense (“drunk and disorderly behavior”) and ordered to spend 30 days in prison or pay a fine, died from an attack of cholera six days after his arrest. His mother learned of his detention from neighbors four days after his death. In this case, the State failed to administer sufficient rehydration remedy, transfer Mr. Hernández Lima to a hospital facility, and notify a third party of his arrest.<sup>338</sup>

299. In the context of its monitoring functions, the IACHR noted that in March 2000 at *Combinado del Este* prison in Havana, six prisoners with tuberculosis, HIV, and other diseases reportedly died, apparently due to the negligence of the medical and paramedical personnel of the prison hospital.<sup>339</sup> Furthermore, in the exercise of its protection functions, the IACHR has granted precautionary measures in serious and urgent cases where individuals were at risk of irreparable harm due to lack of medical care.<sup>340</sup>

300. In light of these standards, the IACHR underscores that judicial authorities (be they trial judges or sentence enforcement judges) on whose decisions rests the fate of persons deprived of liberty, play a fundamental role in protecting the right to life of individuals who are seriously ill. Therefore, judicial officials must act with diligence, independence, and humanity in cases where it is duly attested that there is an imminent risk to life of the individual owing to their deteriorated health or a fatal illness.

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<sup>337</sup> The IACHR took into consideration the fact that the victim received no medical treatment from April 13 to 16, 1993, while he was being held in police cells where the standards of hygiene, sanitation, and medical care were deplorable. Furthermore, despite the fact that on April 16 the Judge of the 11th Criminal Court of Pichincha ordered the director of Santo Domingo Hospital to readmit Mr. Vera Vera for surgery, he was not admitted until April 17, at 13:00 hrs, and no surgery was performed on him until April 22, when he was treated at Eugenio Espejo Hospital in Quito. Therefore, in the 10 days that Mr. Vera Vera was in the custody of the state, various authorities, including correctional staff and medical personnel at state hospitals, committed a series of omissions that resulted in his death on April 23, 1993. IACHR, Application to the I/A Court H.R., *Pedro Miguel Vera Vera et al.*, Case 11.535, Ecuador, February 24, 2010, paras. 1, 21, 32, 45, 46, 47 and 56.

<sup>338</sup> IACHR, Report No. 28/96, Case 11.297, Merits, *Juan Hernández Lima*, October 16, 1996, paras. 1-5, 17, 56 and 60.

<sup>339</sup> IACHR, *Annual Report 2001*, Chapter IV, Cuba, OEA/Ser./L/V/II.114. doc. 5 rev., April 16, 2002, para. 81(a). Taken from the report of the United Nations Special Rapporteur on Torture, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, E/CN.4/2001/66, January 25, 2001, p. 78, para. 358.

<sup>340</sup> Thus, for example, precautionary measures were granted in favor of *Francisco Pastor Chaviano* (MC-19-07), in Cuba, who had been held in a punishment cell, mistreated by prison guards, and not provided medical treatment, despite suffering from serious illnesses. Mr. Pastor Chaviano was later released by the Cuban authorities on August 20, 2007. The IACHR also granted precautionary measures in favor of *Luis Sánchez Aldana* (MC-1018-04), a Colombian citizen detained in Suriname, who reportedly suffered from complete occlusion of the aorta and gangrene in the lower limbs, without receiving adequate medical care. The IACHR decided to lift these precautionary measures in June 2005 after it was provided with clear evidence that the State was administering the medical care that the beneficiary needed, and therefore the original circumstances that supported their granting no longer existed.

#### D. Deaths directly perpetrated by agents of the State

301. In addition to deaths arising from prison violence and gross negligence on the part of the State, another of the observed forms of serious violation of the right to life of persons deprived of their liberty, although statistically inferior to the above, is through acts directly imputable to the State, including, for example, extrajudicial execution; acts of torture or cruel, inhuman and degrading treatment resulting in the death of the victim; and forced disappearance of persons deprived of liberty.

##### *Extrajudicial executions*<sup>341</sup>

302. In this connection, the Commission received information that at 2:00 a.m. on September 25, 2006, a joint operation code-named “*Restauración 2006*” was carried out at Pavón Prison in Guatemala, in which the police, army, prisons service, and officials from the Office of the Attorney General took part. The stated objective of the operation was to regain control of the prison, which for more than a decade had been in the hands of a criminal organization of inmates known as the Committee for Order and Discipline (COD). During the operation agents of the State allegedly executed seven inmates, some of whom were recognized as COD ringleaders, in circumstances where they were reportedly offering no resistance.<sup>342</sup>

303. The IACHR has also received information that on April 5, 2003, at El Porvenir Penal Farm in Honduras, there was a riot between members of the *Mara 18* gang and prison trustees known as *rondines* (common prisoners illegally delegated disciplinary authority, which they impose even by use of force), which reportedly included the

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<sup>341</sup> For decades, both the Inter-American Court and the IACHR have been pronouncing decisions in cases of extrajudicial execution of persons deprived of liberty in the region, such as: (1) The suppression of a riot in San Juan Bautista Prison (formerly “El Frontón”) on June 19, 1986, in which the Peruvian Armed Forces used artillery, killing at least 111 inmates. I/A Court H.R., *Case of Durand and Ugarte Case V. Peru*. Judgment of August 16, 2000. Series C No. 68, paras. 59 and 68; I/A Court H.R., *Case of Neira Alegria et al. V. Peru*. Judgment of January 19, 1995. Series C No. 20, para. 69. (2) “Operation *Mudanza 1*” launched on May 6, 1992, in which different units of the Peruvian state security forces executed an attack using military weapons (including grenades, rockets, bombs, helicopter gunships, mortars, and tanks) against male and female inmates of cellblocks 1A and 4B of Miguel Castro Castro Prison, in which 41 prisoners died. I/A Court H.R., *Case of the Miguel Castro-Castro Prison V. Peru*. Judgment of November 25, 2006. Series C No. 160. paras. 211, 216, 222, and 223. (3) The storming by the National Guard and Metropolitan Police of Venezuela of Los Flores de Catia Detention Center, in which they shot indiscriminately at inmates using firearms and teargas, killing approximately 63 people. I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006. Series C No. 150, paras. 60.16, 60.25, and 60.27. (4) The massacre at Carandirú Detention Center on October 2, 1992, in which the Military Police fired indiscriminately at inmates, most of whom had surrendered and were unarmed, causing 111 deaths. IACHR, Report No. 34/00, Case 11.291, Merits, Carandiru, Brazil, April 13, 2000, paras. 1, 10-14, 67 and 69.

<sup>342</sup> As a result of the events of September 25, 2006, the IACHR wrote two letters to the State requesting confidential information: one on September 27, 2006, and the other on November 27, 2007. On October 19, 2006, in the context of the 126th regular session of the IACHR, there was a meeting with a delegation of the State of Guatemala at which the Commission received detailed information. Subsequently, on November 22, 2010, a meeting was held with representatives of the CICIG and the Institute for Comparative Studies in Criminal Sciences of Guatemala [*Instituto de Estudios Comparados en Ciencias Penales de Guatemala*] (ICCPG). See also, *Informe Anual Circunstanciado 2006* [Detailed Annual Report 2006] (p. 738) and *Informe Final del Caso de Pavón* [Final Report on the Pavón Case], both issued by the Ombudsman of Guatemala and available [HERE](#) in “Documents.”

involvement of different army and police units, who, together with the *rondines*, allegedly perpetrated a massacre of *Mara 18* gang members. The final outcome of the incident is said to have been 69 killed and 39 injured. According to available information, when the security forces entered the prison the death toll is thought to have been no more than 10 (including gang members and *rondines*); however, all the fatalities that occurred thereafter corresponded to *Mara 18* members. The IACHR was informed that after the army units arrived, the *rondines* set fire to cellblocks 2 and 6 where most of the gang members were housed, resulting in the deaths of 25 of the latter; other gang members who were injured and had surrendered were allegedly executed by the *rondines* and security forces.<sup>343</sup>

304. Furthermore, in the case of *Orlando Olivares et al.*, which the Commission recently declared admissible, it was alleged that on November 10, 2003, members of the Venezuelan National Guard extra judicially executed seven inmates, who had surrendered and were unarmed in the context of an operation to control a supposed riot at Bolívar State Judicial Confinement Center (also known as Vista Hermosa Prison). According to the petitioners, after the situation had been brought under control, the security forces reportedly forced the inmates outside and placed them on the sports field where they physically assaulted them, beating them with baseball bats, pipes, rifles, and metal bars. After that, they apparently took presumed cellblock leaders and executed them, the latter being the seven alleged victims in the case.<sup>344</sup>

#### *Other forms of mistreatment resulting in death*

305. As this report shows in the next chapter, which concerns the right to humane treatment, in performing its various functions the IACHR has found that the use of torture and cruel, inhuman, and degrading treatment on individuals in State custody remains one of the principal human rights problems in the region. In this context, the Inter-American human rights system has examined cases in which the nature and intensity of the assault have caused the traumatic death of the victim.

306. Thus, for example, in the *Bulacio* case, the Inter-American Court found that the victim, a 17-year-old youth, who was detained on April 19, 1991, as part of a mass arrest (or *razzia*), died seven days later as a result of "cranial traumatism" caused by a savage beating to which he was subjected by police officers.<sup>345</sup>

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<sup>343</sup> IACHR, Public hearing: *Situation of the Persons Deprived of Liberty in Honduras*, 124<sup>o</sup> Ordinary Period of Sessions, Participants: State of Honduras, Center for Justice and International Law (CEJIL), Comité para la Defensa de los Derechos Humanos en Honduras (CODEH), Comité de Familiares de Detenidos y Desaparecidos de Honduras (COFADEH) and Centro para la Prevención, Tratamiento y Rehabilitación de las Víctimas de Tortura (CPTRT). March 7, 2006. In this regard, see the report: *Situación del Sistema Penitenciario en Honduras*, drafted by CPTRT and COFADEH, presented in the said hearing available at: <http://www.cptrt.org/pdf/informesistemapenitenciarioCIDH.pdf>.

<sup>344</sup> IACHR, Report No. 14/11, P-1347-07, Admissibility, *Orlando Olivares et al.* (Deaths in the Vista Hermosa Prison), Venezuela, March 23, 2011, paras. 1, 8, and 9.

<sup>345</sup> I/A Court H.R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 3.

307. In the course of its working visit to the province of Buenos Aires in June 2010, the Rapporteurship of PDL received information according to which, on February 23, 2008, Mr. Gastón Duffau, after being arrested, was beaten in a patrol car and at Ramos Mejía police station, and later taken dead to a hospital. The second autopsy carried out on him determined as many as 100 lesions consistent with kicking, baton blows, punching, and knee blows. The autopsy concluded that all of these lesions had occurred immediately before death. In this regard, according to the Committee against Torture of the *Comisión Provincial por la Memoria* [Provincial Truth Commission]:

There are no exact figures on the number of people who were victims of torture, executions, or killings by the police. [...] [A]s the people concerned tend to belong to the most excluded sectors, most such incidents are not reported, nor do they come to the attention of the media. Unless relatives, organizations, and persons close to the victims persevere in these cases, they usually remain in impunity or are justified as “confrontations.” There is a structural pattern, an attitude of institutional concealment, regardless of the import of the offense committed.<sup>346</sup>

*Forced disappearances*

308. The Commission notes that in the present times, even though less than in the past, there are still instances of persons who have gone missing while in the custody of the State. These incidents even happen with individuals formally deprived of liberty in a jail or in another official detention facility.

309. Thus, for example, the IACHR requested the Inter-American Court to order provisional measures to protect the lives and wellbeing of Francisco Dionel Guerrero Larez and Eduardo José Natera Balboa, on November 13 and 28, 2009, respectively. Mr. Guerrero Larez was serving a sentence at the Venezuela General Penitentiary (PGV) and his family said that they had had no news of his whereabouts since November 7. Similarly, Mr. Natera Balboa, who was imprisoned in the Eastern Region Penitentiary Center known as “El Dorado”, was last seen on November 8, 2009, when he was allegedly violently put into a black vehicle by members of the National Guard. In both cases, relatives of the disappeared men made different efforts before administrative, judicial, and investigative authorities but failed to obtain any concrete results. The Inter-American Court continues to maintain in effect both provisional measures, in which it orders the Venezuelan State to adopt “immediately, the measures necessary to determine the situation and whereabouts” of the beneficiaries.<sup>347</sup>

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<sup>346</sup> Comité Contra la Tortura de la Comisión Provincial por la Memoria, Annual Report 2009: *El Sistema de la Crueldad IV* [The System of Cruelty IV], pp. 432-434.

<sup>347</sup> I/A Court H.R., Provisional Measures, Matter of Guerrero-Larez, Venezuela, Order of the Inter-American Court of Human Rights of November 17, 2009, Having Seen 1 and 2; Whereas 9, 11, and 12; and Resolves 1; I/A Court H.R., Provisional Measures, Matter of Natera-Balboa, Venezuela, Order of the President of the Inter-American Court of Human Rights of December 1, 2009, Having Seen 1 and 2; Whereas 9 and 11, and Resolves 1.

310. Furthermore, in the framework of the working visit made by the Office of the Rapporteur on the Rights of Persons Deprived of Liberty to the province of Buenos Aires in June 2010 and at its follow-up hearing in March 2011, the IACHR was informed of the alleged disappearance of Luciano Arruga. According to the information received, Luciano Arruga—aged 17 at the time of the events—is said to have disappeared in January 2009 after being unlawfully detained at Lomas de Mirador police station. Previously, on September 21, 2008, Luciano Arruga was reportedly detained for 12 hours without any record having been made of that fact. The suspicions about the possible involvement of the police in Luciano Arruga’s disappearance stem from the repeated threats that he received from the police station personnel as well as witness testimony given during the proceeding at the domestic level to the effect that he was at Lomas del Mirador police station.<sup>348</sup>

311. Likewise, the *Centro de Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares* [Center for Prevention, Treatment, and Rehabilitation of Torture Victims and their Families] (CPTRT) recorded at least six possible cases of disappearance of inmates in prisons in Honduras between 2004 and 2006.<sup>349</sup> According to the CPTRT most of the victims in these cases were members of gangs (or *maras*) and their disappearances were the work of other inmates.<sup>350</sup>

312. In light of the above considerations, the IACHR underscores that international human rights law requires States to adopt certain specific measures to prevent forced disappearance of persons deprived of their liberty. Examples of these measures are: keeping up-to-date official records on persons deprived of their liberty, which shall be made available to third parties;<sup>351</sup> holding of individuals in officially

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<sup>348</sup> Comité Contra la Tortura de la Comisión Provincial por la Memoria, Annual Report 2009: *El Sistema de la Crueldad IV* [The System of Cruelty IV], pp. 440-441; IACHR, Public hearing: *Human Rights Situation of Persons Deprived of Liberty in the Province of Buenos Aires*, 141<sup>st</sup> Ordinary Period of Sessions, Participants: State of Argentina, the Center for Legal and Social Studies (CELS), *Comisión por la Memoria de la Provincia de Buenos Aires* [Truth Commission for the Province of Buenos Aires], March 28, 2011; Comité Contra la Tortura de la Comisión Provincial por la Memoria, Annual Report 2010: *El Sistema de la Crueldad V* [The System of Cruelty IV], pp. 30, 309-312.

<sup>349</sup> They are: (a) Sandy Otoniel Gómez González and Oscar Danilo Vásquez Corea, who both allegedly disappeared from Támara National Penitentiary in February 2006; (b) José Rafael Reyes Gálvez, also an inmate at Támara National Penitentiary, who was last seen in July 2005; and (c) José Arnaldo Mata Aguilar, Orlín Geovany Funez, and Glen Rockford, who variously disappeared in 2003 and 2004 while confined at San Pedro Sula Prison. Their remains were found buried in the ground under the Cell 19 after the process of restoration that followed the fire in May 2004.

<sup>350</sup> IACHR, Public hearing: *Situation of the Persons Deprived of Liberty in Honduras*, 124<sup>th</sup> Ordinary Period of Sessions, Participants: State of Honduras, Center for Justice and International Law (CEJIL), Comité para la Defensa de los Derechos Humanos en Honduras (CODEH), Comité de Familiares de Detenidos y Desaparecidos de Honduras (COFADEH) and Centro para la Prevención, Tratamiento y Rehabilitación de las Víctimas de Tortura (CPTRT). March 7, 2006. In this regard, see the report: *Situación del Sistema Penitenciario en Honduras*, drafted by CPTRT and COFADEH, presented in the said hearing.

<sup>351</sup> See, Inter-American Convention on Forced Disappearance of Persons, Article XI; International Convention for the Protection of all Persons from Forced Disappearance, Article 17(3); and the United Nations Declaration on the Protection of all Persons from Enforced Disappearance, Article 10(2) and (3).

recognized places of detention;<sup>352</sup> and exercising effective judicial control over detentions.<sup>353</sup> Furthermore, States have the duty to open *motu proprio* a serious, impartial, diligent investigation, within a reasonable time, of the disappearance of anyone under their custody.<sup>354</sup>

#### E. Suicides

313. Suicide is an ever-present reality in correctional facilities. In this regard, the mere act of confining someone in a closed environment from which they are unable to leave at their own will, with all of the consequences that entails, can have a strong impact on their mental and emotional balance. In addition, there are the inherent imbalances and risk factors found in certain inmates. The World Health Organization regards persons deprived of liberty as a group at a high risk for suicide; that is, they are a population of special concern as their recorded suicide rate is higher than average.<sup>355</sup>

314. There are many factors, both individual and environmental, which may influence the decision of a person deprived of liberty to take their life: the stress caused by the impact of incarceration; the tension of prison life; violence among inmates; possible abuse by the authorities; drug or alcohol addiction; repeated physical or sexual assault by other prisoners with inaction on the part of the authorities; disruption of social relations, or a family conflict or break up; feelings of isolation, despair, and abandonment; impotence and distrust of the judicial system due to reiterated and unjustified procedural delays, leading to a profound feeling of defenselessness in the inmate; the prospect of a long sentence; the lack of privacy; awareness of the crime committed; and the potential impact on a person of public exposure as a criminal. Furthermore, particularly trying or degrading conditions of detention, such as intolerable overcrowding or solitary confinement with significantly long periods of confinement, are also stressors that may lead to suicide.

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<sup>352</sup> See, Inter-American Convention on Forced Disappearance of Persons, Article XI; International Convention for the Protection of all Persons from Forced Disappearance, Article 17(1) and (2); and the United Nations Declaration on the Protection of all Persons from Enforced Disappearance, Article 10(1).

<sup>353</sup> See American Convention, Article 7 (5) and (6); International Covenant on Civil and Political Rights, Article 9 (3) and (4); American Declaration of the Rights and Duties of Man, Article XXV; and European Convention on Human Rights, Article 5 (3) and (4).

<sup>354</sup> See, American Convention (Articles 8 and 25); International Convention for the Protection of all Persons from Forced Disappearance (Articles 3 and 6), United Nations Declaration on the Protection of all Persons from Enforced Disappearance (Article 3), and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 34).

<sup>355</sup> World Health Organization (WHO), *Preventing Suicide in Jails and Prisons*, (update 2007), p. 2, available at: [http://www.who.int/mental\\_health/prevention/suicide/resource\\_jails\\_prisons.pdf](http://www.who.int/mental_health/prevention/suicide/resource_jails_prisons.pdf). See also, Ruiz, José Ignacio; Gómez, Ingrid; Landazabal, Mary Luz; Morales, Sully; Sánchez, Vanessa; and Páez, Darío, *Riesgo de Suicidio en Prisión y Factores Asociados: Un Estudio Exploratorio en Cinco Centros Penales de Bogotá* [Suicide Risk in Prison and Associated Factors: An Exploratory Study in Five Penal Centers in Bogotá], in *Revista Colombiana de Psicología*, 2002, No. 11, 99-104. And, McArthur, Morag; Camilleri, Peter, & Webb, Honey, *Strategies for Managing Suicide & Self-harm in Prisons*, in Trends and Issues in Crime and Criminal Justice series, Australian Institute of Criminology, 1999, No. 125, available at: <http://www.aic.gov.au/documents/2/9/4/%7B2945C409-3CE4-49C8-9F58-D8183A77CBD7%7Dt125.pdf>.

315. In this regard, a number of States that presented responses to the questionnaire published for the purposes of this report provided the following information:

- (a) In *Argentina*, 24 suicides were recorded in prisons of the Federal Penitentiary Service between 2006 and 2009; in prisons of the province of Buenos Aires Penitentiary Service there were 83 suicides between 2004 and 2009.
- (b) In *Chile*, 87 people reportedly died by suicide in the country's prisons from 2005 to 2009.
- (c) In *Costa Rica*, from 2005 to 2009, there were 18 recorded suicides and 56 acts described as suicide attempts.
- (d) The Government of *Nicaragua* reported that in the five years prior to September 2010 there were seven deaths by suicide in the prisons of the National Penitentiary System.

316. In exercising its contentious function, the IACHR has pronounced its opinion on the content and scope of the responsibility of State in cases of suicide by persons deprived of liberty. Thus, in the case of *César Alberto Mendoza et al. (Incarceration and perpetual confinement of adolescents)*, one of the victims, Ricardo David Videla Fernández, committed suicide by hanging himself with his belt from one of the bars over the window of his cell located in unit 11 "A" of the Young Adult Security Center at Mendoza Prison. In this case, the IACHR determined that the State committed a sequence of omissions that resulted not only in the deterioration of the victim's well-being, but also in the loss of his life, which could have been avoided.<sup>356</sup>

317. In its analysis, the Commission took into consideration that: (a) The victim was in a punishment cell under an isolation regime whereby he was locked up for 21 hours a day; (b) the victim applied for a writ of habeas corpus in which he claimed that he was constantly threatened by prison staff as well as a victim of psychological harassment on their part; (c) on several occasions the victim announced to correctional staff that he intended to take his life; (d) days before his death a delegation from the Prison Policy Monitoring Committee noted his marked psychological deterioration, which was brought to the attention of the appropriate authorities; and (e) two days before the victim committed suicide, the administrative chief of the Health Division urgently requested the prison director to eliminate the 21-hours-a-day lockdown system in use in Unit 11.

318. The Commission found that, aside from the omissions in the days and weeks leading up to Ricardo Videla's death, the prison authorities failed to keep him under close watch, to make emergency calls to medical or psychological staff who might have intervened in the situation, or to arrange adequate custodial measures. In other words, the authorities in whose custody he found himself failed to make all necessary efforts to

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<sup>356</sup> IACHR, Report No. 172/10, Case 12.651, Merits, *César Alberto Mendoza et al.*, Argentina, November 2, 2010, paras. 2, 95, 97, 102, 103, 104, 109, 262, 264, 265, 266, 267, 268 and 271.



safeguard his life. Furthermore, in the moment that the victim proceeded to take his life, the authorities failed to act with due diligence to prevent the suicide from being consummated. Basically, the concurrence of the circumstances described, as well as the absence of any other satisfactory explanation from the State, allowed the IACHR to conclude that they had a direct bearing on the victim's death. This case is currently before the Inter-American Court.

319. Accordingly, the IACHR finds that the incarceration of an individual in isolation conditions that do not meet the applicable international standards constitutes a risk factor for suicide.<sup>357</sup> Therefore, the physical and mental health of the inmate should be kept under close medical supervision throughout the time that this measure is enforced.<sup>358</sup> The isolation or solitary confinement of a person deprived of liberty shall only be permitted as a measure that is strictly limited in time, as a last resort, and in accordance with a series of safeguards and guarantees set down in the applicable international instruments.

320. Isolation or solitary confinement shall be strictly prohibited in the case of children and adolescents deprived of their liberty.<sup>359</sup> The mere application of measures of this type to anyone under the age of 18 in itself constitutes a form of cruel, inhuman, or degrading treatment. The segregation and isolation of children or adolescents constitutes an additional risk factor for acts of suicide.<sup>360</sup>

321. The Commission is of the opinion that the State, as guarantor of the rights of persons deprived of liberty, should address suicide prevention as a matter of priority, which entails reducing potential risk factors to a minimum. In this regard, the applicable international instruments establish, for example, the duty to perform a medical examination of all individuals upon admission to a detention facility,<sup>361</sup> which should include observation to determine if the inmate poses a danger to themselves,<sup>362</sup> as well as the duty of the State to provide mental health services whenever the personal situation of the inmate warrants,<sup>363</sup> obligation which arises from Article 5 of the American Convention (see Chapter IV of this report).

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<sup>357</sup> See also, Shalev, Sharon, *A Sourcebook on Solitary Confinement*, Mannheim Centre for Criminology, 2008, p. 17, available at: [http://solitaryconfinement.org/uploads/sourcebook\\_web.pdf](http://solitaryconfinement.org/uploads/sourcebook_web.pdf).

<sup>358</sup> See, Standard Minimum Rules for the Treatment of Prisoners (Rule 32.3).

<sup>359</sup> See, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, No. 67; Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Principle XXII.3); and the Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on 9 December 2007, available at: [http://solitaryconfinement.org/uploads/Istanbul\\_expert\\_statement\\_on\\_sc.pdf](http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf).

<sup>360</sup> WHO, *Health in Prisons: A WHO guide to the essentials in prison health*, 2007, p. 8.

<sup>361</sup> Standard Minimum Rules for the Treatment of Prisoners (Rule 24), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 24), Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Principle IX.3) and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 50).

<sup>362</sup> WHO, *Health in Prisons: A WHO guide to the essentials in prison health*, 2007, pp. 24 and 25.

<sup>363</sup> See, Standard Minimum Rules for the Treatment of Prisoners (Rule 22.1 and 25.1); Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Principle X); and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rules 49 and 51). Currently, the European Prison

322. According to the current guidelines of the World Health Organization, suicide prevention programs of detention facilities should include the following components:<sup>364</sup>

- (a) Proper training for prison staff (health and correctional) in detection and treatment of potential suicide cases;
- (b) Medical assessment of inmates upon admission in order to screen them for possible suicidal risks;
- (c) Establishment of clearly articulated policies and procedures for continued supervision and treatment of inmates who are considered a suicide risk;
- (d) Adequate monitoring during the night shift and at shift changes of inmates kept in isolation as a disciplinary measure;
- (e) Promotion of interaction by inmates among themselves, with their relatives, and the outside world;
- (f) Maintaining a safe physical environment that reduces the possibility of using mechanisms to commit suicide, in which, for instance, hanging points and access to lethal materials are eliminated or minimized; and in which efficient surveillance mechanisms are adopted (although in practice, these should never be used as a substitute for direct observation by staff);
- (g) Adequate mental health treatment of inmates who present a clear suicide risk, which should include evaluation and care by qualified staff and psychopharmacological treatment; and
- (h) Establishment of procedures and protocols in the event of a suicide attempt; or so-called manipulative attempts, which may consist of self-harming behavior; and if a suicide actually occurs.

323. Ultimately, authorities with persons deprived of liberty in their custody should make every effort necessary to safeguard the lives and well-being of those persons and prevent suicides from occurring in prisons.<sup>365</sup> Furthermore, the IACHR considers that as part of a comprehensive corrections policy, States should identify detention facilities with an unusually high suicide rate and adopt such measures as may be necessary to correct that situation, which must include a thorough investigation of all its causes.

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Rules are the only international instrument that expressly mentions that the prison medical service at detention facilities should pay special attention to suicide prevention (Rule 47.2).

<sup>364</sup> World Health Organization (WHO), *Preventing Suicide in Jails and Prisons*, (update 2007), pp. 9-21.

<sup>365</sup> IACHR, Report No. 172/10, Case 12.651, Merits, César Alberto Mendoza *et al.*, Argentina, November 2, 2010, para. 276.

324. Prisons are a closed environment in which persons deprived of their liberty are under the absolute control of the State, and very often at the mercy of other inmates. Therefore, it is possible that the death of an inmate, which might appear at first sight to be a suicide, could have been caused intentionally by someone else. Accordingly, the State must ensure that such acts are effectively investigated and that a ruling of suicide is not used as a quick way to conceal deaths that were caused by something else. The authorities responsible for the investigation of the death of a person in the custody of the State must be independent from those implicated in the events; this means hierarchical or institutional independence and also practical independence.<sup>366</sup>

325. The Inter-American Commission on Human Rights reiterates that the State has the duty to investigate *sua sponte* the death of any person that occurs in a center of deprivation of liberty.<sup>367</sup> Therefore, the fact that evidence might initially suggest the possibility of a suicide does not exempt the competent authorities from undertaking a serious and impartial investigation in which all logical lines of inquiry are pursued in order to establish if the inmate really did take his own life and,<sup>368</sup> even assuming he did, whether the authorities were in any way responsible for a failure to prevent it.<sup>369</sup> When the State does not discharge fully this duty to investigate, it violates the right of the victim's relatives to an effective remedy to clarify the facts and determine the appropriate responsibilities (Articles 8 and 25 of the American Convention).<sup>370</sup>

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<sup>366</sup> IACHR, Report No. 54/07, Petition 4614-02, Admissibility, Wilmer Antonio Gonzalez Rojas, Nicaragua, July 24, 2007, para. 49; European Court of Human Rights, *Case of Sergey Shevchenko v. Ukraine*, (Application no. 32478/02), Judgment of April 4, 2006, Second Section, para. 64.

<sup>367</sup> In this regard, in cases of suicide while in custody, the European Court has held that the obligation to effectively investigate "is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigation authority. The mere fact that the authorities were informed of the killing by an individual gives rise *ipso facto* to an obligation [...] to carry out an effective investigation into the circumstances surrounding the death." IACHR, Report No. 54/07, Petition 4614-02, Admissibility, Wilmer Antonio González Rojas, Nicaragua, July 24, 2007, para. 51; ECtHR, *Uçar v. Turkey*. Judgment of 11 April 2006 (Second Section of the Court), para. 90.

<sup>368</sup> In this regard, the Court has held that "[i]t is vital that the complexity of the matter, the context and the circumstances in which it occurred and the patterns that explain its commission must be taken into account when carrying out a due diligence in the investigative procedures." I/A Court H.R. *Case of Escué Zapata V. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165. para. 106.

<sup>369</sup> See in this regard, IACHR, Report No. 54/07, Petition 4614-02, Admissibility, Wilmer Antonio Gonzalez Rojas, Nicaragua, July 24, 2007, para. 51; European Court of Human Rights, *Case of Trubnikov v. Rusia*, (Application no. 49790/99), Judgment of July 5, 2005, Second Section, para. 89.

<sup>370</sup> IACHR, Report No. 172/10, Case 12.651, Merits, César Alberto Mendoza *et al.*, Argentina, November 2, 2010, paras. 277-282.

## **F. Recommendations**

326. With regard to the respect and assurance of the right to life of persons deprived of liberty, the IACHR reiterates the recommendations formulated in Chapter II of this report in relation to:

1. The maintenance of an effective control of the detention centers and the prevention of violence.
2. Judicial review of the deprivation of liberty.
3. Admission, registration and initial medical examination of persons deprived of liberty.
4. The use of force by the authorities in charge of detention centers. And
5. The right to medical care for detainees.

327. The IACHR also makes the following recommendations:

6. Adopt prevention policies for crisis situations, such as fires and other emergencies. The keystones of these policies should be training for prison staff and introduction of protocols and plans of action for crisis situations.
7. Ensure that the physical infrastructure of detention facilities is kept in conditions that minimize the potential risk of fires and other accidents that might endanger the lives of inmates. In particular, eliminate overcrowding to ensure that detention facilities do not house more persons than they can safely accommodate.
8. Ensure regular maintenance and supervision of electrical installations in correctional centers. Enforce the necessary controls on admission and connection of electrical appliances in the different cells or cell blocks.
9. Subject to their characteristics, equip detention facilities with the necessary appliances and mechanisms to prevent and tackle fires and other emergencies. In particular, these include adequate evacuation routes, alarms, and extinguishers.
10. Take the necessary steps to educate and raise awareness in the prison population about the need to prevent fires and about behavior that can cause them. Enforce adequate supervision of internal divisions made by inmates with blankets, drapes, and other improvised materials, which may increase the risk of fire. In countries with cold climates, States should ensure optimal conditions of detention and not force inmates to rely on individual heaters or stoves.

11. Adopt suicide prevention programs in keeping with the current guidelines of the World Health Organization, giving particular attention to measures relating to training of correctional staff, care of juveniles deprived of liberty, and the use of disciplinary measures, such as isolation cells, in accordance with the considerations contained in this chapter.
12. Initiate *sua sponte* serious, impartial, and diligent investigations into fires and other emergencies that occur in detention facilities in which the lives and well-being of persons have been impaired or put at risk.
13. Initiate *sua sponte* serious, impartial, and diligent investigations into all deaths that occur in prisons, irrespective of their cause. Such investigations must be designed to establish the criminal responsibility of those who perpetrated the act, and, as appropriate, the degree of responsibility by omission of the authorities and officials associated with the events.
14. This duty to investigate and impose penalties also extends to any cases that may be classified as suicides, deaths from natural causes, accidental deaths, or deaths resulting from conflicts among inmates.
15. Introduce audit mechanisms and external monitoring of management and processing of criminal and administrative proceedings instituted in connection with acts of prison violence, in order to detect and combat structural impunity.
16. Ensure that police officers and correctional staff charged with homicide are reassigned to positions in which they do not have persons deprived of liberty under their immediate supervision for as long as the relevant proceedings to determine their responsibility last.
17. Ensure that the competent authorities for investigating deaths of persons deprived of liberty follow the procedures and guidelines set down in the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.
18. Adopt the necessary measures to ensure that all proceedings relating to the death of a person deprived of liberty are dealt with and decided in the regular criminal jurisdiction.

#### IV. RIGHT TO HUMANE TREATMENT

##### A. Basic standards

328. The right to life and to humane treatment are fundamental for the exercise of all other rights, and they are essential minimums for the exercise of any activity.<sup>371</sup> As emphasized above, the State is in a special position as guarantor regarding persons under its custody and, in this capacity, it has the special duty to respect and ensure the human rights of inmates, particularly, their right to life and humane treatment. In this regard, the IACHR emphasized in its Report on Citizen Security and Human Rights that:

The activity of the security forces lawfully directed toward the protection of the population is fundamental in achieving the common good in a democratic society. At the same time the abuse of police authority in the urban setting constitutes a high risk factor for the enforcement of individual liberty and security. Human rights as limits on the arbitrary exercise of authority constitute an essential safeguard for the security of the public in preventing the State's lawful measures, enacted in order to protect general security, from being used to suppress rights.<sup>372</sup>

329. This analysis of inmates' right to humane treatment goes hand in hand with other chapters of this report, in which other aspects are also examined regarding effective enjoyment of this right, such as the chapter on the duty of the State to provide medical care to persons deprived of liberty.

330. In the Inter-American human rights system, the right to humane treatment is prescribed primarily in Article I, XXV and XXVI of the American Declaration and Article 5 of the American Convention, which provide:

##### American Declaration

Article I. Every human being has the right to life, liberty and the security of his person.

Article XXV. [...] Every individual who has been deprived of his liberty [...] has the right to humane treatment during the time he is in custody.

Article XXVI. Every person accused of an offense has the right [...] not to receive cruel, infamous or unusual punishment.

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<sup>371</sup> IACHR, *Democracy and Human Rights in Venezuela*, Ch. VI, para. 667.

<sup>372</sup> IACHR, *Report on Citizen Security and Human Rights*, para. 24.

## American Convention

### Article 5

(1) Every person has the right to have his physical, mental, and moral integrity respected. (2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. (3) Punishment shall not be extended to any person other than the criminal. (4) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as non-convicted persons. (5) Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. (6) Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

331. The American Convention attaches a high degree of importance to the right to humane treatment: not only does it establish its non-derogable nature in time of war, public danger or other emergency that threatens the independence or security of the State (Article 27), but it also does not set forth any specific exceptions to when it applies.<sup>373</sup> In short, the right to humane treatment cannot be suspended under any circumstance. Securing respect for the basic human integrity of all individuals in the Americas, regardless of their personal circumstances, is a central purpose of the Convention in general, and of its Article 5 in particular.<sup>374</sup>

332. Moreover, while the American Declaration does not contain a general provision on the right to humane treatment, the Commission has interpreted Article I of the American Declaration as containing a prohibition similar to that under the American Convention. In fact it has specified that an essential aspect of the right to personal security is the absolute prohibition of torture, a peremptory norm of international law creating obligations *erga omnes*. It has also qualified the prohibition of torture as a norm of *jus cogens*.<sup>375</sup>

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<sup>373</sup> In the same vein, the United Nations Human Rights Committee has referred regarding the legal regime established by Articles 4 and 7 of the International Covenant on Civil and Political Rights. See, United Nations, Human Rights Committee, General Comment No. 20: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (Article 7), adopted at the 44<sup>th</sup> session (1992), para. 3. In *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies, Volume I, HRI/GEN/1/Rev.9 (Vol. I)* adopted on May 27, 2008, p. 239.

<sup>374</sup> IACHR, Report No. 50/01, Case 12,069, Merits, Damion Thomas, Jamaica, April 4, 2001, para. 36.

<sup>375</sup> IACHR, *Report on Terrorism and Human Rights*, para. 155; IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106. Doc. 40 rev., adopted on February 28, 2000, paras. 118 and 154.

333. Additionally, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas establish that such persons shall be protected “from any kind of threats and acts of torture, execution, forced disappearance, cruel, inhuman, or degrading treatment or punishment, sexual violence, corporal punishment, collective punishment, forced intervention or coercive treatment, from any method intended to obliterate their personality or to diminish their physical or mental capacities.” (Principle I) The non-derogable nature of this provision and the duty of the State to treat all persons deprived of liberty in keeping with the principle of humane treatment are also set forth therein.<sup>376</sup>

334. These provisions reflect human rights similar to those ensured under other international instruments, such as the Universal Declaration of Human Rights (Articles 3 and 5); the International Covenant on Civil and Political Rights (Articles 7 and 10); the European Convention on Human Rights (Article 3); UN Convention on the Rights of the Child (Article 37); the African Charter on Human and Peoples’ Rights (Article 4 and 5); the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Principle 6); and the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Article 2 and 3).

335. Both the Court<sup>377</sup> and the Commission<sup>378</sup> have consistently held that an international body of law, which falls today within the scope of *ius cogens*, has been put in place which absolutely forbids all forms of torture. Specifically with regard to persons in the custody of the State, the Inter-American Convention to Prevent and Punish Torture establishes that “neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.” (Article 5).

336. The Commission finds that this peremptory prohibition of all forms of torture is complementary to the duty of the State to treat every person deprived of liberty humanely and with respect for his or her dignity. In fact, persons deprived of liberty not only may not be subjected to torture and cruel, inhuman and degrading treatment, but

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<sup>376</sup> The IACHR, in various circumstances, has granted precautionary measures to protect detainees that claimed that they were being subjected to torture or cruel, inhuman and degrading treatment. For example, on March 12, 2002, the IACHR granted precautionary measures (MC-259-02) in favor of the approximately 254 detainees brought to Guantanamo Naval Base as of January 11, 2002. Subsequently, on March 21, 2006 and August 20, 2008, the IACHR granted precautionary measures to protect, respectively, Mr. Omar Khadr and Mr. Djamel Ameziane, also held at the naval base at Guantanamo Bay.

<sup>377</sup> The Inter-American Court established this assessment of the international prohibition of torture from the case Cantoral Benavides, and began referring to it as part of the domain of *ius cogens*, in its decision of the case Maritza Urrutia. Véase, I/A Court H.R., *Case of Cantoral Benavides V. Peru*. Judgment of August 18, 2000. Series C No. 69, paras. 102 y 103; I/A Court H. R., *Case of Maritza Urrutia V. Guatemala*. Judgment of November 27, 2003. Series C No. 103, para. 92. See also, I/A Court H.R., *Case of Bueno-Alves V. Argentina*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 77; in which the Court makes a comprehensive analysis of the many international instruments that contain such a prohibition, even in the field of international humanitarian law.

<sup>378</sup> See for example, IACHR, *Democracy and Human Rights in Venezuela*, Ch. VI, para. 707; IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch.. VI, para. 8.



neither may they be subjected to hardship or restrictions, except for those that are unavoidably incidental to the deprivation of liberty.<sup>379</sup>

337. On this score, the IACHR noted in its Report on the Human Rights Situation in Bolivia (2007):

Persons held in prisons inherently cope with necessary limitations due to their deprivation of liberty. Nevertheless, they maintain the right to exercise their fundamental rights as recognized in national and international law, regardless of their legal situation or the stage of the proceedings against them, and in particular they maintain the right to humane treatment and due respect for their dignity as human beings.<sup>380</sup>

Similarly, in the context of follow up on the situation of persons deprived of liberty in Cuba, the IACHR emphasized:

It is essential that deprivation of freedom must have well-established objectives. Prison authorities cannot overstep those objectives, not even in the disciplinary action that they are authorized to take. Prisoners must not be marginalized or discriminated against; the goal is to get them back into society. In other words, prison practices must observe one basic principle: imprisonment must not be compounded by any more suffering than what it already represents. The prisoner must be treated humanely, in a manner commensurate with the dignity of his person, while the system endeavors to reincorporate him into society."<sup>381</sup>

338. The bodies of the Inter-American human rights system have established that the content and scope of the term "torture," as set forth in Article 5.2 of the American Convention, must be interpreted in accordance with the definition provided in Article 2 of the Inter-American Convention to Prevent and Punish Torture,<sup>382</sup> which defines torture as:

[...] any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be

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<sup>379</sup> In this regard, the Standard Minimum Rules for the Treatment of Prisoners lays down that "[i]mprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation." (Rule 57)

<sup>380</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Ch. III, para. 15.

<sup>381</sup> IACHR, *Annual Report 2002*, Chapter IV, Cuba, OEA/Ser.L/II.117. Doc. 1 rev. 1, adopted on March 7, 2003, para. 73; IACHR, *Annual Report 2001*, Chapter IV, Cuba, OEA/Ser.L/V/II.114. doc. 5 rev. 1, adopted on April 16, 2002, para. 76.

<sup>382</sup> I/A Court H. R., *Case of Tibi V. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 145.

the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

339. In interpreting this standard, the legal precedents of the Inter-American human rights system have held that in order for conduct to be considered torture, the following elements must be present: i) an intentional act; ii) which causes severe physical or mental suffering; and iii) is committed with a given purpose or aim.<sup>383</sup> The Inter-American Court has established that “threatening an individual with a real risk of physical injury causes, in certain circumstances, such moral anguish as may be considered psychological torture,”<sup>384</sup> or at least inhuman treatment.<sup>385</sup>

340. Also, as interpreted by the UN Rapporteur on Torture, acts that do not fall exactly under the definition of torture, particularly acts that lack the elements of intentionality or that have not been committed for a specific purpose (deliberately), may constitute cruel, inhuman or degrading treatment or punishment. For example, acts meant to humiliate the victim constitute degrading treatment or punishment, even though they have not inflicted serious pain.<sup>386</sup>

341. Following the European Court’s jurisprudence, the Inter-American Court has noted that in examining the seriousness of acts that may constitute cruel, inhuman or degrading treatment or punishment, it is relative and dependent upon all of the circumstances of the case, such as the duration of the treatment, the physical and mental effects thereof and, in some instances, the victim’s gender, age and state of health, among other things.<sup>387</sup> Similarly, following along the lines of the former European Commission, the IACHR has found that treatment must have a minimum level of severity in order to be considered “inhuman or degrading;” and that the determination of that minimum level is related to and follows from the particular circumstances of each case.<sup>388</sup>

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<sup>383</sup> I/A Court H.R., *Case of Bueno-Alves V. Argentina*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 79.

<sup>384</sup> I/A Court H.R., *Case of Cantoral Benavides V. Peru*. Judgment of August 18, 2000. Series C No. 69, para. 102.

<sup>385</sup> I/A Court H.R., *Case of The “Street Children” V. Guatemala (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 165.

<sup>386</sup> United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted to the (former) Commission on Human Rights, E/CN.4/2006/6, adopted on December 23, 2005, para. 35.

<sup>387</sup> I/A Court H. R., *Case of Gómez Paquiyauri Brothers V. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 113. In the same vein, the Court held in the case of *Loayza Tamayo* that “[t]he violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation.” I/A Court H.R., *Case of Loayza Tamayo V. Peru*. Judgment of September 17, 1997. Series C No. 33, para. 57.

<sup>388</sup> For example, with respect to Nicaragua in the early '80s, the IACHR considered as forms of harassment and unnecessary humiliation to some prisoners, forcing them to sing the Sandinista anthem or attend  
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342. In its Report on Terrorism and Human Rights, the IACHR provides a list of examples of the forms of torture that it has observed in cases examined by it, both in the Inter-American human rights system, as well as by other international protection mechanisms. These examples include:<sup>389</sup> prolonged incommunicado detention; keeping detainees hooded and naked in cells and interrogating them under the drug pentothal; applying electric shocks to a person; holding a person's head in water until just before the point of drowning; standing or walking on top of individuals; beating; burning a person's skin with lighted cigarettes; rape; deprivation of food and water; threats of torture or death; threats of assaults on family members; exposure to the torture of other victims; simulated executions; extraction of nails or teeth; suspending the person by the feet; suffocation; exposure to excessive light or noise; sleep deprivation; total isolation and sensory deprivation; forcing detainees to remain standing for prolonged periods of time.

343. The Commission finds that even though every person in any circumstance is entitled to the right to humane treatment, the absolute prohibition of torture and cruel, inhuman and degrading treatment is especially relevant in order to protect individuals in the custody of or under the power of authorities of the State. This means that this prohibition must always be based on the element of defenselessness of the victim.<sup>390</sup> Hence—as has been emphasized above in this report—the State has the special duty to guarantee the lives and individual integrity of the persons in its custody, which entails taking concrete measures to effectively ensure full enjoyment of this right. On the subject, the IACHR has established that:

The State's responsibility as far as the integrity of people in its custody is considered, is not restricted to the negative obligation to refrain from torturing or mistreating those people. Since prison is a place where the State has total control over the life of inmates, its obligations towards them, among others, include the security and control measures necessary to preserve the life and physical integrity of people deprived of their freedom.<sup>391</sup>

Consequently, the State must take all necessary measures to protect inmates from any assaults that may come from third parties, even from other inmates. This involves preventing patterns of prison violence and inmate-to-inmate assaults and, particularly,

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mandatory political gatherings. IACHR, Report on the Situation of Human Rights in the Republic of Nicaragua, OEA/Ser.L/V/II.53 doc. 25, adopted on June 30, 1981, Cap. V, section D, para. 3.

<sup>389</sup> IACHR, *Report on Terrorism and Human Rights*, paras. 161-163.

<sup>390</sup> See also, United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted to the (former) Commission on Human Rights, E/CN.4/2006/6, adopted on December 23, 2005, para. 40.

<sup>391</sup> IACHR, *Annual Report 2009*, Chapter IV, Cuba, OEA/Ser.L/V/II. Doc. 51, rev. 1, adopted on December 30, 2009, para. 274. IACHR, *Annual Report 2008*, Chapter IV, Cuba, OEA/Ser.L/V/II.134, Doc. 5, rev. 1, adopted on February 25, 2009, para. 193. IACHR, *Annual Report 2007*, Chapter IV, Cuba, OEA/Ser.L/V/II.130, Doc. 22, rev.1, adopted on December 29, 2007, para. 108.

providing adequate and constant oversight at prison facilities and maintaining internal security and order.

344. Effectively guaranteeing the right to humane treatment of persons deprived of liberty also entails the duty of the State to investigate, punish, and redress any violation of this right committed against persons in its custody. The basis of this international obligation is found in Article 1.1, 8 and 25 of the American Convention, and in Article 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. As for the content and scope of these provisions, the Inter-American Court has established that “the State has the duty to immediately and *ex officio* to begin an effective investigation to identify, try and punish those responsible, when there is a complaint or there are grounds to believe that an act of torture has been committed in violation of Article 5 of the American Convention.”<sup>392</sup>

345. The Court has further established that effective investigation and documentation of cases of torture and cruel, inhuman and degrading treatment must be governed by the principles of independence, impartiality, competence, diligence, and promptness.<sup>393</sup> This investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth,<sup>394</sup> and be conducted within a reasonable time, which should be ensured by the intervening judiciary bodies.<sup>395</sup> Additionally, it is the duty of judicial authorities to ensure the rights of the detainee, which involves obtaining and securing any evidence that may prove the alleged acts of torture.

346. Likewise, the State should ensure the independence of the medical and health care personnel in charge of examining and providing assistance to persons deprived of liberty so they are able to freely perform the required medical evaluations, and adhere to established standards in the practice of their profession.<sup>396</sup>

347. In cases involving persons deprived of liberty, the IACHR has set a higher standard regarding the State’s duty to investigate, in considering that, in such instances,

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<sup>392</sup> I/A Court H. R., *Case of Tibi V. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 159. The Inter American Court has taken a bit of a formal position in relation to the concept of "claim" as a precondition of the State's obligation to investigate promptly and impartially the possible cases of torture, leading to consider in the case *Vélez Loor* that it is enough that the victim or a third party make it known to the authorities. I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 21, para. 240.

<sup>393</sup> I/A Court H.R., *Case of Bueno-Alves V. Argentina*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 108.

<sup>394</sup> I/A Court H.R., *Case of García-Prieto et al. V. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101.

<sup>395</sup> I/A Court H. R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 114.

<sup>396</sup> I/A Court H.R., *Case of Cabrera-García and Montiel-Flores V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, para. 135. In this regard, the Court followed the paragraphs 56, 60, 65, 66 and 76 of the Istanbul Protocol.

the victims are in a enclosed space and controlled exclusively by agents of the State and it is the State which has control over all the probative means to clarify the facts. Consequently, any allegation regarding difficulty or impossibility of establishing the identity of those responsible should be strictly and rigorously scrutinized.<sup>397</sup>

348. Specifically, the IACHR has found that the State cannot justify breaching its duty to open an investigation in response to complaints of torture based on the fact that the victims did not individually identify the perpetrators of the act, particularly, in cases where the victims remain under the custody of the very same agents of the State. In this type of situation, the State should take the necessary measures so the victims may provide their statements in secure conditions. The authorities in charge of the investigation should explore all means available to them in order to establish the facts, including assessing whether the victims may be unwilling to provide the requested information out of fear. In short, the State should provide the necessary means to eliminate any source of risk to victims as a consequence of their complaints and to overcome obstacles to continuing the investigation.<sup>398</sup>

349. In its role as guarantor, the State has the responsibility both of ensuring the rights of the individual under its custody, and of providing information and evidence pertaining to what happened to these individuals.<sup>399</sup> In these circumstances, the burden of proof is on the State.<sup>400</sup> Concretely, the State must provide a satisfactory explanation of what happened to the person who presented normal physical conditions and, while under the custody of authorities, his or her conditions became abnormal.<sup>401</sup> In the absence of such an explanation, State responsibility for what has happened to these people under its custody should be presumed.<sup>402</sup> Consequently, the State is considered presumptively as responsible for the injuries exhibited by a person who has been under custody of State agents.<sup>403</sup>

350. There is no conflict between the State's obligation to investigate and punish those responsible for human rights violations and the right to a fair trial of the

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<sup>397</sup> IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997, para. 394.

<sup>398</sup> IACHR, Report No. 172/10, Case 12.651, Merits, César Alberto Mendoza *et al.*, Argentina, November 2, 2010, para. 311.

<sup>399</sup> I/A Court H. R., *Case of Juan Humberto Sánchez V. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 111.

<sup>400</sup> I/A Court H.R., *Case of Neira Alegria et al. V. Peru*. Judgment of January 19, 1995. Series C No. 20, para. 65; IACHR, Report No. 1/97, Case 10,258, Merits, Manuel García Franco, Ecuador, February 18, 1998, paras. 63 and 68.

<sup>401</sup> I/A Court H. R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 127.

<sup>402</sup> I/A Court H.R., Provisional Measures, Matter of Urso Branco Prison regarding Brazil, Order of the Inter-American Court of Human Rights of June 18, 2002, Whereas, para. 8.

<sup>403</sup> I/A Court H.R., *Case of Cabrera-García and Montiel-Flores V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, para. 134.

accused. In reality, the two rights are harmoniously interlinked to legitimize the judicial system of a human rights-abiding State.<sup>404</sup> In this regard, beyond the specific mandate of provisions pertaining to the right to humane treatment and the State's duty to prevent, punish and investigate torture, international human rights law establishes the general and higher imperative under which States should adopt concrete measures to combat and eradicate all forms of torture and cruel, inhuman and degrading treatment. These acts are unacceptable in any democratic society and their commission cannot be justified under any circumstance.

**B. The use of torture for purposes of criminal investigation<sup>405</sup>**

351. As has been examined in this report, in many cases and circumstances persons deprived of liberty can suffer violations of individual integrity, both at the hands of the authorities themselves and of other inmates or detainees. Nonetheless, the IACHR has noted over the years up to the present time that most acts of torture and cruel, inhuman and degrading treatment perpetrated against persons in the custody of the State take place during the arrest and first hours or days of detention. The great majority of the cases involve acts of torture for purposes of criminal investigation. This pattern has been widely documented, by both the Commission and the Court, as well as by the different protection mechanisms of the United Nations.

352. For example, in the context of the Fifth IACHR Report on the Human Rights Situation in Guatemala, the Commission received reports of the consistent practice by police agents of threatening and intimidating suspects from the time of arrest through interrogation. The IACHR noted that there was a systematic pattern in confirmed cases, which often involved placing oilcloth hoods over detainees' heads, beatings, threats and other assaults on detainees.<sup>406</sup> Subsequently, at a thematic hearing held in March 2006, the petitioners provided information to the effect that the practice of subjecting detainees to acts of torture for purposes of criminal investigation, particularly in cases of homicide, aggravated robbery and drug trafficking, persisted in Guatemala.<sup>407</sup>

353. During a country visit to the Dominican Republic, the IACHR was informed about the police practice of subjecting detainees to severe beatings; particularly, people charged with minor offenses, who are captured in sting operations or raids.<sup>408</sup>

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<sup>404</sup> IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997, para. 397.

<sup>405</sup> Both the Inter-American Convention to Prevent and Punish Torture (Article 2) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 1), foresee respectively the "criminal investigation", and "obtaining from him or a third person information or a confession" as the main purposes of the acts of torture over a person."

<sup>406</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VI, paras. 15-19.

<sup>407</sup> IACHR, Public hearing: *Situation of the Penitentiary System in Guatemala*, 124<sup>o</sup> Ordinary Period of Sessions, Participants: Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), March 6, 2006.

<sup>408</sup> IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, Ch. V, para. 175.

354. In the Third IACHR Report on the Human Rights Situation in Paraguay, the Commission noted that despite the fact that the State had enacted a variety of laws prohibiting torture, it continues to be a recurring problem, both at prison facilities and at police stations, with police officers being the main culprits of cases of torture, which are mostly committed at police stations.<sup>409</sup>

355. Additionally, during its recent mission to Paraguay, the SPT confirmed that the widespread practice by the police of subjecting detainees to torture and mistreatment in order to extract confessions or other information pertaining to the alleged commission of crimes still persists. These acts, for the most part, take place during arrest, transfer to the police station, or at the police station itself, and are allegedly committed by uniformed or plainclothes police officers. The SPT reported that methods such as the 'dry submarine' (suffocating by means of a polyethylene bag), forcing detainees to be naked, blows to the trachea, smacking ears and the back of the neck, beating the soles of feet (*falanga* or *pata pata*) and squeezing testicles tightly, are still being used.<sup>410</sup>

356. The IACHR noted in its Report on the Situation of Human Rights in Mexico that most cases of torture and cruel, inhuman and degrading treatment take place in the context of the administration of justice, mainly during the stage of the preliminary investigation of crimes as a method to obtain confessions from alleged defendants or to intimidate them, with the culprits of these acts usually being both state and federal judicial police, the Office of the Public Prosecutor, and members of the armed forces.<sup>411</sup> This general pattern in Mexico has also been observed in a significant number of hearings,<sup>412</sup>

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<sup>409</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, Ch. IV, paras 35 and 37.

<sup>410</sup> United Nations, CAT/OP/PRY/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Paraguay*, June 7, 2010, paras. 78-81 and 134-143. In the same way, the Special Rapporteur on Torture UN reached the conclusion after his mission to Paraguay that torture is still practiced widely in the first days of custody to obtain confessions. United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. III: Situation of the torture and ill-treatment, para. 44.

<sup>411</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, Ch. IV, paras. 305-306.

<sup>412</sup> As part of monitoring the human rights situation in Mexico, the IACHR has undertaken several thematic hearings in which it has continued to receive information concerning the practice of torture for the purposes of criminal investigation in that State, in this regard, see for example: IACHR, Public hearing: *Situation of Persons in Preventive Detention in México (situación de arraigo)*, 141<sup>o</sup> Ordinary Period of Sessions, Participants: State of Mexico, Center for Justice and International Law (CEJIL), Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), Federación Internacional de Derechos Humanos (FIDH), Comisión Ciudadana de Derechos Humanos del Noroeste, A.C. (CCDH), Comisión de Solidaridad y Defensa de los Derechos Humanos, A.C. (COSYDDHAC), Litigio Estratégico de Derechos Humanos, Instituto Mexicano de Derechos Humanos y Democracia (IMDHD), Colectivo de Organizaciones Michoacanas de Derechos Humanos (COMDH), March 29, 2011; IACHR, Public hearing: *Torture in Mexico*, 127<sup>o</sup> Ordinary Period of Sessions, Participants: State of Mexico, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), Colectivo contra la Tortura y la Impunidad, Universidad Iberoamericana, March 6, 2007; and IACHR, Public hearing: *Information Related to Alleged Acts of Torture in Mexico*, 116<sup>o</sup> Ordinary Period of Sessions, Participants: State of Mexico, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), Grupo de Mujeres de San Cristobal de las Casas (COLEM), Acción de los Cristianos para la Abolición de la Tortura (ACAT), Red de Defensores Comunitarios de Chiapas, October 18, 2002.

petitions and cases examined by the Inter-American human rights system and has been the subject of consistent pronouncements of UN human rights protection mechanisms.<sup>413</sup>

357. Likewise, after the IACHR the SPT reported that at all of the detention centers it visited during its mission to Mexico, it received testimony from people who claimed to have been subjected to some type of physical and/or psychological mistreatment after being arrested. Most of these acts of police brutality allegedly had taken place in areas of open country, isolated sites, during transfer in police vehicles (in which the detainees' were usually blindfolded) and at the police station itself. According to information obtained by the SPT, the worse acts of police brutality had been committed against persons being detained in non-judicially supervised holds (*arraigo*), particularly women who were being held under this special form of detention.<sup>414</sup>

358. Ecuador is another State mentioned by the bodies of the Inter-American human rights system on several occasions regarding the practice of acts of torture for purposes of criminal investigation. In its Report on the Human Rights Situation in Ecuador, the IACHR highlighted that torture and mistreatment were used mainly in the context of criminal investigations in order to obtain confessions, and that complaints of this type of violation had been lodged throughout the country. It is reported that the methods used by the security forces include brute force, beatings, gassing, the 'submarine' (immersion of the victim in water to just prior to the point of drowning), electric shocking on different body parts, including the genitals, and food deprivation.<sup>415</sup>

359. Then, following its mission to Ecuador, the Working Group on Arbitrary Detentions similarly reported that:

Ill-treatment by officers of the Judicial Police, including torture, is apparently common during the initial phases of detention. The Committee against Torture noted in its conclusions and recommendations issued on February 8, 2006 (CAT/C/ECU/CO/3) that 70 per cent of detainees in Quito had reported being victims of torture or ill-treatment during their detention (para. 16). The purpose of such treatment is apparently not only to obtain forced confessions or information, but also to castigate and punish. The Working Group saw detainees who showed signs of torture and ill treatment. The Judicial Police apparently acts without any oversight from an outside body and in complete impunity. Some inmates reported being struck and tortured

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<sup>413</sup> See in this regard, United Nations, Committee against Torture, Report on México produced by the Committee under Article 20 of the Convention, and reply from the government of México, CAT/C/75, adopted on May 25, 2003; United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted pursuant to Commission on Human Rights resolution 1997/38, Addendum, Visit by the Special Rapporteur to México, E/CN.4/1998/38/Add.2, adopted on January 14, 1998.

<sup>414</sup> United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, paras. 108, 141, 142 y 266.

<sup>415</sup> IACHR, *Report on the Situation of Human Rights in Ecuador*, Ch. V.



with nightsticks or batons marked with the words “human rights” when they were being interrogated at the Judicial Police cells in Quito.”<sup>416</sup>

360. Moreover, during the working visit to Ecuador of the Rapporteur on the Rights of Persons Deprived of Liberty, some non governmental organizations noted that the practice of torture for purposes of criminal investigation and mistreatment committed by police agents still persists.<sup>417</sup> In this regard, the Federation of Women of Sucumbios claimed that cases of physical and psychological abuse have been reported at the Provisional Detention Center of Lago Agrio (such as the practice of “submarining,” electric shocking on genitals and beatings of hooded detainees). Additionally, the Ecumenical Human Rights Commission (CEDHU) stated that it is common to find in the dungeons (underground holding cells) of the Judicial Police and the Anti-drug Unit people who have been victims of torture investigation processes. According to reports, these people often are not provided medical care so that no evidence remains of the torture, and are only transferred to the prisons of the penitentiary system after the physical traces of torture have disappeared.

361. Furthermore, the IACHR has also noted this type of practice in some countries of the Caribbean. For example, in Merits Report No. 48/01, regarding the Bahamas, it was established that two of the victims were targeted by the police with acts of violence to get them to sign confessions about their complicity in the crime of homicide. The police beat the head of one of them against a desk, punched him in the ear, the stomach and tried to strangle him; a plastic bag was put over the head of the other victim, and he was beaten on the wrists with bamboo sticks and his testicles were squeezed tightly.<sup>418</sup>

362. Similarly, in Merits Report No. 81/07, regarding Guyana, the IACHR attested to the fact that the victims were beaten hard by the police and that the confessions obtained thereby were admitted as evidence in a court proceeding in which they were sentenced to the death penalty.<sup>419</sup>

363. Another illustrative example of resorting to torture and other cruel, inhuman and degrading treatment as a means of obtaining information from detainees is the practice carried out against the detainees of Guantanamo Naval Base.<sup>420</sup> Many of these

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<sup>416</sup> United Nations, Working Group on Arbitrary Detention, *Report on Mission to Ecuador*, A/HRC/4/40/Add.2, adopted on October 26, 2006, para. 91.

<sup>417</sup> IACHR, Press Release 56/10 - IACHR Rapporteurship on Persons Deprived of Liberty Concludes Visit to Ecuador. Washington, D.C., May 28, 2010.

<sup>418</sup> IACHR, Report No. 48/01, Cases 12.067, 12.068 and 12.086, Merits, Michael Edwards, Omar Hall, Brian Schroeter and Jerónimo Bowleg, Bahamas, April 4, 2001, paras. 91 and 190.

<sup>419</sup> IACHR, Report No. 81/07, Case 12.504, Merits, Daniel and Kornel Vaux, October 15, 2007, paras. 48-52.

<sup>420</sup> In this regard, the IACHR granted precautionary measures on May 21, 2006, to protect the life and physical integrity of Omar Khdar (MC-8-06). In a public hearing held regarding this precautionary measure, the petitioners alleged inter alia that Mr. Khdar was interrogated by military personnel; denied medical treatment; handcuffed and shackled for prolonged periods of time; threatened with mad dogs; threatened with rape; and his

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practices were expressly authorized by the Secretary of Defense, such as: using strenuous positions, isolation, sensory deprivation, forced shaving and nudity, deprivation of basic hygienic accessories and exploitation of detainees' fears (such as fear of dogs) to make it stressful for them.<sup>421</sup> The aforementioned practices were in addition to other ones such as beating, deprivation of food and water, sexual humiliation, exposure to strident music, threats of firing squad, electric shocking, dousing with chemicals, and disproportionate use of force in searches and for minor disciplinary offenses, among others.<sup>422</sup>

364. After examining the enormous amount of information that was generated regarding patterns of torture for purposes of criminal investigation in the region, the IACHR finds that the main causes for the persistence of this practice include:

(a) **The existence of inherited institutional practices and a culture of violence firmly rooted in the security forces of the State.** The institutionalized acceptance that abuse of detainees amounts to a valid procedure calls for a solid torture prevention framework.<sup>423</sup> This framework must be taken seriously, and not merely as a mechanical and superficial exercise to fulfill a requirement. Effective respect for human rights requires a system in which all members are trained on the principles relating to democracy and human rights.<sup>424</sup> This message of respect during training must be backed by the determination and commitment to investigate complaints of torture and abuse, and to prosecute and punish those responsible. This type of act requires official condemnation by the authorities, who must send a consistent message that such behavior shall be repudiated by all means of administrative, disciplinary and criminal proceeding.<sup>425</sup> Moreover, constant use of violence by prison staff is tantamount to institutional validation or approval of such use, and this has a direct bearing on the high incidence of inmate-to-inmate violence.

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head covered with a plastic bag. IACHR, Hearing on the Precautionary Measure 8/06 – *Omar Ahmed Khdar*, 124<sup>9</sup> Ordinary Period of Sessions, Participants: the United States of America, International Human Rights Law Clinic of the American University-Washington College of Law, March 13, 2006.

<sup>421</sup> United Nations, Joint Report of the Working Group on Arbitrary Detention; the Special Rapporteur on the Independence of Judges and Lawyers; the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Special Rapporteur on Freedom of Religion or Belief; and the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, E/CN.4/2006/120, adopted on February 27, 2006, paras. 49-50.

<sup>422</sup> See also, Physicians for Human Rights (PHR), *Broken Laws, Broken Lives: medical evidence of torture by US personnel and its impact*, 2008, available at: [https://s3.amazonaws.com/PHR\\_Reports/BrokenLaws\\_14.pdf](https://s3.amazonaws.com/PHR_Reports/BrokenLaws_14.pdf).

<sup>423</sup> See also, United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, paras. 81-83.

<sup>424</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, Ch. IV, para. 36.

<sup>425</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VI, para. 20; United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 62.

(b) **Impunity, which has consistently been defined by the bodies of the Inter-American human rights system as: an overall failure to investigate, pursue, arrest, try and convict those responsible of human rights violations.** It is a widely known and proven fact that impunity fosters chronic repetition of human rights violations and total defenselessness of victims and their family members. In this regard, the IACHR stresses that the fact that the laws of the State severely punish acts of torture, does not constitute *per se* sufficient guarantee to fulfill its international obligation to take effective measures to punish said acts, if indeed the agencies of the aforementioned State in charge of enforcing said law only do so partially or seldom.<sup>426</sup> Acts of torture must be subject to effective investigation, which lead to prosecution and punishment of the culprits.

(c) **The lack of funding, adequate equipment and the necessary technical training of the security forces to perform their jobs.** It is a fact that in many countries of the region the police and security forces lack adequate means to perform their duties effectively, and to yield the results that are demanded of them by civilian authorities. This leads, in many instances, to police agents, who lack the means and training to gather evidence, resorting to torture and cruel, inhuman and degrading treatment against the detainees as a quick way to obtain confessions and information that can presumably lead to solving crimes.<sup>427</sup> In this way, an institutional mechanism is created wherein the most important thing is to show results and offer up the culprits to society, in order to give the impression that citizen security objectives are being met. In the final analysis, even though the IACHR appreciates the imperative of an efficient police force, the standards of the Inter-American human rights system dictate that this purpose cannot and should not be achieved at the expense of the rights of the accused in custody.<sup>428</sup>

(d) **Repressive responses of the State —“iron fist” or “zero tolerance” policies—to the widespread perception of public insecurity, which lead to constant demand by the people for even more forceful and, often more repressive, measures against crime.** This climate of fear, in which the media and political discourse convey the idea that human rights are a way of protecting criminals, can bring as a consequence a certain social acceptance of torture and cruel, inhuman and degrading treatment.<sup>429</sup>

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<sup>426</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, Ch. IV, para. 327.

<sup>427</sup> On this matter, see *e.g.*, United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. III: Situation of torture and ill-treatment, para. 61; and, United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted pursuant to Commission on Human Rights resolution 1995/37 (B), Addendum, Visit by the Special Rapporteur to Venezuela, E/CN.4/1997/7/Add.3, adopted on December 13, 1996, para. 77.

<sup>428</sup> IACHR, Report No. 81/07, Case 12.504, Merits, Daniel and Kornel Vaux, October 15, 2007, para. 64.

<sup>429</sup> United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit by the Special Rapporteur to Brazil, E/CN.4/2001/66/Add.2, adopted on March 30, 2001, paras. 10 y 14; United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted pursuant to Commission on Human Rights resolution 1997/38, Addendum, Visit by the Special Rapporteur to México, E/CN.4/1998/38/Add.2, adopted on January 14, 1998, para. 77; United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted pursuant to Commission on Human Rights resolution 1995/37 (B), Addendum, Visit by the Special Rapporteur to Venezuela, E/CN.4/1997/7/Add.3, adopted on December 13, 1996, para. 83; United Nations, Working Group on

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Experience has shown over the past years in the region that resorting to torture, to arbitrary detentions, and to repressive legislation and practices, has not been effective in responding to the justified demand for citizen security.<sup>430</sup>

(e) **Granting probative value to confessions and information obtained by means of torture or cruel, inhuman and degrading treatment.** Based on its experience in performing its duties of dispute adjudication and protection and the information obtained in the variety of monitoring activities conducted by it, the IACHR can attest that in granting probative effect to extrajudicial statements, or those provided during the investigative stage of a proceeding, an incentive is offered to practice torture, inasmuch as police prefer to spare their efforts to investigate, and obtain a confession of the crime from the defendant himself.<sup>431</sup> Consequently, States should make sure that only confessions given or confirmed before the judicial authority are admitted as evidence against a defendant.<sup>432</sup>

365. International human rights law encompasses a whole framework of legal protection against torture for purposes of criminal investigation, the main prevention measure of which is the prohibition of the validity of all evidence obtained by this means.<sup>433</sup> Accordingly, the American Convention provides that any person accused of a crime has the right to not be compelled to be a witness against him or herself or to plead guilty (Article 8.2.g); and that a confession of guilt by the accused shall be valid only if it is made without coercion of any kind (Article 8.3), the latter provision not only being restricted to acts of “torture or cruel, inhuman or degrading treatment or punishment,” but

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Arbitrary Detention, *Report on Mission to Ecuador*, A/HRC/4/40/Add.2, adopted on October 26, 2006, para. 101(h).

<sup>430</sup> United Nations, Working Group on Arbitrary Detentions, *Report on mission to Honduras*, A/HRC/4/40/Add.4, adopted on December 1, 2006, para. 105; United Nations, Working Group on Arbitrary Detention, *Report on Mission to Argentina*, E/CN.4/2004/3/Add.3, adopted on December 23, 2003, para. 62.

<sup>431</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, Ch. IV, para. 311. See also, United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 144; and United Nations, CAT/OP/PRY/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Paraguay*, June 7, 2010, para. 79.

<sup>432</sup> United Nations, Human Rights Committee, *Consideration of reports submitted by States Parties under Article 40 of the Covenant, Concluding observations: Mexico*, CCPR/C/MEX/CO/5, adopted on May 17, 2010, para. 14.

<sup>433</sup> This legal Framework is composed by the Inter-American Convention to Prevent and Punish Torture, that lays down in its Article 10, that “[n]o statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means;” the UN Convention against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment (Article 15); the International Covenant on Civil and Political Rights (Article 14.3); the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Principle V); the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Principle 21.1); and the UN Declaration on the Protection of All Persons from Being Subject to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 12).

referring to any type of coercion.<sup>434</sup> In this regard, the Inter-American Court has established that:

Upon verifying any type of duress capable of breaking the spontaneous expression of will of a person, this necessarily implies the obligation to exclude the respective evidence from the judicial proceeding. This nullification is a necessary means to discourage the use of any type of duress. [...] Likewise, the absolute character of the exclusionary rule is reflected on the prohibition of granting probative value not only to the evidence obtained directly under duress, but also to evidence gathered or derived from information obtained under duress.<sup>435</sup>

366. In order for this exclusionary rule to truly function as a judicial protection of the right to due process and as a mechanism of prevention of torture, it is essential that it be implemented in such a way that the burden of proving that the confession or statement were made voluntarily is on the competent authorities, and not the victims.<sup>436</sup> In most cases, the position in which torture victims find themselves makes it materially impossible or extremely difficult to prove the occurrence of this type of act, because of the very conditions of imprisonment and their own defenselessness.<sup>437</sup> Consequently, when a statement or testimony is given and there is any sign or justifiable presumption that it was obtained by means of any kind of duress, either physical or psychological, the competent judicial body should determine whether or not duress was actually used.<sup>438</sup>

367. The IACHR underscores that as a measure for the prevention of coercive acts during investigations, States should make sure that in training police agents and other officials in charge of the custody of persons deprived of liberty, special emphasis should be placed on the prohibition of the use of torture,<sup>439</sup> cruel, inhuman and degrading treatment, and any form of duress.

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<sup>434</sup> I/A Court H.R., *Case of Cabrera-García and Montiel-Flores V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, para. 166.

<sup>435</sup> I/A Court H.R., *Case of Cabrera-García and Montiel-Flores V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, paras. 166-167. See also, ONU, Human Rights Committee, General Comment No. 21: Humane treatment of persons deprived of liberty (Art. 10), para. 6. In: *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies*, Volume I, HRI/GEN/1/Rev.9 (Vol. I) adopted May 27, 2008, p. 297.

<sup>436</sup> I/A Court H.R., *Case of Cabrera-García and Montiel-Flores V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, paras. 136 y 176; United Nations, Human Rights Committee, *Consideration of reports submitted by States Parties under Article 40 of the Covenant, Concluding observations: Mexico*, CCPR/C/MEX/CO/5, adopted on May 17, 2010, para. 14.

<sup>437</sup> United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 39.

<sup>438</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, Ch. IV, para. 39.

<sup>439</sup> The duty of training these security forces in the specific prohibition of the use of torture during interrogation is set out in Article 7 of the Inter-American Convention to Prevent and Punish Torture and Article 10.1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. See also, as an example of the establishment of the State's international responsibility for the violation of these rules: IACHR, Report No. 35/08, Case 12.019, Merits, Antonio Ferreira Braga, Brazil, July 18, 2008, paras. 121-122.

368. Likewise, States should adopt protocols and regulations requiring, among other things, that:

- (a) registries should be established to record the date, time, place, duration of interrogation, as well as identifying all authorities who took part in them;
- (b) the person under interrogation or his attorneys should be provided access to these registries;<sup>440</sup>
- (c) persons legally detained do not remain under the supervision of the interrogators or investigators beyond the statutory time limit so the competent judicial authority may determine whether or not preventive detention is warranted;<sup>441</sup>
- (d) in the case of interrogations of women detainees, female security staff be present;<sup>442</sup> and
- (e) periodic reviews be conducted of the rules, instructions, methods and practices of interrogations, in order to detect and eradicate potential practices which run counter to the right to human treatment and the fair trial rights of detainees.<sup>443</sup>

369. With respect to the use of interrogations as a form of criminal investigation, the IACHR concurs with the view put forth by the UN Rapporteur on Torture that investigation techniques should include, among other things:

[T]he abilities to gather all available evidence in a case before interviewing a suspect; plan an interview based on that evidence so that an effective interview can be conducted; treat an interview as a means of gather more information or evidence rather than as a means of securing a confession; conduct an interview in a manner that respects the suspects' rights; analyze information obtained during the interview, and

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<sup>440</sup> Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Principle 23).

<sup>441</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 34.

<sup>442</sup> United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted to the (former) Commission on Human Rights, E/CN.4/1995/34, adopted on January 12, 1995, para. 24. According to the experience of the Special Rapporteur on Torture of the UN, interrogation and custody of females by male personnel constitute conditions that may be conducive to the occurrence of rape and sexual abuse of female inmates, to be threatened with such acts or they feel fear of their occurrence.

<sup>443</sup> See in this regard, Declaration on the Protection of All Persons from Being Subject to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 6).

carry out any further investigation into the case suggested by that analysis; and check any admission or confession made by the suspect against available evidence. [...] <sup>444</sup>

Prohibition of the use of torture and cruel, inhuman or degrading treatment or punishment applies, above all, to interrogations conducted by public officials, whether working for the police forces, the military or the intelligence services. <sup>445</sup>

370. Resorting to torture and cruel, inhuman and degrading treatment as a method of investigating crimes, in addition to concretely constituting a violation of individuals' right to humane treatment and to a fair trial, is in the final analysis an assault on the rule of law itself and the very essence of any democratic society in which, by definition, the rights of all persons must be respected.

### **C. Disciplinary measures in prisons**

#### **1. Fundamental aspects <sup>446</sup>**

371. The disciplinary rules or system is one of the mechanisms available to the State administration to ensure proper order at penitentiaries and detention centers, and such a system should take into account the imperatives of efficiency, security and discipline, while being respectful of the human dignity of the persons who are deprived of liberty.

372. Prison authorities should make sure disciplinary procedures are used on an exceptional basis, and only resort to them when other means prove to be inadequate to maintain proper order. <sup>447</sup> Only behavior that constitutes a threat to the order and safety should be defined as offenses warranting disciplinary action. Furthermore, both the offenses warranting disciplinary action, as well as the procedures for application of punishments, must be provided for in the law. Said punishment should always be proportional to the offense for which it was established; otherwise, it would be tantamount to improperly making the nature of the deprivation of liberty harsher. <sup>448</sup>

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<sup>444</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 35.

<sup>445</sup> United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted to the (former) Commission on Human Rights, E/CN.4/2006/6, adopted on December 23, 2005, para. 41.

<sup>446</sup> The subject of disciplinary sanctions in the case of children and adolescents deprived of liberty is fully developed by the IACHR at: IACHR, *Juvenile Justice and Human Rights in the Americas*, paras. 547-570.

<sup>447</sup> On this matter, the European Prison Rules Establish that, "[w]henever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners (Rule 56.2)." See also, Penal Reform International (PRI), *Manual de Buena Práctica Penitenciaria: Implementación de las Reglas Mínimas de Naciones Unidas para el Tratamiento de los Reclusos*, 2002, p. 47.

<sup>448</sup> For example, the Special Rapporteur on Torture UN observed during his visit to Brazil that in many cases the prisoners had been cut off from communication as punishment for minor infractions such as possession of a mobile phone or injuring a guard prison, or because they had been threatened by other inmates. United

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373. In essence, the State should make sure that security and discipline are maintained by means of disciplinary procedures, which are clearly set forth in the law and respective regulations; that is, within the framework of the rule of law. Consequently, unofficial or arbitrary punishment cannot be permitted, nor can proper order at penitentiary facilities be kept based on inmates living in permanent fear of prison authorities or fear of other inmates, who have been “deputized” by prison staff to perform duties of security maintenance and disciplining. In addition to being gross violations of the human rights of the persons deprived of liberty, this type of abusive practice contributes to a climate of resentment and hostility, which never fails to degenerate into fights, riots and other acts of violence in prisons.

374. In the end, disciplinary systems will be effective to the extent that they are suitable for fulfilling their objectives by striking a balance between human dignity and proper order; and by promoting an overall climate of respect in which inmates develop a sense of responsibility toward complying with the rules. The fact that prison authorities have effective disciplinary mechanisms in place is an essential tool to prevent said authorities from resorting to torture and abuses.

375. Additionally, prison staff should act professionally and discreetly in applying disciplinary procedures. Staff should also have good social and inter-personal skills in order to handle tension between inmates and between inmates and authorities;<sup>449</sup> and perform their duties under a system of monitoring, oversight and accountability, in light of the huge power that they wield over the inmates.

376. With respect to the disciplinary system, the Principles and Best Practices provide:<sup>450</sup>

Disciplinary sanctions, and the disciplinary procedures adopted in places of deprivation of liberty shall be subject to judicial review and be previously established by law, and shall not contravene the norms of international human rights law.

The imposition of disciplinary sanctions or measures and the supervision of their execution shall be the responsibility of the competent authorities who shall act in every circumstance in accordance with the principles of due process of law, respecting the human rights and basic guarantees of persons deprived of liberty as enshrined in international human rights law.

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Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit by the Special Rapporteur to Brazil, E/CN.4/2001/66/Add.2, adopted on March 30, 2001, para. 127.

<sup>449</sup> See also, Penal Reform International (PRI), *Manual de Buena Práctica Penitenciaria: Implementación de las Reglas Mínimas de Naciones Unidas para el Tratamiento de los Reclusos*, 2002, pp. 37-38.

<sup>450</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, (Principles XII .1 y XII.2).



377. IACHR also considers that the law must determine:<sup>451</sup> (a) the acts and omissions of persons deprived of liberty that constitute disciplinary offenses; (b) the procedures to follow in such cases;<sup>452</sup> (c) the specific disciplinary sanctions that may be applied and the duration of the same; (d) the competent authority to impose them; and (e) the proceedings to challenge said sanctions and the competent authority to decide the challenges.

378. It is essential that, within the framework of due process that must be followed in these types of disciplinary proceedings, the inmate is afforded the opportunity to be heard by the authorities and to introduce any evidence that he/she deems relevant prior to the decision to sanction him/her.<sup>453</sup> During this stage, it is important for authorities to act with diligence in determining whether that person is being subjected to any type of duress or intimidation and, when necessary, protection measures should be granted to him.

379. Additionally, in keeping with the principle of *non bis in idem*, no person deprived of liberty may receive disciplinary punishment twice for the same act.<sup>454</sup> In cases where the act committed by the inmate constitutes a criminal offense, this does not preclude the appropriate criminal sanctions from being given to him as well.

380. It is a particularly relevant situation when gaps exist in the regulatory framework with regard to disciplinary proceedings, as this gives rise to actual scenarios in which inmates are exposed to different forms of abuse and arbitrariness by prison staff and other inmates.<sup>455</sup> Additionally, it is absolutely necessary that these rules become more widely known by both the prison staff and the inmates, and that the authorities distribute and make printed copies available.

381. Additionally, the authorities at centers of deprivation of liberty must keep standardized records of the disciplinary measures they take, which include the identity of the offender, the punishment given, the duration of the sanction and the authority that ordered it.<sup>456</sup> Moreover, the rules, sanctions and proceedings of the disciplinary regime

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<sup>451</sup> On this matter, the IACHR takes as a reference: the Standard Minimum Rules for the Treatment of Prisoners (Rule 29); the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Principle 30.1); and the European Prison Rules (Rule 57.2).

<sup>452</sup> Regarding this procedures it must be taken into account the Principle V of the IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*.

<sup>453</sup> Standard Minimum Rules for the Treatment of Prisoners (Rules 30.2 and 30.3), and the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Principle 30.2; see also, European Prison Rules (Rule 59).

<sup>454</sup> Standard Minimum Rules for the Treatment of Prisoners (Regla 30.1); see also, European Prison Rules (Rule 63).

<sup>455</sup> See in this regard, United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, paras. 236-241.

<sup>456</sup> United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, para. 204; and Continues...

must be periodically reviewed by higher-level authorities that can objectively assess their suitability, effectiveness, and identify potential patterns of abuse and arbitrariness in the application thereof.

## 2. Limits on the exercise of disciplinary measures

382. As previously mentioned, the exercise of disciplinary systems may not contravene norms of international human rights law. This means essentially that sanctions or punishments that are imposed on inmates must not constitute acts of torture or cruel, inhuman or degrading treatment;<sup>457</sup> nor be imposed in such a way that they amount to a violation of other rights, such as the right to protection of the family.<sup>458</sup>

383. The IACHR Principles and Best Practices provide that the law shall prohibit: the imposition of collective punishment (Principle XXII.4); the suspension or restriction of food and drinking water (Principle XI); and the application of corporal punishment (Principle I). Additionally, the Minimum Standard Rules for the Treatment of Prisoners establishes the prohibition of corporal punishment, close confinement in an unlit cell and the use of means and instruments of coercion and physical restraint as a form of disciplinary sanction (Rules 31 and 33).<sup>459</sup>

384. Likewise, in the case of *Caesar*, the Inter-American Court broadly hashed out the prohibition in force under international human rights law with regard to the use of corporal punishment, and established that a State Party to the American Convention, as provided in Article 1(1), 5(1) and 5(2) of said treaty, “has an obligation *erga omnes* to refrain from imposing corporal punishments, as well as to prevent their imposition inasmuch as they constitute, in any circumstance, cruel, inhuman or degrading treatment or punishment.”<sup>460</sup>

385. In fact, both collective punishments and other forms of punishments that run afoul of international human rights law are usually employed as a mechanism of deterrence in situations such as brawls, riots and attempted prison breaks, and can range from depriving a whole section of a jail or particular groups of inmates from regular

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United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 171.

<sup>457</sup> In this sense, both the Inter-American Convention to Prevent and Punish Torture (Article 2), and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (Article 1.1), contemplate as a manifestation of the intent of torture in the purpose of *punishing* the victim.

<sup>458</sup> On this matter, the European Prison Rules establish that, “Punishment shall not include a total prohibition on family contact” (Rule 60.4).

<sup>459</sup> This standards set forth by the Standard Minimum Rules for the Treatment of Prisoners have been underscored by the Inter-American Court of Human Rights, in I/A Court H.R., *Provisional Measures, Matter of Urso Branco Prison regarding Brazil*, Order of the Inter-American Court of Human Rights of June 18, 2002, Considering paragraph 10. In the same vein, the European Prison Rules (Rules 60.3 and 60.6).

<sup>460</sup> IA Court of HR, *Case of Caesar vs. Trinidad and Tobago*. Judgment of March 11, 2005. Series C No. 123, para. 57-70.

outdoor recess time in the prison yard and from other activities, to acts of torture or cruel, inhuman and degrading treatment.

386. For example, in the context of the case of the *Miguel Castro Castro Prison*, it was determined that following the events of the operation known as “Mudanza 1,” the inmates who remained at that detention center were targets of several forms of aggression, including the so-called “dark alley” (*callejón oscuro*), a method of collective punishment consisting “of forcing the detainee to walk between a double file of agents who would beat them with blunt instruments such as sticks and metal or rubber batons, and whoever fell down on the ground received more beatings until they reached the other end of the alley.”<sup>461</sup> Additionally, it was established that the inmates were subjected to other forms of collective punishment such as:

Beatings with metal rods on their soles, commonly identified as *falanga* beatings; application of electric shocks; beating carried out by many agents with sticks and kicking which included blows to the head, the hips and other body parts where victims were injured; and the use of punishment known as the “hole.”<sup>462</sup>

387. Likewise, during its visit to the province of Buenos Aires, the Rapporteur on the Rights of Persons Deprived of Liberty also received information about the alleged use of the torture commonly known as “falanga” or “pata-pata,” at the hands of Buenos Aires Penitentiary Service staff.<sup>463</sup>

388. Additionally, in 2005, the Commission received reports on the systematic practice in Ecuador of subjecting persons deprived of liberty, who are recaptured after escaping or attempting to escape, to solitary confinement and other physical and psychological punishments.<sup>464</sup> This is a widespread practice in several countries of the region, which is used as punishment to set an example, inasmuch as escapes compromise the security system of the jail and the prison staff itself.

389. During his visit to Chile in 2008, the Rapporteur on the Rights of Persons Deprived of Liberty observed that the following transpired at all of the prison facilities he visited: excessive and gratuitous use of force and punishment, systematic practice of physical abuse by members of the *Gendarmeria* (the correctional security force), and the

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<sup>461</sup> I/A Court H.R., *Case of Miguel Castro-Castro Prison V. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 297.

<sup>462</sup> I/A Court H.R., *Case of Miguel Castro-Castro Prison V. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 320.

<sup>463</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010. The IACHR has also addressed this particular form of torture in: IACHR, Report No. 172/10, Case 12.651, Merits, César Alberto Mendoza *et al.*, Argentina, November 2, 2010, para. 291.

<sup>464</sup> IACHR, *Annual Report 2005*, Chapter IV, Ecuador, OEA/Ser.L/V/II.124. Doc. 7, adopted on February 27, 2006, para. 185.

use of solitary confinement in subhuman conditions.<sup>465</sup> His observations were consistent with prior reports, during a thematic hearing on acts of torture in Chile, held in 2003, when the petitioners contended that inmates were frequently subjected to beatings, solitary confinement in unlit and unventilated cells, no visitation rights, and being hosed down with cold water particularly in the context of jailbreaks and riots. The petitioners also claimed that inmates often are forced into a state of uncertainty regarding the reasons why and the circumstances in which disciplinary sanctions are applied; and that no oversight mechanism is in place nor is any opportunity for them to file complaints. Consequently, these incidents usually remain in impunity.<sup>466</sup>

390. Moreover, on a visit to Honduras, the SPT learned that as a result of a jailbreak at the San Pedro Sula Prison on July 17, 2009, all of the members of the “Mara 18” gang were punished by taking away their visitation rights, restricting their access to water and electricity, and not allowing them to use air conditioners or the outside yard in their cell block.<sup>467</sup>

391. Another widespread form of punishment violating the right to humane treatment is a practice known as “welcome” calls for new inmates. On this topic, in the context of its Special Report on the Challapalca Jail, the IACHR received complaints regarding the practice of subjecting incoming inmates to beatings with rods and electric prods, after forcing them to strip and bathe in cold water, in order to make them feel their duty of submission to prison discipline.<sup>468</sup> Likewise, in the context of his working visit to El Salvador in 2010, the Rapporteur on the Rights of Persons Deprived of Liberty received reports as well that this type of “welcoming protocol” had allegedly taken place at the maximum-security prison of Zacatecoluca.<sup>469</sup>

392. During a mission to Paraguay, the UN Rapporteur on Torture called “particularly disturbing” the standard practice—even at the women’s prison—of locking up inmates in punishment cells as a form of “welcome” upon their arrival in the prison center, without having ever broken any disciplinary rule.<sup>470</sup>

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<sup>465</sup> IACHR, Press Release 39/08 - Rapporteurship on the Rights of Persons Deprived of Liberty concludes visit to Chile. Santiago, Chile, August 28, 2008.

<sup>466</sup> IACHR, Public hearing: *Information on Alleged Acts of Torture in Chile*, 117<sup>o</sup> Ordinary Period of Sessions, requested by: Center for Justice and International Law (CEJIL), March 24, 2003.

<sup>467</sup> United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, para. 204.

<sup>468</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, para. 80.

<sup>469</sup> *Informe Especial de la Procuraduría para la Defensa de los Derechos Humanos de El Salvador* submitted to the UN Committee against Torture on October 2009, para. 202, available at: [http://www2.ohchr.org/english/bodies/cat/docs/ngos/PPDH\\_ElSalvador\\_43.doc](http://www2.ohchr.org/english/bodies/cat/docs/ngos/PPDH_ElSalvador_43.doc).

<sup>470</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. IV: *Conditions of detention*, para. 74.

393. Another restriction that international human rights law places on the imposition of disciplinary measures is the prohibition to delegate those functions on the inmates themselves. On this issue, the Principles and Best Practices establish:

Persons deprived of liberty shall not be responsible for the execution of disciplinary measures, or for custody or surveillance activities, not excluding their right to take part in educational, religious, sporting, and other similar activities, with the participation of the community, non-governmental organizations, and other private institutions.<sup>471</sup>

394. It is a fact that, at many prisons in the region *de facto* disciplinary powers are wielded by specific inmates known as: chiefs, coordinators, foreman, leaders, capos, *pranes*, cleaning, order and discipline committees, among other names, based on the particular country.

395. For example, in the context of precautionary measures recently granted on behalf of persons deprived of liberty at the Professor Anibal Bruno Prison, in Pernambuco, Brazil (MC-199-11), one of the elements taken into account by the IACHR in determining the risk and levels of violence present at the facility was precisely the argument that the functions of organization and internal security, including the application of disciplinary punishment, were delegated to specific inmates known “gatekeepers.” Based on information submitted by the petitioners, most of the aggression endured by the inmates of that prison had allegedly been carried out or ordered by the *gatekeepers*. Consequently, the IACHR requested the State to take the necessary measures to increase security staff at the Professor Anibal Bruno Prison and put an end to the so-called *gatekeeper* system.

396. This type of situation takes place especially at prisons where internal oversight is, for the most part, in the hands of the inmates themselves, and also at prisons that are understaffed with few security guards, where authorities decide to “delegate” security functions to the inmates. In any case, even though the practice is quite widespread, it poses a serious and anomalous situation that must be eradicated by the States.

### **3. Solitary confinement**

397. *The Istanbul Statement on the Use and Effects of Solitary Confinement*, (hereinafter “the Istanbul Statement”) defines this form of imprisonment as:

[t]he physical isolation of individuals who are confined to their cells for twenty-two to twenty four hours a day. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum.

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<sup>471</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle XXII.5). In the same vein, the Standard Minimum Rules for the Treatment of Prisoners (Rule 28) and the European Prison Rules (Rule 62).

The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.<sup>472</sup>

Pursuant to this technical document, generally speaking, solitary confinement is used in four circumstances: (a) as disciplinary punishment; (b) to isolate a defendant during criminal investigations (linked to a general status of being incommunicado);<sup>473</sup> (c) as an administrative measure to control particular groups of inmates;<sup>474</sup> and (d) as a court-imposed sentence. This last category may include cases in which the law prescribes that either all or part of a sentence must be served in solitary confinement.<sup>475</sup> Solitary confinement can also be used in certain circumstances as part of medical or psychiatric treatment.

398. In practice, isolation or segregation of inmates is usually also used as a measure of protection; for example, in order to protect inmates from assaults by other inmates (for a wide variety of reasons) or from potential retaliation by the guards themselves. In these instances, the State must make sure that this measure is not used as a subtle form of punishment against inmates who have filed complaints against the prison authorities. In any case, a measure of this nature cannot be the only response to a risky situation, which clearly calls for further prevention measures and responses.

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<sup>472</sup> Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on 9 December 2007. The Rapporteur on Torture of the UN stresses that this document aims to promote the application of established human rights standards to the use of solitary confinement and create new rules based on the latest research. United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim report submitted to the General Assembly in accordance with Assembly resolution 62/148, A/63/175, adopted on July 28, 2008, Ch. IV: *Solitary confinement*, para. 84.

<sup>473</sup> Solitary confinement and "incommunicado detention" are situations of different nature, although in some cases both can be used concurrently on the same person.

<sup>474</sup> For example, in Honduras, the authorities launched the so-called "Project Scorpio" to put in solitary confinement certain inmates considered dangerous, and not necessarily as a disciplinary mechanism. On this matter, see *e.g.*, United Nations, Working Group on Arbitrary Detentions, *Report on mission to Honduras*, A/HRC/4/40/Add.4, adopted on December 1, 2006, para. 65; See also, IACHR, Public hearing: *Situation of the Persons Deprived of Liberty in Honduras*, 124<sup>th</sup> Ordinary Period of Sessions, requested by: State of Honduras, Center for Justice and International Law (CEJIL), Comité para la Defensa de los Derechos Humanos en Honduras (CODEH), Comité de Familiares de Detenidos y Desaparecidos de Honduras (COFADEH) and Centro para la Prevención, Tratamiento y Rehabilitación de las Víctimas de Tortura (CPTRT). March 7, 2006. In this regard, see the report: *Situación del Sistema Penitenciario en Honduras*, drafted by CPTRT and COFADEH, p. 14, presented in the said hearing available at: <http://www.cptrt.org/pdf/informesistemapenitenciarioCIDH.pdf>.

<sup>475</sup> This is the case with the execution of the sentence for crimes of terrorism and treason in Peru established by Decree Law No. 25475 which Article 20 (later reprinted by Article 3 of Decree Law No. 25744) which established that the imprisonment set forth in the decree law had to be completed in its entirety, (This rule was in force until the approval of the Supreme Decree No. 005-97-JUS of June 24, 1997). The Inter American Court in its jurisprudence on Peru stated that the criminal enforcement regime constituted cruel, inhuman and degrading treatment in terms of Article 5 of the American Convention. I/A Court H. R., *Case of García Asto and Ramírez Rojas V. Peru*. Judgment of November 25, 2005. Series C No. 137, paras. 229 and 233; I/A Court H. R., *Case of Lori Berenson Mejía V. Peru*. Judgment of November 25, 2004. Series C No. 119, paras. 106-108; I/A Court H.R., *Case of Cantoral Benavides V. Peru*. Judgment of August 18, 2000. Series C No. 69, paras. 58 and 106.

399. The IACHR has observed in several countries of the region that solitary confinement takes place in conditions, which do not uphold the right to humane treatment of inmates, as in the examples below:

400. In its Special Report on the Prison of Challapalca, the IACHR highlighted that several inmates claimed that the punishment of solitary confinement for thirty days was given to them arbitrarily by authorities, without any prior proceeding being held to officially advise them of the charges and to provide them an opportunity to defend themselves. It was also claimed that the solitary confinement was applied without any degree of gradualness and for longer periods than those permitted by the rules.<sup>476</sup>

401. In the follow up to the human rights situation in Cuba, the IACHR has repeatedly mentioned protracted solitary confinement of inmates as a deliberate form of punishment against political dissidents, who are held in extremely cramped cells, in unhygienic conditions, without beds or mattresses or any items to endure the cold or heat; and in a few instances, even with a bricked in door (bricked in cells). In addition to this punishment, other restrictions are placed on things such as food, medical care and visitation, and these inmates are subjected to constant psychological abuse. The inmates may remain in these conditions for periods even longer than one year.<sup>477</sup>

402. On a recent visit to Suriname, the Rapporteur for Persons Deprived of Liberty was able to observe that at the central penitentiary “Santa Boma” there were three solitary confinement cells commonly known as “black rooms,” where inmates, who commit disciplinary offenses, were kept in isolation for days and up to weeks. Inmates had to sleep on the floor of these cells without any bed or mattress and endure oppressive heat without sufficient ventilation, or any natural light.<sup>478</sup>

403. Additionally, in the context of the visit to the province of Buenos Aires, the Office of the Rapporteur on the Rights of Persons Deprived of Liberty received reports of the use of the isolation ward or *buzones* (‘cubby holes’) at the Penitentiary Units of the province as one area where the right to humane treatment of inmates is violated repeatedly. The confinement transpires in 2 by 1.5 meter cells for 23 or 24 hours a day behind double doors; usually without any drinking water or personal hygiene items; in filthy and unhygienic cells; in many instances, without any natural or artificial light; without heating or ventilation; with little if any chance to gain access to a shower; without food or the possibility to cook; without any chances for visitation and, much less, access to a

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<sup>476</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, para. 70.

<sup>477</sup> IACHR, *Annual Report 2010*, Chapter IV, Cuba, OEA/Ser.L/V/II. Doc. 5 corr. 1, adopted on March 7, 2011, para. 363; IACHR, *Annual Report 2006*, Chapter IV, Cuba, OEA/Ser.L/V/II.127. Doc. 4 Rev. 1, adopted on, March 3, 2007, para. 67; IACHR, *Annual Report 2005*, Chapter IV, Cuba, OEA/Ser.L/V/II.124. Doc. 7, adopted on February 27, 2006, para. 80; IACHR, *Annual Report 2004*, Chapter IV, Cuba, OEA/Ser.L/V/II.122. Doc. 5 Rev 1, adopted on February 23, 2005, paras. 61 and 65; IACHR, *Annual Report 2002*, Chapter IV, Cuba, OEA/Ser.L/II.117. Doc. 1 rev. 1, adopted on March 7, 2003, para. 69; and IACHR, *Annual Report 2001*, Chapter IV, Cuba, OEA(Ser./L/V/II.114. doc. 5 ver., adopted on April 16, 2002, para. 81(b).

<sup>478</sup> IACHR, Press Release, “Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname,” Washington, D.C., June 9, 2011, Annex, para. 14.

telephone; among other conditions which run counter to international standards. Inmates in these wards bear the heaviest burden of violence (beatings and other assaults) perpetrated by prison staff.<sup>479</sup>

404. Likewise, the SPT established on its visit to the National Penitentiary of Tacumbu, in Paraguay, that solitary confinement cells at the facilities were around 2.5 x 2.5 meters each, had inoperative toilets, were rat-infested and had poor ventilation. Additionally, all of the inmates being held in solitary confinement had claimed that penitentiary staff demanded that they pay a certain amount of money as a condition to be able to leave the cell block.<sup>480</sup> Similarly, the UN Rapporteur on Torture observed that in Paraguay it was common practice to place new inmates in solitary confinement as a form of “welcoming” to the prison facilities immediately upon their arrival.<sup>481</sup>

405. On his mission to Brazil, the UN Rapporteur on Torture observed that the maximum 30-day time period for solitary confinement is not always respected, and that some inmates claimed to have remained incommunicado or locked alone in cells as punishment for more than two months. In most instances, the detainees who were punished in solitary confinement stated that they had been locked in the cells at the prison warden’s or the chief security officer’s decision. Many of them did not know how long they would be kept incommunicado or in the punishment cells.<sup>482</sup>

406. The IACHR also notes that, according to the information presented by different UN mechanisms, the detainees at Guantanamo naval base were subjected to consecutive periods of thirty days of isolation (one period of thirty days being the maximum allowed), after very short respite periods in between each thirty day block of time and, as a result, they would actually be serving up to 18 months continuously in solitary confinement.<sup>483</sup>

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<sup>479</sup> Comité Contra la Tortura de la Comisión Provincial por la Memoria, Annual Report 2009: *El Sistema de la Crueldad IV* [The System of Cruelty IV], p. 105.

<sup>480</sup> United Nations, CAT/OP/PRY/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Paraguay*, June 7, 2010, para. 184.

<sup>481</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. IV: *Conditions of detention*, para. 74.

<sup>482</sup> United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit by the Special Rapporteur to Brazil, E/CN.4/2001/66/Add.2, adopted on March 30, 2001, para. 127.

<sup>483</sup> United Nations, Joint Report of the Working Group on Arbitrary Detention; the Special Rapporteur on the Independence of Judges and Lawyers; the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Special Rapporteur on Freedom of Religion or Belief; and the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, E/CN.4/2006/120, adopted on February 27, 2006, para. 53.



407. With regard to the use of solitary confinement, Principle XXII.3 of the Principles and Best Practices establishes the following fundamental standards:

Solitary confinement shall only be permitted as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution's internal security, and to protect fundamental rights, such as the right to life and integrity of persons deprived of liberty or the personnel. In all cases, the disposition of solitary confinement shall be authorized by the competent authority a shall be subject to judicial control, since its prolonged, inappropriate or unnecessary use would amount to acts of torture, or cruel, inhuman, or degrading treatment or punishment.

408. In the case of *Montero Aranguren et al (Reten de Catia)*, reiterating applicable international standards, the Inter-American Court stressed that isolation cells:

[m]ust only be used as disciplinary measures or for the protection of persons during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality. Such places must fulfill the minimum standards for proper accommodation, sufficient space and adequate ventilation, and they can only be used if a physician certifies that the prisoner is fit to sustain it.<sup>484</sup>

409. As for the specific restrictions on the use of this measure, the aforementioned Principle XXII.3 provides that solitary confinement in punishment cells shall be forbidden for pregnant women; and mothers who are living with their children in the place of deprivation of liberty; and children deprived of liberty.

410. Similarly, the UN Rules for the Protection of Juveniles Deprived of their Liberty provide that the placement of persons under the age of 18 in dark cells and punishment of solitary confinement is strictly forbidden (Rule 67). The UN Committee on the Rights of Child has recommended that the use of solitary confinement at centers of deprivation of liberty of children and adolescents be forbidden.<sup>485</sup>

411. In essence, solitary confinement should only be used on an exceptional basis, for the shortest amount of time possible and only as a measure of last resort.<sup>486</sup>

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<sup>484</sup> I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 94.

<sup>485</sup> United Nations Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations: Singapore*, CRC/C/SGP/CO/2-3, adopted on May 4, 2011, para. 69(b); United Nations Committee on the Rights of the Child, *Considerations of reports submitted by States parties under Article 44 of the Convention: Concluding Observations: Denmark*, CRC/C/DNK/CO/4, adopted on April 7, 2011, para. 66(b).

<sup>486</sup> United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim report submitted to the General Assembly in accordance with Assembly resolution 62/148, A/63/175, adopted on July 28, 2008, Ch. IV: *Solitary confinement*, para. 83. In the same sense, the European Penitentiary Rules (Rule 60.5). The UN Basic Principles for the Treatment of Prisoners go further in establishing  
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Additionally, the instances and circumstances in which this measure can be used must be expressly established by law (as provided in Article 30 of the American Convention), and its use must always be subject to strict judicial oversight. In no instance should the solitary confinement of an individual last longer than thirty days.

412. The IACHR finds that prison authorities must immediately report the use of this measure to the court under whose orders the inmate is serving. The competent judicial authority must also be empowered to request additional information from prison authorities and to overturn the measure should it believe that there are justifiable reasons to do so. Under no circumstances may the solitary confinement of an individual be left exclusively in the hands of the authorities in charge of the centers of deprivation of liberty without proper judicial oversight.

413. Hence, it has been widely established in international human rights law that solitary confinement for extended periods of time constitutes at the very least a form of cruel, inhuman and degrading treatment,<sup>487</sup> as does the uncertainty of the duration of the same.<sup>488</sup> In fact, solitary confinement can be utilized as a means of torture,<sup>489</sup> an issue about which the Criminal Tribunal for the Ex Yugoslavia has held, as a general standard, that:

Solitary confinement is not, in and of itself, a form of torture. However, in view of its strictness, its duration and the object pursued, it could cause great physical or mental suffering [...] To the extent that the confinement of the victim can be shown to pursue one of the prohibited purposes of torture and to have caused the victim severe pain and

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that, "[e]fforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged." (Principle 7)

<sup>487</sup> See e.g., United Nations, Human Rights Committee, General Comment No. 20: *Prohibition of torture and cruel treatment or punishment (Article 7)*, adopted at the 44<sup>th</sup> session (1992), para. 6. In: *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies, Volume I, HRI/GEN/1/Rev.9 (Vol. I)* adopted May 27, 2008, p. 239; United Nations Human Rights Committee, Communication No. 577/94, Víctor Alfredo Polay Campos, Perú, CCPR/C/61/D/577/1994, decision adopted on January 9, 1996, paras. 8.6, 8.7 and 9; United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim report submitted to the General Assembly in accordance with Assembly resolution 62/148, A/63/175, adopted on July 28, 2008, Ch. IV: *Solitary confinement*, para. 7; I/A Court H.R., *Case of Castillo Petruzzi et al. V. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 194; I/A Court H.R., *Case of Loayza Tamayo V. Peru*. Judgment of September 17, 1997. Series C No. 33, paras 57-58, (resides the decisions cited above in the footnote 471); African Commission on Human Rights, Communication No. 250/2002, Zegveld y Epbrem v. Eritrea, session 34, November 6-20, 2003, para. 55.

<sup>488</sup> United Nations, Joint Report of the Working Group on Arbitrary Detention; the Special Rapporteur on the Independence of Judges and Lawyers; the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Special Rapporteur on Freedom of Religion or Belief; and the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, E/CN.4/2006/120, adopted on February 27, 2006, para. 87.

<sup>489</sup> *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, Office of the United Nations High Commissioner for Human Rights, paras. 145(M) and 234.

suffering, the act of putting or keeping someone in solitary confinement may amount to torture.<sup>490</sup>

414. The Commission stresses that solitary confinement in a cell as a disciplinary measure should not be used in circumstances that amount to a form of cruel, inhuman and degrading treatment. This means *inter alia* that the State must ensure that the conditions of the cells used for solitary confinement meet the minimum standards for the accommodations of the inmates being punished.<sup>491</sup> The essential thing is that conditions of the cells used for solitary confinement must adhere to the same international standards for spaces housing the general population of inmates. Not only is there no valid justification for conditions in these punishment cells to be substandard, but such conditions also are tantamount to the improper harshening of the sentence and jeopardize the very health of the person held in solitary confinement.

415. According to the Istanbul Declaration, solitary confinement can cause serious psychological and, sometimes, physiological damage in persons, who can present symptoms ranging from insomnia and mental cloudiness to hallucinations and psychosis. These adverse health effects can begin to manifest themselves after only a few days of confinement and progressively grow worse.<sup>492</sup>

416. In this regard, the European Court has established that protracted sensory isolation coupled with complete social isolation can no doubt ultimately destroy the personality; thus, it constitutes a form of inhuman treatment, which cannot be justified out of concerns for security or anything else.<sup>493</sup>

417. In light of this consideration, the IACHR underscores that the health of the persons who are held in solitary confinement must be monitored on a regular basis by medical staff,<sup>494</sup> particularly for purposes of suicide prevention (on this topic, also see the Chapter III section E of this report). When health care staff deems the individual unfit for solitary confinement or that the use of this method must be stopped, an expert opinion must be submitted to the competent authorities.

418. Likewise, health care staff at centers of deprivation of liberty should periodically inspect the cells and the places used for solitary confinement of inmates and

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<sup>490</sup> International Tribunal for the Former Yugoslavia (ICTY), Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Trial Chamber II, Judgment of March 15, 2002, para. 183.

<sup>491</sup> IACHR, Press Release, "Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname," Washington, D.C., June 9, 2011, Annex, para. 15.

<sup>492</sup> Most of the effects produced by solitary confinement are psychological in nature and can cause acute alterations, and even chronic in the following areas: anxiety, depression, anger, cognitive, perceptual distortions, paranoia and psychosis. At the physiological level there can be gastro-intestinal, cardiovascular, genito-urinary, migraines, and profound fatigue problems. See, Shalev, Sharon, *A sourcebook on solitary confinement*, Mannheim Centre for Criminology, LSE, 2008, pp. 15-16, available [HERE](#).

<sup>493</sup> European Court of Human Rights, *Case of Ramírez Sánchez v. France*, (Application no. 59450/00), Judgment of July 4, 2006, Grand Chamber, paras. 120-123.

<sup>494</sup> On this matter, see the Standard Minimum Rules for the Treatment of Prisoners (Rule 23.3).

issue recommendations to the appropriate authorities.<sup>495</sup> Health care staff must act independently and autonomously in performing these monitoring duties, so that the inmates do not lose the trust that they have placed in them and the proper doctor-patient relationship remains intact. The IACHR finds that these medical supervisory obligations stem directly from the duty of the State to ensure inmates' right to life and humane treatment.

#### **D. Searches**

419. As has been mentioned above, State authorities have the inescapable duty to ensure proper internal order and security at centers of deprivation of liberty, as well as to enforce laws and regulations intended to regulate activity at these facilities. Consequently, searches or inspections at facilities where inmates live, work or gather are a necessary mechanism in order to seize illegal possessions such as weapons,<sup>496</sup> drugs, alcohol, cell phones; or in order to prevent attempts at escaping. Nonetheless, these procedures should be performed in keeping with protocols and processes that are clearly established by law and in respecting the fundamental rights of the individuals deprived of liberty. Otherwise, they could become a mechanism that is used to arbitrarily punish and assault inmates.

420. As for searches or inspections at facilities where inmates live, work or gather,<sup>497</sup> the Principles and Best Practices establish the following fundamental parameters:

Principle XXI: Whenever bodily searches, inspections of installations and organizational measures of places of deprivation of liberty are permitted by law, they shall comply with criteria of necessity, reasonableness and proportionality. [...] The inspections or searches in units or installations of places of deprivation of liberty shall be carried out by the competent authorities, in accordance with a properly established procedure and with respect for the rights of persons deprived of liberty.

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<sup>495</sup> This obligation derives from the general duties of the physicians or competent health authorities to inspect, evaluate and advise the administration of prisons on the sanitary and hygiene conditions of the facilities, and constantly monitor the health conditions of persons subject to solitary confinement as a disciplinary sanction. See, the Standard Minimum Rules for the Treatment of Prisoners (Rules 26.1 and 32.3); and the European Prison Rules (Rule 44.b and 44.c).

<sup>496</sup> For example, the Inter-American Court has expressly ordered the confiscation of weapons from inmates as a fundamental measure to protect the life and physical integrity of prisoners in the context of prisons with high levels of violence. See, I/A Court H.R., Provisional Measures, Matter of Urso Branco Prison regarding Brazil, Order of the Inter-American Court of Human Rights of June 18, 2002, Operative paragraph 1.

<sup>497</sup> With respect to the searches and controls, the European Penitentiary Rules laid down *inter alia* that the situations in which such searches are necessary and their nature shall be defined by law; the Staff shall be trained to carry out these searches in such a way as to detect and prevent any attempt to escape or to hide contraband, while at the same time respecting the dignity of those being searched and their personal possessions, and that prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this (Rule 54).

Likewise, the Inter-American Court has established as a general standard, that:

The State must make sure that searches are properly and periodically conducted, aimed at the prevention of violence and elimination of risk, as a result of adequate and effective control within the wards by prison guards, and that the results of these searches are conveyed to the competent authorities in a proper and timely fashion.<sup>498</sup>

421. In this regard, on a visit to El Salvador, the Office of the Rapporteur on the Rights of Persons Deprived of Liberty received numerous testimonies of abuse against inmates during searches conducted inside the prisons with the support of the Order Maintenance Unit (UMO). According to the information provided, the authorities in charge of carrying out these searches allegedly engaged in the practice of beating the inmates and destroying their belongings for no justifiable reason.<sup>499</sup>

422. In the context of the thematic hearing on the situation of persons deprived of liberty in Panama, the participants submitted information on the systematic acts humiliation against inmates during the searches conducted by the police. Based on the information in the submission, authorities allegedly engaged in the practice of bursting into cells, removing the occupants, who were sometimes naked; rummaging through, destroying or stealing their personal possessions; intentionally wetting their mattresses and clothes; and, on some occasions they were even alleged to have cut the ropes of the hammocks that inmates were forced to sleep in due to overcrowding.<sup>500</sup>

423. In the context of the case of *Rafael Arturo Pacheco Teruel et al*, pertaining to the Prison of San Pedro Sula in Honduras, the petitioners provided consistent testimony of the victims' family members, echoing what the victims had claimed: that whenever police agents would conduct searches or inspections in the cell block where the victims were located (which was used for the imprisonment of alleged members of the *Mara Salvatrucha* gang), the agents would rob them or destroy their personal belongings.<sup>501</sup>

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<sup>498</sup> I/A Court H.R., Provisional Measures, *Matter of the Mendoza Prisons regarding Argentina*, Order of the Inter-American Court of Human Rights of November 26, 2010, Whereas 52.

<sup>499</sup> IACHR, Press Release 104/10 - IACHR Office of the Rapporteur Attests to Structural Deficiencies in Prison System of El Salvador. Washington, D.C., October 20, 2010, Annex, section 7<sup>o</sup>. See also, *Informe Especial de la Procuraduría para la Defensa de los Derechos Humanos de El Salvador* submitted to the UN Committee against Torture on October 2009, paras. 209, 212 y 213.

<sup>500</sup> IACHR, Public hearing: *Human Rights Violations in Prisons in Panama*, 131<sup>o</sup> Ordinary Period of Sessions, requested by: State of Panama, Comisión de Justicia y Paz de la Conferencia Episcopal de Panamá, Centro de Iniciativas Democráticas (CIDEM), Harvard University. March 7, 2008. In this regard, see the report: *Del Portón para Acá se Acaban los Derechos Humanos: Injusticia y desigualdad en las cárceles panameñas*, presented in the said hearing .

<sup>501</sup> IACHR, Report No. 118/10, Case 12.680, Merits, *Rafael Arturo Pacheco Teruel et al.*, Honduras, October 22, 2010, para. 46. In this regard, see also, United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, para. 237.

424. Similarly, based on information submitted by Diego Portales University, during a search conducted on May 10, 2010, at the Villarica Prison, ten inmates were allegedly taken undressed to the yard of the facilities by members of the Gendarmeria (rural police force) who beat them and subjected them to an “exercise session.” They were then returned to their cells where they were rinsed off with cold water to make sure that no signs of any injury remained.<sup>502</sup>

425. The IACHR notes that one of the most common practices in the realm of prisons is how authorities use force without a second thought in performing searches.<sup>503</sup> Nonetheless, as is required anytime that force is used, searches must be performed with the strictest respect for the lives and personal integrity of the persons deprived of liberty.

426. Moreover, in the case of *Montero Aranguren et al* the Inter-American Court reiterated and fleshed out the fundamental principle that “the use of force by governmental security forces must be grounded on the existence of exceptional circumstances and should be planned and proportionally limited by the government authorities.” Therefore, “force or coercive means can only be used once all other methods of control have been exhausted and failed.”<sup>504</sup> Moreover, Article 3 of the Code of Conduct for Law Enforcement Officers<sup>505</sup> provides that “[l]aw enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”

427. In the specific context of the use of force in a prison setting, the Standard Minimum Rules for Treatment establish that in using force, prison facilities officials must adhere to the principles of legality, necessity, proportionality and supervision.<sup>506</sup> Likewise, the Principles and Best Practices on the Protection of Persons Deprived of Liberty prescribe more broadly that:

The personnel of places of deprivation of liberty shall not use force and other coercive means, save exceptionally and proportionately, in serious, urgent and necessary cases as a last resort after having previously exhausted all other options, and for the time and to the extent strictly necessary in order to ensure security, internal order, the protection of the fundamental rights of persons deprived of liberty, the personnel, or the visitors.<sup>507</sup>

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<sup>502</sup> Universidad Diego Portales, Centro de Derechos Humanos de la Facultad de Derecho, *Informe Anual sobre Derechos Humanos en Chile 2010*, pp. 116-117.

<sup>503</sup> See *e.g.*, I/A Court H.R., *Case of Miguel Castro-Castro Prison V. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 326; IACHR, Report No. 67/11, Case 11.157, Merits, Gladys Espinoza Gonzales, Perú, March 31, 2011, paras. 142, 148, 149, 151 and 184.

<sup>504</sup> I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 67.

<sup>505</sup> United Nations Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169, December 17, 1979.

<sup>507</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle XXIII.2).

428. The use of force and of coercive methods during searches can only be justified to the extent that the inmates themselves exhibit violent conduct or otherwise attack or attempt to assault authorities. On the other hand, if the inmates are not in a position to use force against the security agents or against third parties, and are reduced to a situation of defenselessness, the proportionality test is no longer applicable,<sup>508</sup> and therefore, any manifestation of violence by the authorities is characterized, as the case may be, as torture or cruel, inhuman and degrading treatment. In the final analysis, the institutionalized practice of displaying deliberate and excessive violence and force when conducting searches is unnecessary and amounts to a violation of inmates' right to humane treatment.

429. The IACHR views as a best practice that prison authorities allow the presence of representatives of other national human rights institutions during searches, provided that there are no clear security reasons rendering such a presence ill-advised. An example of such a best practice took place during a visit to Uruguay in July of 2011 of the Rapporteur on the Rights of Persons Deprived of Liberty, who was informed that Parliamentary Commissioner for the Prison System and his team had implemented the practice of being present during searches at prison facilities. The monitoring and independent oversight of these procedures helps to prevent torture, cruel, inhuman and degrading treatment, and other arbitrary acts at prisons.

#### **E. Conditions of imprisonment**

430. As was discussed in previous sections of this report, all persons deprived of liberty are entitled to be treated humanely, with unlimited respect for the dignity that is inherent to them and for their rights and fundamental guarantees. This means that the State, by way of guarantor of the rights of persons under its custody, not only has the special duty to respect and ensure their lives and personal integrity, but also must ensure that they are afforded minimum conditions compatible with their dignity.<sup>509</sup> Such conditions must not add further affliction to the nature of the deprivation of liberty, which is already punitive as it is. Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universal rule, which must be applied without distinction of any kind, and cannot be dependent on the material resources available in the State.<sup>510</sup>

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<sup>508</sup> United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted to the (former) Commission on Human Rights, E/CN.4/2006/6, adopted on December 23, 2005, para. 38.

<sup>509</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle I).

<sup>510</sup> United Nations, Human Rights Committee, General Comment No. 21: *Humane treatment of persons deprived of liberty*, adopted at the 44<sup>th</sup> session (1992), para. 4. In: *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies*, Volume I, HRI/GEN/1/Rev.9 (Vol. I) adopted May 27, 2008, p. 242.

431. Attention to prison conditions in the hemisphere is not only a concrete legal duty stemming from the American Convention and Declaration, but is a priority set forth at the highest level of political will by the States of the Hemisphere in the Plans of Action of the Summits of the Americas.<sup>511</sup>

432. The IACHR has noted that the State must ensure the following essential minimum requirements: “access to drinking water, sanitary facilities, personal hygiene, floor space, light and ventilation, sufficient and adequate food; and adequate bedding.”<sup>512</sup> Traditionally, the IACHR has considered that Rules 10, 11, 12, 15 and 21 of the Standard Minimum Rules for the Treatment of Prisoners constitute reliable criteria of reference as minimum international norms for humane treatment of inmates regarding accommodations, hygiene and physical exercise.<sup>513</sup> And it has considered that these rules apply regardless of the type of behavior for which the person in question has been imprisoned and the level of development of the State.<sup>514</sup> Currently, the position of the IACHR with regard to these minimum conditions is set forth in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

433. In examining individual cases, both the IACHR,<sup>515</sup> and the Court<sup>516</sup> have taken into consideration the *cumulative effect or impact* of the conditions of imprisonment

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<sup>511</sup> See, Plan of Action of the third Summit of the Americas, held in Quebec, Canada, on the 2001, available at: [http://www.summit-americas.org/iii\\_summit/iii\\_summit\\_poa\\_en.pdf](http://www.summit-americas.org/iii_summit/iii_summit_poa_en.pdf); and Plan of Action of the First Summit of the Americas, held in Miami, Florida in the United States of America, on 1994, available at: [http://www.summit-americas.org/i\\_summit/i\\_summit\\_poa\\_en.pdf](http://www.summit-americas.org/i_summit/i_summit_poa_en.pdf).

<sup>512</sup> IACHR, Follow-up Report - *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser/L/V/II.135. Doc. 40, adopted on August 7, 2009, Ch. V, para. 123.

<sup>513</sup> These norms set forth the following standards: “[a]ll accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation;” (Rule 10) “[i]n all places where prisoners are required to live or work, (a) [t]he windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; (b) [a]rtificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight;” (Rule 11) “[t]he sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean decent manner;” (Rule 12) “[p]risoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness;” (Rule 15) “[e]very prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits; [y]oung prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.” (Rules 21.1 and 21.2).

<sup>514</sup> IACHR, Report No. 28/09, Case 12.269, Merits, Dexter Lendore, Trinidad y Tobago, March 20, 2009, paras. 30-31; IACHR, Report No. 78/07, Case 12.265, Merits, Chad Roger Goodman, Bahamas, October 15, 2007, paras. 86-87; IACHR, Report No. 67/06, Case 12.476, Merits, Oscar Elías Biscet *et al.*, Cuba, October 21, 2006, para. 152; IACHR, Report No. 76/02, Case 12.347, Merits, Dave Sewell, Jamaica, December 27, 2002, paras. 114- 115.

<sup>515</sup> IACHR, Report No. 28/09, Case 12.269, Merits, Dexter Lendore, Trinidad y Tobago, March 20, 2009, para. 34; IACHR, Report No. 76/02, Case 12.347, Merits, Dave Sewell, Jamaica, December 27, 2002, para. 116, IACHR, Report No. 56/02, Case 12.158, Merits, Benedict Jacob, Grenada, October 21, 2002, para. 94; IACHR, Report No. 41/04, Case 12.417, Merits, Whitley Myrie, Jamaica, October 12, 2004, para. 46.

<sup>516</sup> See, *e.g.*, I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 227; I/A Court H.R., *Case of Boyce et al. V.* Continues...



to which a person is subjected, in order to determine whether such conditions as a whole have constituted a form of cruel, inhuman and degrading treatment.

434. Accordingly, the Court has determined a host of circumstances which in combination with one another could reach the threshold of constituting cruel, inhuman or degrading treatment as provided for in Article 5(1) and 5(2) of the Convention, for example:<sup>517</sup> lack of adequate infrastructure; imprisonment in overcrowded conditions; lack of adequate ventilation and natural light; unsanitary cells; no beds (sleeping on the floor or in hammocks); no adequate medical care or drinking water; no segregation by categories (i.e. mixing of children and adults, or accused with convicted persons); no adequate sanitation facilities (having to urinate or defecate in receptacles or plastic bags); lacking conditions of minimum privacy in sleeping quarters; very little and poor quality food; few chances to exercise; no education or sports programs, or few chances to engage in such activities; improper restrictions on visitation; periodical use of forms of collective punishment and other abuses; solitary confinement and incommunicado; and imprisonment in locations that are extremely far away from the family residence and in severe geographic conditions.

435. As has been discussed earlier in this report, particular situations, such as the lack of medical treatment, or the failure to separate children from adults or men from women, can be considered by themselves violations of the right to humane treatment. Additionally, when the State intentionally subjects a person to particularly injurious conditions of imprisonment for a particular purpose, it could in itself rise to the level of torture.<sup>518</sup> This would be, for example, the consistent practice of the Cuban government

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*Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, para. 94.

<sup>517</sup> I/A Court H.R., *Case of Loayza Tamayo V. Peru*. Judgment of September 17, 1997. Series C No. 33, para. 89; I/A Court H.R., *Case of Cantoral Benavides V. Peru*. Judgment of August 18, 2000. Series C No. 69, para. 85; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 76.b; I/A Court H. R., *Case of Caesar V. Trinidad and Tobago*. Judgment of March 11, 2005. Series C No. 123, para 99; I/A Court H. R., *Case of Tibi V. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 151; I/A Court H.R., *Case of Suárez Rosero V. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 91; I/A Court H. R., *Case of "Juvenile Reeducation Institute" V. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paras. 165-171; I/A Court H. R., *Case of Fermín Ramírez V. Guatemala*. Judgment of June 20, 2005. Series C No. 126, paras. 54.55, 54.56 y 54.57; I/A Court H. R., *Case of Raxcacó Reyes V. Guatemala*. Judgment of September 15, 2005. Series C No. 133, paras. 43.23; I/A Court H. R., *Case of García Asto and Ramírez Rojas V. Peru*. Judgment of November 25, 2005. Series C No. 137, paras. 97.55, 97.56 y 97.57; I/A Court H. R., *Case of López Álvarez V. Honduras*. Judgment of February 1, 2006. Series C No. 141, paras. 54.48 y 108; I/A Court H.R., *Case of Miguel Castro-Castro Prison V. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paras. 296 y 297; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006. Series C No. 150, paras. 90-99 y 104; I/A Court H.R., *Case of Boyce et al. V. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, paras. 94-102.

<sup>518</sup> In this regard, the Istanbul Protocol includes among the different methods of torture a specific category relating to prison conditions under which it can inflict physical and psychological harm to a person by his confinement: small or crowded cells, alone, unsanitary conditions, without sanitation, with irregular administration of food and water or contaminated food and water, exposed to extreme temperatures, denying all privacy and subjecting him to forced nudity (para. 145 -m-)

against political dissidents;<sup>519</sup> or the treatment given by the United States government to the detainees at Guantanamo naval base.<sup>520</sup>

436. Over the years and in performance of its different functions, the IACHR has widely addressed conditions of imprisonment in the Americas; in the absolute majority of these cases, the fact is, based on our observations, current international standards are not adhered to. Examples of this include the following:<sup>521</sup>

437. In the follow up to the human rights situation in Haiti, the IACHR has confirmed that prisons in that country are characterized by a widespread lack of adequate and sufficient infrastructure to house the inmate population; by overcrowding conditions without ventilation or natural light or floor space to sleep in; by the lack of medical care, which is why the inmates suffer from overall poor health; and by malnutrition among prisoners. Every prison has some inhabitable or cells, cells with no bedding for inmates to sleep in and, in some instances, there are not even any sleeping quarters for the guards themselves.<sup>522</sup>

438. Likewise, during a meeting that was held on an *in loco* visit to Bolivia in 2006, the Director General of the Prison System called the country's jails "human trash dumps," because of the poor conditions of infrastructure and neglect they were subjected to over the years. In this regard, the IACHR additionally found that the precarious nature of the infrastructure and inadequate budget was also reflected in unacceptable conditions of health, hygiene and food at Bolivian prisons.<sup>523</sup>

439. On a country visit to Jamaica in 2008, the IACHR confirmed serious conditions of detention at the Spanish Town and Hunts Bay police stations, noting that detainees were piled up in dark and dirty cells, with no ventilation. Spanish Town Police officers reported that mentally disabled detainees were locked in the cell bathrooms.

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<sup>519</sup> See, e.g., IACHR, *Annual Report 2010*, Chapter IV, Cuba, OEA/Ser.L/V/II.Doc.5 corr. 1, adopted on March 7, 2011, paras. 361-365.

<sup>520</sup> United Nations, Joint Report of the Working Group on Arbitrary Detention; the Special Rapporteur on the Independence of Judges and Lawyers; the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Special Rapporteur on Freedom of Religion or Belief; and the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, E/CN.4/2006/120, adopted on February 27, 2006, paras. 49-50.

<sup>521</sup> A comprehensive reference that covers the entire reality would be very extensive and exceeds the scope of this report, which illustrates this situation with some representative examples, without this meaning a "black list" or "ranking" of countries who have the worst deficiencies in this matter, because, as already mentioned, the lack of adequate conditions of confinement is a general problem that touches the absolute majority of the States of the region.

<sup>522</sup> IACHR, *Observations of the Inter-American Commission on Human Rights upon conclusions of its April 2007 visit to Haiti*, OEA/Ser.L/V/II.131. Doc. 36, adopted on March 2, 2008, paras. 31-33; IACHR, *Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community* Ch. III, para. 209.

<sup>523</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Ch. III, para 206.

Furthermore, the delegation was alarmed in observing that detainees were terribly overcrowded and lived among trash and urine at the Hunts Bay police station.<sup>524</sup>

440. As for the Challapalca Prison in Peru after assessing overall conditions of imprisonment at that facility, which is located at 4,600 meters above sea level in an inhospitable area, far removed from any population center, and with extreme climatic conditions, the Commission recommended the State to immediately close that prison and transfer all inmates being held there to prisons located closer to their family circles.<sup>525</sup>

441. Likewise, on a visit to Suriname, the Rapporteur on the Rights of Persons Deprived of Liberty witnessed that conditions of detention at the Geyersvlijt Police Station were palpably worse than those of the prison facilities visited in that State. At this police station, particularly in the men's section, a serious problem of overcrowding was apparent, with all of the consequences that this situation entails: inmate-to-inmate violence, transmission of disease, and lack of bedding (some detainees had to sleep in hammocks in their cells). Additionally, sanitary and hygienic conditions were deplorable; toilets were in poor working order; the trash produced in the cells was deposited in bags that were then stored in the bathroom near the toilets and showers, and was only taken out once a week; and insects, rats and other vermin were present. This was all in a setting of overcrowding, excessive heat and stuffiness, with a lack of ventilation and natural light. Most male and female inmates claimed that they remained totally confined to their cells for almost the whole day in these conditions.<sup>526</sup>

442. Additionally, during a visit to Uruguay, the Rapporteur on the Rights of Persons Deprived of Liberty was able to attest that infrastructure, sanitary and hygiene conditions at cellblocks 1, 2 and 4 of the Santiago Vasquez Prison Complex (COMCAR) were absolutely unfit for human habitation. These modules were dark, dank, cold, unsanitary, trash-laden spaces with insufficient air ventilation and natural light. The wastewater flooded out of the drains onto the floors and into the cells, which in addition to being unhygienic produced a nauseating stench in the atmosphere. The building infrastructure of these modules was totally corroded and worn down, and holes and openings were visible in the walls and in the hallway floors. In such unsanitary conditions, the Rapporteurship witnessed the presence of persons living with HIV. Accordingly, the IACHR recommended that the State close down those cellblocks and transfer the inmates to another facility with adequate conditions.<sup>527</sup>

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<sup>524</sup> IACHR, Press Release 59/08 - IACHR Issues Preliminary Observations on Visit to Jamaica. Kingston, Jamaica, December 5, 2008.

<sup>525</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, para. 119; IACHR, *Second Report on the Situation of Human Rights in Peru*, Ch. IX, para 24(12).

<sup>526</sup> IACHR, Press Release 56/11, "Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname," Washington, D.C., June 9, 2011, Annex,, paras. 19-20.

<sup>527</sup> IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011, Annexes, paras. 25 and 27.

443. In some serious and urgent cases, the IACHR has found that the conditions of detention, in addition to not conforming to applicable international standards, placed inmates at risk of suffering irreparable harm; thus, in those cases the IACHR has granted precautionary measures.

444. During a recent visit to the province of Buenos Aires, the Rapporteurship noted that the 3<sup>rd</sup> Sectional Police Station of Ensenada was holding 20 detainees at the time of the visit, when its maximum capacity is for 6, thus creating conditions of absolute overcrowding (according to its registry book, that police station held up to 28 detainees the week before the visit). The detainees would be confined to these conditions for 24 hours a day without access to natural light, except from a small barred window, through which they have contact with attorneys and visitors. It was also noted that some detainees were sleeping on the corridor floor, one right next to the other. It was confirmed that all of the detainees at that police station had been held there for periods ranging from 3 to 18 months, and there was even a 75 year-old arthritic person who had been held there for 45 days.<sup>528</sup>

445. Likewise, in June 2009, the IACHR granted precautionary measures to protect the persons incarcerated at *Polinter-Neves* detention center in Rio de Janeiro. At the time of granting these measures, the Commission took into consideration that this facility was housing some 759 people, despite having actual maximum capacity for 250, and these individuals were held in an alarming situation of overcrowding. They received none of the medical care they required, especially for treatment of tuberculosis and skin infections and they were housed in extremely hot and stuffy cells (as hot as 56<sup>o</sup> Celsius), dank, smelly cells, which lacked ventilation and natural light. It was reported that as a result of the lack of available floor space and bedding, some of the detainees would sleep tied up to the bars, and were commonly known as “bat men.”<sup>529</sup>

446. The general notion of conditions of imprisonment is very broad. It encompasses some aspects which, due to their nature and significance, are examined more specifically in later chapters or sections of this report, such as: health services, inmate contact with family members, rehabilitation programs and the duty of the State to ensure a safe environment for the lives and personal integrity of the inmates. The next section focuses in the following fundamental aspects: overcrowding, accommodations, hygiene and clothing, and food and drinking water.

## **1. Overcrowding**

447. As already discussed in this report, even though most States face very similar challenges in respecting and ensuring the human rights of persons deprived of liberty the most serious one currently affecting the absolute majority of the countries of the region is overcrowding. This is not a new reality, as the IACHR has been stressing this

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<sup>528</sup> File of the Precautionary Measure MC-187-10.

<sup>529</sup> File of the Precautionary Measure MC-236-08. Subsequently the prison population of this facility fluctuated as follows: 575 people (August 2009), 727 (August 2009), 722 (November 2009), 622 (March 2010), 803 (May 2010), 570 (August 2010), 580 (September 2010), 453 (November 2010) and 544 (January 2011).

situation in the region for over 45 years,<sup>530</sup> and has done so repeatedly in almost all of its reports in which the topic of the situation of persons deprived of liberty has been addressed.

448. The significance and scope of this reality has not only been highlighted by the IACHR in its capacity as monitor of human rights in the region, but it has also been recognized at the highest political level by the OAS member States at their General Assembly.<sup>531</sup> Additionally, the authorities responsible for penitentiary and prison policies of the OAS member States, in the context of REMJA, have pointed to overcrowding and infrastructure deficiencies at prisons as one of the principal challenges of the region.<sup>532</sup>

449. Recently, the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD) found in a regional survey that two of the main issues with prison systems in Latin America are, precisely, overcrowding and deficient quality of life in prisons<sup>533</sup>.

450. Accordingly, most of the States that submitted responses to the questionnaire that was published in conjunction with this report recognized that one of the principal challenges faced by them is precisely the lack of capacity to house the inmate population. Brazil, for example, stated that its prison system is at a critical juncture of inmate overpopulation with a deficit of 180,000 spaces. In this regard, one of the questions of the questionnaire referred to the housing capacity of prison centres and their actual current population. In this regard, the States submitted the following information.<sup>534</sup>

Argentina	The capacity of the Federal Penitentiary Service Units is 10,337 spots, and the population on April 2010 was 9,426 inmates. According to the information, each and every location is within its capacity limits.
Bolivia	The total capacity listed for the 23 penitentiaries in June 2012 was 3,738 and the population of prisoners was 7,700 inmates. The San Pedro prison in La Paz (capacity 400/population 1,450), and the Palmasola prison in Santa Cruz (capacity 600/population 2,186), are two of the most crowded. At the same time, the cells of Montero (Santa Cruz), San Pedro, and San Pablo (Cochabamba) prisons, all have a capacity for 30 persons, and each were housing in June of 2010: 162, 141 and 164 persons, respectfully.

<sup>530</sup> See in this regard, *Report of the IACHR on its Activities in Dominican Republic*, OEA/Ser.L/V/II.13 doc 14 Rev. (available only in Spanish), adopted on October 15, 1965, Ch. II.A.

<sup>531</sup> OAS, General Assembly Resolution, AG/RES. 2510 (XXXIX-O/09), adopted on June 4, 2009; OAS, General Assembly Resolution, AG/RES. 2403 (XXXVIII-O/08), adopted on June 13, 2008; OAS, General Assembly Resolution, AG/RES. 2283 (XXXVII-O/07), adopted on June 5, 2007; and OAS, General Assembly Resolution, AG/RES. 2233 (XXXVI-O/06), adopted on June 6, 2006.

<sup>532</sup> OAS, Report of the First Meeting of Authorities Responsible for Penitentiary and Prison Policies of OAS Member States, OEA/Ser.K/XXXIV GAPECA/doc.03/03, adopted on October 17, 2003, available [HERE](#).

<sup>533</sup> United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), *Crime, Criminal Justice and Prison in Latin America and the Caribbean*, 2009, pp. 28-31.

<sup>534</sup> Importantly, none of the answers given by the states provide data related to housing rates of people in Commissariats or Police Stations, which in fact are often used much like prisons.

Chile	<p>According to official information updated on December 31, 2009, the relation between the capacity and the inmates population by regions in Chile is as follows:<sup>535</sup></p> <ul style="list-style-type: none"> <li>▪ Arica and Parincota (1 UP): capacity 1,100/population 2,190;</li> <li>▪ Tarapaca (3 penitentiaries): capacity 2,233/population 2,628;</li> <li>▪ Antofagasta (5 Ps.): capacity 1,378/population 2,398;</li> <li>▪ Atacama (3 Ps.): capacity 524/population 1,147;</li> <li>▪ Coquimbo (4 Ps.): capacity 2,022/population 2,186;</li> <li>▪ Valparaiso (10 Ps.): capacity 2,574/población 5,749;</li> <li>▪ O'Higgins (5 Ps.): capacity 2,332/población 2,813;</li> <li>▪ El Maule (11 Ps.): capacity 1,985/población 2,819;</li> <li>▪ El Bío Bío (13 Ps.): capacity 3,245/population 4,820;</li> <li>▪ La Araucana (11 Ps.): capacity 1,759 /population 2,680;</li> <li>▪ Los Ríos (3 Ps.): capacity 1,473/population 1,191;</li> <li>▪ Los Lagos (5 Ps.): capacity 1863/population 1,840;</li> <li>▪ Aysén (4 Ps.): capacity 290/population 236;</li> <li>▪ Magallanes (3 Ps.): capacity 423/population 388;</li> <li>▪ Metropolitana (13 Ps.): capacity 12,011/population 20,588.</li> </ul> <p>In this context, and emphasized in the examples of the following Penal Units : <i>CDP</i> Santiago Sur (capacity 2,446/population 6,803); <i>CDP</i> San Miguel (capacity 892/population 1,790); <i>CP</i> Arica (capacity 1,100/population 2,190); <i>CCP</i> Antofagasta (capacity 684/population 1,251); <i>CCP</i> Copiapo (capacity 252/population 759); <i>CCP</i> Talca (capacity 566/population 1,002); and <i>CP</i> Concepción (capacity 1,220/population 2,255).</p>
Costa Rica	<p>The total capacity of housing in the Attention Centers of the Institutional Program (<i>Centros de Atención Institucional-CAI</i>) on May 20, 2010 was 8,523 spots and the population had risen to 9,770 inmates; being the biggest: <i>CAI</i> Reforma, San Rafael de Alajuela (capacity 2,016/population 2,231); the <i>CAI</i> Gerardo Rodríguez, San Rafael de Alajuela (capacity 952/population 1,121); the <i>CAI</i> Pococi, La Leticia Guápiles (capacity 874/population 970); and the <i>CAI</i> San Rafael, San Rafael de Alajuela (capacity 744/population 826).</p>
Ecuador	<p>The total housing capacity on the 42 Social Rehabilitation Centers as of September 30, 2010 was 9,403 spots for 13,237 inmates (this number includes those who had been sentenced, those who had been procesed, and those who had been convicted. At the same time, the State gave information that in July 2010 the total population of the penitentiary system (including the floating population) rose to 18,300 persons. According to the information presented by the State, the four prisons with the worst capacity problems (on July of 2010) are: the Guayaquil CDP (population 161/space for 140); the Quito CDP No. 1 (population 573/space for 275); the Guayaquil Varones No. 1 (population 3,598 space for 2,792); and the Quito CDP 24 de mayo No. 2 (population 168/space for 130).</p>

<sup>535</sup> Due to the high number of prisons, detention centers and correctional institutions, the information has been presented by regions, and underscoring some remarkable examples.

El Salvador	The total capacity for the 20 penitentiary centers in April 2010 was 8,110 spots and, on this date, they housed 22,707 persons. By way of example: the Centro Penal de Apanteos prison, with a capacity for 1,800 inmates, housed on that date 3,344; the Centro Penal La Esperanza prison, with a capacity to hold 850, 4,700; and the Centro Penal de Ilopango prison, with a capacity of 250, 1477.
Guatemala	The total capacity in the 20 penitentiaries of the country, on May of 2010, was 6,610 places and their actual holding was 10,512 persons deprived of liberty. The most overcrowded are: the Centro Preventivo de la Zona 18 (capacity 1,500/population 2,843); the Granja Cantel (capacity 625/population 1,167); the Granja Canadá (capacity 600/population 1,163); the Centro de Detención Los Jocotes de Zacapa (capacity 158/population 571); and the Centro de Detención de Mazatenango (capacity 120/population 402).
Guyana	The total capacity of country's 5 prisons, in September 2010 was 1,580 spots and an actual population of 2,007 prisoners. The most populated is the prison of Georgetown, which housed 967 inmates on that date and its capacity is for 600.
México	The State of Mexico stated that, in September 2010, all of the Federal Centers of Social Readaptation, including the Federal Center of Psychological Readaptation had an internal population below the designed capacity. With regard to the Complejo Penitenciario de Islas Mariás, it was stated that it housed 2,685 inmates and that "its current housing capacity is about to increase."
Nicaragua	The total capacity of the 8 penitentiary centers of the country, in September 2010, was 4,742 spots, and they were being filled by 6,071 persons. The most populated is the Centro Penal de Granada, which capacity is for 469 persons and housed 851.
Panamá	The total capacity of the 19 penal centers of the country on September 2010 was 7,088 spots, and they had an actual population of 11,578 inmates; noting: the Centro Penitenciario La Joyita (capacity 1,850/population 4,027); the Centro Penitenciario La Joya (capacity 1,556/population 1,871); the Centro de Rehabilitación Nueva Esperanza (capacity 1,008/population 1,305); the Cárcel de David (capacity 300/population 906); and the Cárcel de La Chorrera (capacity 175/population 494).
Paraguay	The total capacity of the 15 penitentiary institutions in the country, on May 13, 2010 was 4,951 spots and their population 6,270 inmates. It is worth undercoring: the Penitenciaría Nacional de Tacumbú (capacity 1,800/population 3,138); the Penitenciaría Reg. P.J. Caballero y la Penitenciaría Reg. Misiones, both with a capacity for 90 persons, and which held 657 and 442 persons respectively.
Perú	According to official information updated on May 23, 2010, the relation between the capacity and the inmates population by regions in Perú is as follows: <sup>536</sup> <ul style="list-style-type: none"> <li>▪ Northern Region (13 penitentiaries): capacity 4,840/population</li> </ul>

<sup>536</sup> Due to the large amount of Penitentiary Establishments, information is organized according to the totals by region, and at the end some examples of representative cases are provided.

	<p>6,264;</p> <p>Lima Region (16 Ps.): capacity 11,413/population 23,472;</p> <ul style="list-style-type: none"> <li>▪ Pucallpa West region (4 Ps.): capacity 1,734/population 2,941;</li> <li>▪ Huancayo Central Region (9 Ps.): capacity 1,763/population 4,026;</li> <li>▪ Cusco South West Region (10 Ps.): capacity 1,632/population 2,248);</li> <li>▪ Arequipa Southern Region (6 Ps.): capacity 1,010/population 1,785;</li> <li>▪ San Martín North West Region (8 Ps.): capacity 1,304/population 3,010;</li> <li>▪ Altiplano Puno Region (5 Ps.): capacity 1,198/population 1,014.</li> </ul> <p>The overall housing capacity of the State is 24,894 spots for a total population of 44,760 inmates; in this context, the following centers are in overflow: EP. Lurigancho (capacity 3,204/population 8,877); EP. Callao (capacity 572/population 2,598); EP. de Cañete 567/1,975); EP. de Pucallpa (capacity 484/population 1,340); EP. de Chanchamayo (capacity 120/population 497); and EP. de Ayacucho (capacity 644/population 1,706).</p>
Suriname <sup>537</sup>	The four penitentiary centers of the country, in February 2011, had a total capacity of housing for 1,277 and a total population of 1,010, indicating that every one of its establishments was below capacity limits.
Trinidad y Tobago	On February 2010 the 8 penitentiaries of the country had a total capacity for housing of 4,386 places for a population of 3,672 inmates. However some specific prisons are considerably overpopulated, for example: the Prisión de Puerto España (capacity 250/population 460); the Carrera Prison for Convicted (capacity 185/population 380); and the Remand Yard Prison (capacity 655/population 981).
Uruguay <sup>538</sup>	The housing capacity for the Penitentiary System of Uruguay in March 2010 was 6,413 places, with a prison population of 8,785 persons.
Venezuela	<p>According to official numbers given in June 2010, the information is the following, by prison<sup>539</sup>:</p> <ul style="list-style-type: none"> <li>▪ Casa de Reeducción, Rehabilitación e Internado Judicial El Paraíso (La Planta): capacity 600/population 1940;</li> <li>▪ Internado Judicial Capital Rodeo I: capacity 750/population 2,145;</li> <li>▪ Internado Judicial Capital Rodeo II: capacity 684/population 1161;</li> <li>▪ Centro Penitenciario Metropolitano Complejo Yare: capacity 750/population 1,334;</li> </ul>

<sup>537</sup> For a more recent reference regarding statistical information of Suriname, see, IACHR, Press Release 56/11, "Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname," Washington, D.C., June 9, 2011, Annex.

<sup>538</sup> For a more recent reference regarding statistical information of Uruguay, see, IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011.

<sup>539</sup> In the case of those prison establishments that have cellblocks or attachments for female inmates, this population is included within the term "general population"; however in the case of those prisons that only house male prisoners, inmate total is called "population".



- Centro Penitenciario Metropolitano Yare III: population 140 (the capacity was not given);
- Instituto Nacional de Orientación Femenina (INOF): capacity 240/population 676;
- Internado Judicial de Los Teques: capacity 700/population 1,340;
- Cárcel Nacional de Maracaibo (Sabaneta): capacity 800/ general population 2,514;
- Internado Judicial de Falcón: capacity 750/ general population 898;
- Comunidad Penitenciaria de Coro: capacity 818/ general population 560;
- Centro Penitenciario de la Región Centro Occidental (Uribana): capacity 860/ general population 1785;
- Centro Penitenciario Los Llanos (Guanare): capacity 800/population 949;
- Internado Judicial de Trujillo: capacity 400/population 714;
- Internado Judicial de Barinas: capacidad 540/ general population 1616;
- Centro Penitenciario Región Andina: capacity 776/ general population 1550;
- Centro Penitenciario de Occidente (Santa Ana): capacity 1,500/ general population 2,254;
- Internado Judicial de Apure: capacity 418/ general population 500;
- Internado Judicial de Yaracuy: capacity 300/population 839;
- Internado Judicial de Carabobo (Tocuyito): capacity 1,200/ general population 3,810;
- Centro Penitenciario de Carabobo (Mínima): capacity 300/population 96;
- Centro Penitenciario de Aragua (Tocorón): capacity 550/ general population 3,332;
- Centro Experimental de Reclusión y Rehabilitación de Jóvenes Adultos (CERRA): capacity 50/population 5;
- Internado Judicial de Los Pinos: capacity 600/population 922;
- Penitenciaría General de Venezuela: initial capacity 3000/population 915;
- Internado Judicial de Anzoátegui (Puente Ayala): capacity 650/population 1071;
- Internado Judicial de Sucre (CUMANA): capacity 135/ general population 424;
- Internado Judicial de Carúpano: capacity 120/ general population 571;
- Centro Penitenciario Región Oriental (El Dorado): capacity 200/population 138;
- Internado Judicial de Ciudad Bolívar (Vista Hermosa): capacity 400/population 1,060;
- Internado Judicial de la Región Insular (Margarita): capacity 510/ general population 1,693;
- Centro Penitenciario Femenino Región Insular: capacity 54/population 18;

Internado Judicial de Monagas (La Pica): capacity 800/ general population 1156.

451. The IACHR notes that overcrowding is the foreseeable consequence of the following fundamental factors: (a) lack of adequate infrastructure to house the growing prison population; (b) implementation of repressive policies of social control, which institute the deprivation of liberty as a fundamental response to the need for public security (so-called “iron fist” or “zero tolerance” policies); (c) the excessive use of preventive detention and deprivation of liberty as a criminal sanction;<sup>540</sup> and (d) the lack of a quick and effective response by the court systems to process, both criminal cases, and all motions that are part and parcel of the process of sentence execution (such as entertaining motions for probation).

452. With respect to policies that foster the use of imprisonment as a tool to decrease levels of violence, the IACHR noted in its Report on Citizen Security and Human Rights that:

With debatable efficacy, [these policies] have in fact increased the prison population. However, the vast majority of the countries of the region did not have –and do not have– either the infrastructure or the technical and human resources that their prison systems need in order to ensure that persons deprived of their liberty will receive humane treatment and to make that system an effective tool for prevention of violence and crime.<sup>541</sup>

453. This reality was clearly observed by the Rapporteur on the Rights of Persons Deprived of Liberty on his visit to El Salvador when he witnessed that even though the Salvadoran prison system has installed capacity for 8,110 inmates, in October 2010 it was housing 24,000 people. However, criminal activity and levels of violence continue to rise despite the massive use of detention. In this regard, the IACHR considers that “penal reforms designed to produce significant changes must be accompanied by the corresponding modification of judicial and prison institutions, since these are the areas that will feel the direct impact of these legislative reforms.”<sup>542</sup>

454. Similarly, the UN Rapporteur on Torture has considered that, in general, the use of imprisonment as a habitual measure and not as a last resort has not curbed crime rates or prevented recidivism. On the contrary, it has had a negative impact on the prison system; consequently, instead of a punitive penal and penitentiary system directed at locking people up, the highest priority should be afforded to a comprehensive reform of the whole administration of justice system, introducing a new approach aimed at the rehabilitation and reintegration of offenders in society.<sup>543</sup>

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<sup>540</sup> See also, United Nations, Working Group on Arbitrary Detention, Report to the [former] UN Commission on Human Rights, E/CN.4/2006/7, adopted on December 12, 2005, Ch. III:(B) *Over-incarceration*, paras. 60-67.

<sup>541</sup> IACHR, *Report on Citizen Security and Human Rights*, para. 157.

<sup>542</sup> IACHR, Press Release 104/10 - IACHR Office of the Rapporteur Attests to Structural Deficiencies in Prison System of El Salvador. Washington, D.C., October 20, 2010.

<sup>543</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Mission to Uruguay, A/HRC/13/39/Add.2, adopted on December 21, 2009. Ch. IV: Continues...

455. The overcrowding of persons deprived of liberty generates constant friction between inmates and increases levels of violence in prisons<sup>544</sup>. Overcrowding also makes it difficult for prisoners to have a minimum of privacy; reduces opportunity for access to showers, bathrooms and the prison yard, etc; fosters the spread of illness; creates an atmosphere in which health, sanitary and hygienic conditions are deplorable; constitutes a risk factor for fires and other emergency situations;<sup>545</sup> and prevents access to the –usually few– opportunities to work and study; thus, overcrowding poses a true barrier to the achievement of the purposes of the punishment of deprivation of liberty.

456. The overpopulation generates serious problems in the management of prison facilities, adversely affecting, for example, the provision of medical services and implementation of prison security systems. Additionally, it creates conditions for the commission of routinely and systematic acts of corruption, in which prisoners must pay for receiving basic and necessary goods and even for the access to educational and working programs and other resources that should be normally provided freely by the State.<sup>546</sup>

457. Another serious consequence of overcrowding is that it makes it impossible to classify inmates by categories; for example, accused and convicted persons, which is a breach of the Article 5.4 of the American Convention and of the duty of the State to treat accused persons differently, in accordance with the presumption of innocence.

458. In countries where overcrowding has reached critical levels, authorities have resorted to the practice of imprisoning persons for extended periods of time at makeshift detention centers and police stations or headquarters.<sup>547</sup> The practice is a gross violation of inmates' human rights because, among other reasons: (a) these facilities are not designed to house people for extended periods of time, and therefore lack the basics services for this purpose; (b) it is impossible to classify inmates by category, which has

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...continuation

*Administration of criminal justice: underlying causes for collapsing administration of justice and penitentiary systems*, paras. 100- 101.

<sup>544</sup> Overcrowding considerations have been a constant in those prisons with high rates of violence for which the Inter American Court has granted provisional measures. For example, the Tocoron prison in Venezuela, with a capacity of 750 had at the time of the granting of provisional measures a population of 3,211 inmates. I/A Court H.R., Provisional Measures in the matter of Centro Penitenciario de Aragua "Cárcel de Tocorón", Venezuela, Order of the President of the Inter-American Court of Human Rights, November 1, 2010, Having seen paragraph 2a).

<sup>545</sup> For example, overcrowding was one of the key factors in the fatal outcome of deaths in fires in the Department Prison of Rocha, Uruguay on July 8, 2010; and in San Miguel Prison in Chile on December 8, 2010.

<sup>546</sup> See, e.g., United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 169.

<sup>547</sup> See, e.g., IACHR, *Observations of the Inter-American Commission on Human Rights upon conclusions of its April 2007 visit to Haiti*, OEA/Ser.L/V/II.131. Doc. 36, adopte don March 2, 2008, Ch. IV, para 34; IACHR, *Report on the Situation of Human Rights in Brazil*, OEA/Ser.L/V/II.97. Doc. 29 rev. 1, adopted on September 29, 1997. Ch. IV, para. 7; and IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010. See also, United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit by the Special Rapporteur to Brazil, E/CN.4/2001/66/Add.2, adopted on March 30, 2001, paras. 119-120.

serious consequences in terms of security and treatment; and (c) police officers are not trained for direct custody of inmates, nor is that part of their normal duties.

459. On this issue, the IACHR has established that “the necessary legislative measures and structural reforms should be adopted so that detention at police headquarters is used as little as possible, only until a judicial authority determines the situation of the person under arrest.”<sup>548</sup>

460. Overcrowding of persons deprived of liberty could constitute in and of itself a form of cruel, inhuman and degrading treatment, violating the right to humane treatment and other internationally recognized human rights. This situation amounts to a serious structural deficiency, which totally defeats the essential purpose that the American Convention assigns to punishments of deprivation of liberty: reform and social rehabilitation of convicts.

461. The IACHR recognizes that the creation of new prison capacity –either through the construction of new facilities or the modernization and expansion of existing ones— is an essential measure to combat overcrowding and adjust prison systems to present needs; however, this measure alone does not represent a sustainable solution over time. Measures of immediate effect such as presidential pardons or collective release of particular categories of prisoners, based on age, state of health, seriousness of the offense, among other factors, are not sustainable solutions to this problem either; even though in some cases these measures may be necessary and pertinent.

462. Effective attention to overcrowding also calls for States to adopt policies and strategies that include, among other things: (a) the legislative and institutional reforms required to ensure a more rational use of preventive detention, and for this measure to only be used as a last resort and an exception to the rule; (b) enforcement of the maximum time periods established by law for detainees to remain in preventive detention; (c) promotion of the use of alternative measures or substitutes for preventive detention and the deprivation of liberty as a sentence;<sup>549</sup> (d) the use of other methods to serve sentences such as probation, supervised release and work or school release; (e) modernization of administration of justice systems to streamline criminal proceedings; and (f) prevention of illegal or arbitrary detention by law enforcement agents.

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<sup>548</sup> IACHR, Press Release 56/11, “Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname,” Washington, D.C., June 9, 2011, Annex, para. 23.

<sup>549</sup> In this regard, the authorities responsible for the penitentiary and prison policies of the OAS member States recommended: “[e]very effort shall be made to employ alternative sanctions within the framework of the domestic legislation in force. Preference should be given *inter alia* to the following: verbal sanctions, conditional liberty, sanctions that restrict rights, monetary penalties, seizure or confiscation, victim compensation, suspension or deferment of sentences, public service, the obligation to report regularly to a specific institution, house arrest, remission, pardon, and work or educational release programs.” OAS, Recommendations from the Second Meeting of Officials Responsible for Penitentiary and Prison Policies in OAS Member States, OEA/Ser.K/XXXIV GAPECA/doc.8/08 rev. 2, adopted on December 16, 2008, available at: [http://www.oas.org/dsp/English/cpo\\_documentos\\_carceles.asp](http://www.oas.org/dsp/English/cpo_documentos_carceles.asp).

463. As a measure to counteract overcrowding, the Principles and Best Practices provide that occupation of an institution over its maximum capacity shall be prohibited by law and the law shall establish remedies intended to immediately address any situation of overcrowding. Additionally, the competent judicial authorities shall adopt adequate measures in the absence of effective legal regulation.<sup>550</sup>

464. States have the fundamental duty to establish clear criteria to define the maximum capacity of prison facilities.<sup>551</sup> In this regard, the Principles and Best Practices establish that “such information, as well as the actual ratio of each institution or center shall be public, accessible and regularly updated.” The Principles also prescribe that the law shall establish the procedures to dispute the data regarding the maximum capacity or the occupation ratio.<sup>552</sup>

465. The housing capacity of centers of deprivation of liberty should be formulated by taking into account criteria such as: actual floor space available per inmate; ventilation; lighting; access to toilets; number of hours that inmates spend confined to their cells or sleeping quarters; the number of hours that they spend outside; and the chances they have to exercise, work, and engage in other activities. Nonetheless, actual housing capacity is the amount of space available to each inmate in the cell in which he or she is enclosed. Measurement of this space is the quotient of dividing the total floor space in the sleeping quarters or cell by the number of occupants. Furthermore, each inmate must at least have enough space to sleep lying down, to walk freely within the cell or sleeping quarters, and to accommodate his or her personal possessions.<sup>553</sup>

466. If the true causes of overcrowding and possible long-term solutions thereto are not examined thoroughly, any plans or projects to create or refurbish spaces will be nothing more than palliative measures to a problem that will inexorably grow over time.

## **2. Accommodation, hygiene and clothing**

467. With respect to accommodation, the Principles and Best Practices establish:

Principle XII.1: Persons deprived of liberty shall have adequate floor space, daily exposure to natural light, appropriate ventilation and heating, according to the climatic conditions of their place of deprivation of liberty. They shall be provided with a separate bed, suitable bed

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<sup>550</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle XVII).

<sup>551</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, para. 48.

<sup>552</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle XVII).

<sup>553</sup> International Committee of the Red Cross (ICRC), *Water, Sanitation, Hygiene and Habitat in Prisons* (2005), pp. 19-20, available at: [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0823.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0823.pdf).

clothing, and all other conditions that are indispensable for nocturnal rest. The installations shall take into account the special needs of the sick, persons with disabilities, children, pregnant women or breastfeeding mothers, and the elderly, amongst others.

468. In this regard, the IACHR has noted that one of the most frequent reasons why persons deprived of liberty do not have adequate accommodation conditions is because of the widespread practice of using buildings and facilities that were not originally designed for such functions as centers of deprivation of liberty; or that are extremely old, and are not actually fit to serve as deprivation of liberty centers.

469. For example, on the mission to the province of Buenos Aires, the Rapporteur on the Rights of Persons Deprived of Liberty observed that the police headquarters he visited were not facilities designed originally to house persons for extended periods of time, but were instead structures of another kind which were subsequently refurbished.<sup>554</sup> Likewise, on his visit to Uruguay, the same Rapporteur noted serious structural deficiencies of the Women's Center of Cabildo, which was originally a convent built in 1898 and, in the present day, did not provide minimum conditions of security.<sup>555</sup>

470. Moreover, in the questionnaire published in conjunction with this report, information pertaining to the age of prison facilities and whether they had been designed for that specific purpose was requested. In response, some States provided the following information:

Argentina	Of the 54 Penitentiary Units of the province of Buenos Aires, ten of them were not constructed for that specific purpose. Additionally, of the 54 Penitentiary Units, three of them were constructed between 1877 and 1882; four, between 1913 and 1951; and the rest, after 1960.
Bolivia	Of the 18 penitentiary centers of the country, three were constructed between 1832 and 1900; three, between 1935 and 1957; and the rest, after 1980.
Ecuador	Of the 40 rehabilitation centers of the country, four were constructed between 1860 and 1900; six, between 1915 and 1954; and the rest, as of 1964.
El Salvador	The State of El Salvador reported openly and transparently that: "The only Penal Centers that were built for that purpose are the Women's Re-adaptation Center (Centro de Readaptación para Mujeres) of Ilopango, the Maximum Security Penal Center of Zacatecoluca, and the Izalco Penal Center. The rest of them have been refurbished to serve as prisons, such as the case of the Security Penal Center of San Francisco Gotera and the Preventive and Sentence Execution Center of San Miguel, which used to be coffee processing plants; the Occidental Penitentiary of

<sup>554</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

<sup>555</sup> IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011, Anex, para. 29.

	Santa Ana, which is an annex to the Second Infantry Brigade; and the Central Penitentiary la Esperanza, built originally to be a school.”
Guyana	Of the five penitentiary centers of this State, three were originally built between 1832 and 1860, and the other two, during the 1970’s.
Nicaragua	Of the eight penal centers of the country, three were not originally built to be prisons: the Penitentiary Center of Chinadega, which was originally a shelter for people awaiting the train to spend the night and also functioned as a public dormitory; the Women’s Penitentiary Center of Veracruz, which was a private estate; and the Penitentiary Center of Bluefields, “which are very old facilities where King Mosco of the Caribbean Coast was established.”
Panama	Of the 24 facilities officially used as Penal Centers, fifteen were built originally as police barracks about 50 years ago, most of which were refurbished subsequently. Additionally, the penitentiary centers of la Joya and la Joyita, the two most crowded in the country, were originally military and then police facilities, which were adapted to house inmates after the Carcel Modelo was shut down in the mid 1990’s.
Trinidad and Tobago	Of the 8 penitentiary institutions of the State, only three have been built as jails, the other five were originally used for other purposes. They are: <i>Port Spain Prison</i> , built in 1812 as a mental institution and later remodeled to house prisoners; <i>Carrera Convict Prison</i> , built in 1877 as a welcome center for migrant workers, then used as a quarantined leper colony and, in the end, converted to a prison in 1937; <i>Tobago Prison</i> , a structure which originally was part of the Scarborough Police Station and was declared a district prison in 1902; <i>Golden Grove Prison</i> , built originally in 1940 as a movie theater for the Allied Forces during the Second World War, and was then converted to a preventive detention center in 1974.

471. In this context, in addition to current international standards pertaining to infrastructure and living conditions, the IACHR notes that, at the technical level, prison authorities of the OAS member States have urged their countries to:

[P]ropose solutions to the deficiencies of prison infrastructure with the goal of preventing overcrowding and all its negative consequences, and aiming to provide minimum standards of care and personal security. Therefore, it is essential to work toward developing mechanisms that encourage the modernization of the infrastructure of prisons.<sup>556</sup>

472. Basic requirements of accommodation encompass enough floor space for inmates to sleep in a separate bed. According to the technical criteria of the International Red Cross, the beds must at least be 2 meters long by 0.8 meters wide.<sup>557</sup> The IACHR has further established that the concept of “separate bed,” according to current use of the

<sup>556</sup> OAS, Recommendations from the Second Meeting of Officials Responsible for Penitentiary and Prison Policies in OAS Member States, OEA/Ser.K/XXXIV GAPECA/doc.8/08 rev. 2, adopted on December 16, 2008, available at: [http://www.oas.org/dsp/English/cpo\\_documentos\\_carceles.asp](http://www.oas.org/dsp/English/cpo_documentos_carceles.asp).

<sup>557</sup> International Committee of the Red Cross (ICRC), *Water, Sanitation, Hygiene and Habitat in Prisons* (2005), p. 21, available at: [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0823.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0823.pdf).

term, implies that the furniture or structure must have a mattress.<sup>558</sup> This indispensable minimum requirement for the dignified accommodation of persons deprived of liberty is not met by hammocks suspended from the cell walls –a common practice at prisons of the region-, which when hanging at a certain height from the ground, pose an inherent risk factor due to the potential of inmates falling from them.

473. As to hygiene and clothing, the Principles and Best Practices establish:

Principle XII.2: Persons deprived of liberty shall have access to clean and sufficient sanitary installations that ensure their privacy and dignity. They shall also have access to basic personal hygiene products and water for bathing or shower, according to the climatic conditions. Women and girls deprived of their liberty shall regularly be provided with those articles that are indispensable to the specific sanitary needs of their sex.

Principle XII.3: The clothing to be used by persons deprived of liberty shall be sufficient and adequate to the climatic conditions, with due consideration to their cultural and religious identity. Such clothing shall never be degrading or humiliating.

474. Compliance with these provisions means *inter alia* that the State must provide inmates with the essential articles of personal hygiene such as tooth paste and toilet paper, and may not require purchase of these items within the prison or force inmates to depend only on their family members or friends to provide these items to them.<sup>559</sup> Additionally, inmates should have a minimum of privacy to relieve themselves and should have toilets or latrines in their cells or else have the opportunity to have regular access to them, and not be required to hold urine or excrement in bags or plastic receptacles inside their cells or throw them through the window outside of the cells.

### **3. Food and drinking water**

475. With regard to food, the Principles and Best Practices provide:

Principle XI.1: Persons deprived of liberty shall have the right to food in such a quantity, quality, and hygienic condition so as to ensure adequate and sufficient nutrition, with due consideration to their cultural and religious concerns, as well as to any special needs or diet determined by medical criteria. Such good shall be provided at regular intervals, and its suspension or restriction as a disciplinary measure shall be prohibited by law.

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<sup>558</sup> IACHR, Press Release 56/11, "Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname," Washington, D.C., June 9, 2011, Annex, para. 9. IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, para. 69.

<sup>559</sup> See in this regard, IACHR, Press Release 56/11, "Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname," Washington, D.C., June 9, 2011, Annex, para. 8.



476. In performance of its monitoring function, the IACHR, as well as the Office of Rapporteur on the Rights of Persons Deprived of Liberty, have observed at most centers of deprivation of liberty visited by them that food is not provided to inmates in appropriate conditions of quantity, quality and hygiene. Consequently, in practice, persons deprived of liberty must purchase or get their own food in some other way inside the prison,<sup>560</sup> and/or rely on their family members to provide it to them. In the end, this can give rise to inequality and corruption inside of penitentiary centers. Furthermore, it is common that at some prisons the inmates opt to cook their own food using makeshift devices inside their own cell, which increases the number of irregular electrical connections and the consequent fire hazard.<sup>561</sup>

477. During the visit of the Rapporteur on the Rights of Persons Deprived of Liberty to El Salvador, one issue that was widely denounced and attested to at prison visits was the deficient food served to persons deprived of liberty. It was observed in general that the nutritional content and the conditions of quality and hygiene of the food were overtly insufficient, almost totally lacking in protein. Additionally, the food was served in a degrading way, with the inmates being forced to eat with their hands and on improvised dishes.<sup>562</sup> Similarly, on his visit to the province of Buenos Aires, the Rapporteur witnessed with concern that in the cellblock separated from the common areas, the inmates in solitary confinement did not have running water and had to eat with their hands. In this regard, the IACHR stressed that "it is indispensable for the State to provide those in custody with basic utensils so they can eat in minimum conditions of dignity."<sup>563</sup>

478. Likewise, on his visit to Ecuador, the Rapporteur on the Rights of Persons Deprived of Liberty observed that there was an overall lack of resources available to provide adequate food to detainees, and that the daily budget of one dollar per person deprived of liberty is insufficient to adequately cover the nutritional needs of the prison population.<sup>564</sup>

479. In some instances, it has been observed that the State allocates the resources required to feed the inmates; these products are illegally sold off by the prison

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<sup>560</sup> See, e.g., the Rapporteur of PDL during his visit to Uruguay, received testimony from a transgender inmate confined in the module 1 of the Prison Complex Santiago Vasquez, who said he worked as a prostitute in exchange for money and basic necessities such as food.

<sup>561</sup> See in this regard, IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011, Annex, para. 28.

<sup>562</sup> IACHR, Press Release 104/10 - IACHR Office of the Rapporteur Attests to Structural Deficiencies in Prison System of El Salvador. Washington, D.C., October 20, 2010, Annex, section 6.

<sup>563</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

<sup>564</sup> IACHR, Press Release 56/10 - IACHR Rapporteurship on Persons Deprived of Liberty Concludes Visit to Ecuador. Washington, D.C., May 28, 2010. Similarly, in its Special Country Report of Ecuador of 1997, the IACHR received information that the budget allocated to cover the three daily meals of prisoners was 70 cents. IACHR, *Report on the Situation of Human Rights in Ecuador*, Ch. VI.

authorities themselves and consequently, the food never makes it to the prisoners.<sup>565</sup> There is no tight control over the budget allocated for these purposes.<sup>566</sup> Likewise, the IACHR finds that delegating the authority of distribution of food within the prison to particular groups of inmates –usually those who are actually in charge of the institution or even religious leaders-<sup>567</sup> is a dangerous practice that prevents the reasonable and fair distribution of food and perpetuates the system of corruption and abuse in the jails.

480. Moreover, some States have opted to contract out to private companies to supply food to penitentiaries, which are also known as catering services. While this initiative may seem in principle to be advantageous, the IACHR has noticed that even in States that have implemented this method, deficiencies still exist, both in the quality and quantity of food delivered, as well as in the distribution of the food to the prison population.<sup>568</sup> In this regard, the IACHR reiterates that even when feeding persons deprived of liberty is outsourced to a concessionaire, “the State remains responsible for oversight and control of quality of the products provided by the catering companies, and for ensuring that all the products in fact reach the prisoners.”<sup>569</sup> The IACHR also holds that States must ensure full respect for the basic principles of free competition, equality among contracting parties, publicity and transparency in these processes of public procurement.

481. With respect to drinking water, the Principles and Best Practices establish that “every person deprived of liberty shall have access at all times to sufficient drinking water suitable for consumption. Its suspension or restriction as a disciplinary measure shall be prohibited by law.”<sup>570</sup>

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<sup>565</sup> See in this regard, IACHR, *Report on the Situation of Human Rights in Brazil*, Ch. IV, para. 18; IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011 Annex, para. 55.

<sup>566</sup> See in this regard, IACHR, *Second Report on the Situation of Human Rights in Peru*, Ch. IX, para 15.

<sup>567</sup> IACHR, Public hearing: *Human Rights Violations in Prisons in Panama*, 131<sup>o</sup> Ordinary Period of Sessions, requested by: State of Panama, Comisión de Justicia y Paz de la Conferencia Episcopal de Panamá, Centro de Iniciativas Democráticas (CIDEM), Harvard University. March 7, 2008. In this regard, see the report: *Del Portón para Acá se Acaban los Derechos Humanos: Injusticia y desigualdad en las cárceles panameñas*, p.124, presented in the said hearing available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HarvardClinicPanamaprison.pdf>.

<sup>568</sup> See in this regard, IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, para. 57; IACHR, Public hearing: *Human Rights Violations in Prisons in Panama*, 131<sup>o</sup> Ordinary Period of Sessions, Participants: State of Panama, Comisión de Justicia y Paz de la Conferencia Episcopal de Panamá, Centro de Iniciativas Democráticas (CIDEM), Harvard University. March 7, 2008. In this regard, see the report: *Del Portón para Acá se Acaban los Derechos Humanos: Injusticia y desigualdad en las cárceles panameñas*, pp 59/64, presented in the said hearing available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HarvardClinicPanamaprison.pdf>. Likewise, the Rapporteurship on the Rights of Persons Deprived of Liberty noted the lack of quality of the services of catering in prisons in the course of its visit to the Province of Buenos Aires, IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

<sup>569</sup> IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011, Annex, para. 55.

<sup>570</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle XI.2).

482. Moreover, the Court has established that “the lack of supply of water for human consumption is a particularly important aspect of the conditions of detention,” and that:

The absence of minimum conditions to ensure the supply of drinking water in a penitentiary center constitutes a serious failure of the State in its duties to ensure that the persons who are under its custody, inasmuch as the circumstances of imprisonment prevent persons deprived of liberty from satisfying on their own several basic necessities that are essential to the development of a dignified life, such as access to sufficient and healthy water.<sup>571</sup>

483. In accordance with the technical criteria of the International Committee of the Red Cross, the minimum amount of water that a person requires to survive is from 3 to 5 liters per day. This minimum may be higher based on the climate and amount of physical exercise performed by the inmates. Moreover, the minimum requirement per person to meet all of his or her needs is from 10 to 15 liters of water per day, provided that sanitary installations are in proper working order; and the minimum amount of water that inmates should be able to store inside their cells is 2 liters per person per day, if they are confined for periods of up to 16 hours, and from 3 to 5 liters per person per day, if they are confined for more than 16 hours or if the climate is hot.<sup>572</sup>

484. Failure to provide and treat drinking water,<sup>573</sup> as well as food in the proper condition<sup>574</sup> is a permanent factor of illness and health complications for inmates.

#### **F. Transfer and transportation of persons deprived of liberty**

485. The transfer and transportation of inmates is another one of the relevant elements of the special relationship between the State and persons under its custody, where both the right to humane treatment and other fundamental rights can be violated. In practice, both the transfer itself and the conditions in which it is carried out could have a significant impact on the situation of the inmate and on his family. Furthermore, when transfers are executed arbitrarily or in circumstances that are contrary to respect for the human rights of inmates, they could amount to invisible spaces or gray areas for the commission of abuses by authorities.

486. It is precisely in light of this reality that international instruments pertaining to persons deprived of liberty establish a set of parameters and general

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<sup>571</sup> I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, paras. 215-216.

<sup>572</sup> International Committee of the Red Cross (ICRC), *Water, Sanitation, Hygiene and Habitat in Prisons* (2005), pp. 34-36,

<sup>573</sup> See in this regard, IACHR, Press Release 56/11, “Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname,” Washington, D.C., June 9, 2011, Annex, paras. 6 and 20.

<sup>574</sup> See in this regard, IACHR, Press Release 104/10 - IACHR Office of the Rapporteur Attests to Structural Deficiencies in Prison System of El Salvador. Washington, D.C., October 20, 2010, Annex, section 6.

guidelines aimed at protecting the fundamental rights of prisoners during transfers. In this regard, the Principles and Best Practices provide:

The transfers of persons deprived of liberty shall be authorized and supervised by the competent authorities, who shall, in all circumstances, respect the dignity and fundamental rights of persons deprived of liberty, and shall take into account the need of persons to be deprived of liberty in places near their family, community, their defense counsel or legal representative, and the tribunal or other State body that may be in charge of their case.

The transfers shall not be carried out in order to punish, repress, or discriminate against persons deprived of liberty, their families or representatives; nor shall they be conducted under conditions that cause physical or mental suffering, are humiliating or facilitate public exhibition. (Principle IX.4).

Additionally, the Principles establish that transfers shall never be used to justify “discrimination, the use of torture, cruel, inhuman, or degrading treatment or punishment, or the imposition of harsher or less adequate conditions on a particular group.” (Principle XIX)

487. These standards are also recognized at the universal level in the Standard Minimum Rules for the Treatment of Prisoners, Rule 45; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 20; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 26; and the United Nations Principles on Mental Illness, Principle 7.2. Similarly, and concurring with these standards, European Prison Rules, Rules 17.1, 17.3 and 32.

488. In performing its different functions, the Commission has, on several occasions, highlighted situations in which the transfer of persons deprived of liberty has violated the human rights of those transferred:

489. For example, in the follow up on the human rights situation in Cuba, the IACHR has consistently mentioned the deliberate transfer of political prisoners to excessively far away places from where their families reside as an additional punishment to the inhuman regime of imprisonment to which they are subjected. On top of this circumstance, families of political prisoners face transportation difficulties, restrictions on visitation, and harassment perpetrated by the regime. The case of ex-political prisoner Pedro Pablo Alvarez is illustrative of this problem. He testified at a public hearing held at the IACHR on October 28, 2008 that he had been imprisoned at the Canaleta prison, in the province of Ciego de Avila, almost 500 kilometers away from the city of Havana.<sup>575</sup>

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<sup>575</sup> IACHR, *Annual Report 2008*, Chapter IV, Cuba, OEA/SerL/V/II.134, Doc. 5, rev. 1, adopted on February 25, 2009, para. 194. See also, IACHR, *Annual Report 2005*, Chapter IV, Cuba, OEA/Ser.L/V/II.124. Doc. 7, adopted on February 27, 2006, para. 77; and IACHR, *Annual Report 2002*, Chapter IV, Cuba, OEA/Ser.L/II.117. Doc. 1 rev. 1, adopted on March 7, 2003, para. 69.

490. During a recent visit to the province of Buenos Aires, the Rapporteur on the Rights of Persons Deprived of Liberty attested to the fact that prison authorities engaged in the practice of carrying out successive and arbitrary transfers of inmates as a form of internal control of prisons or as a disciplinary measure –which is known in the local jail slang as *la calesita* ‘merry-go-round’–, with the aggravating factor that during the transfer the inmates are often subjected to different forms of cruel, inhuman and degrading treatment. In fact, one of the inmates who was interviewed during the visit claimed that he had been sent to more than 40 (of the 54) Penitentiary Service Units of the province of Buenos Aires. On this topic, the Rapporteur stressed that constant relocation of these persons in different facilities of the vast province of Buenos Aires had adversely affected regular contact with their family members and prevented them from gaining access to the necessary job and education programs for their rehabilitation.<sup>576</sup> The Rapporteur also confirmed first hand that this practice was not only the consequence of a deeply rooted institutional mindset, but also of overpopulation at the Penitentiary Units.

491. Based on information received during that visit, the number of inmates who were transferred 3 or more times during 2008 was 5,643. Furthermore, during that year the Penitentiary System of the province of Buenos Aires allegedly ordered a total of 47,709 transfers, of which 26,385 were lacking a clear justification; 18,928, for “relocation”; 7,378, for unspecified reasons; and 79, for no reason at all. These transfers are usually carried out with prison staff perpetrating acts of violence, almost always beginning with pinning the inmate’s arms painfully behind the back (*crique de brazos*) and “motor scooter” (*motoneta*) position, in order to make him/her feel pain and also neutralize any type of reaction, while the prisoner is beaten by the prison officers.<sup>577</sup>

492. The IACHR also received reports that, in some instances, the transfer of persons as a form of punishment did not necessarily involve sending the person to a far off facility, but often the punishment involved intentionally transferring the person specifically to a jail where conditions were much worse.<sup>578</sup> Similarly, as a consequence of firmly rooted institutional customs, many times that the transfer of particular inmates to jails with better conditions of imprisonment –or VIP jails- are selectively authorized in light of social standing or the degree of influence of these inmates, and not necessarily based on criteria established by the appropriate law or regulation.<sup>579</sup> These patterns, which are quite

<sup>576</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

<sup>577</sup> Comité Contra la Tortura de la Comisión Provincial por la Memoria, Annual Report 2009: *El Sistema de la Crueldad IV* [The System of Cruelty IV], pp. 109, 110 and 117.

<sup>578</sup> With regard to the practice of transferring prisoners from one prison to another as form of disciplinary measure see also, United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. IV: *Conditions of detention*, para. 74.

<sup>579</sup> IACHR, Public hearing: *Human Rights Violations in Prisons in Panama*, 131<sup>o</sup> Ordinary Period of Sessions, Participants: State of Panama, Comisión de Justicia y Paz de la Conferencia Episcopal de Panamá, Centro de Iniciativas Democráticas (CIDEM), Harvard University. March 7, 2008. In this regard, see the report: *Del Portón para Acá se Acaban los Derechos Humanos: Injusticia y desigualdad en las cárceles panameñas*, pp. 96-97 and 128-131 presented in the said hearing available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HarvardClinicPanamaprison.pdf>.

widespread in the region, show that in fact “sub-systems” operate parallel to the regular prison system, in which different inmates are treated in different ways.

493. Likewise, persons deprived of liberty are also vulnerable to assaults by authorities during transfer or travel from one place to another. For example, the UN Subcommittee on Torture witnessed, on a mission to Mexico, that:

Most of the alleged acts of police brutality reported to the delegation during its visit to the State party appear to have occurred in the street or in police vans during the transportation of detainees to police facilities. Almost all of the detainees who alleged having been subjected to some form of abuse said that these acts took place outside police facilities. Most of them also reported that they were blindfolded while they were being transported.<sup>580</sup>

Subsequently, the SPT reported that during its mission to Paraguay, the interviewed detainees repeatedly claimed “to have been the targets of torture and/or abuse during the arrest, transfer to the police station and/or during the first hours of the detention.”<sup>581</sup>

494. On his visit to the province of Buenos Aires, it was brought to the attention of the Rapporteur on the Rights of Persons Deprived of Liberty that in 2008, inmate Oscar Chaparro had suffocated to death in a truck of the Ministry of Security during a transfer. The experts had verified that the cab section in which Chaparro was transported lacked ventilation and the temperatures reached 40° Celsius and, furthermore, a journey that should have taken five hours, took a full day.<sup>582</sup>

495. Likewise, it has been widely documented that, during transfers, the detainees at Guantanamo Bay were shackled, chained and hooded, or were forced to wear earphones and goggles.<sup>583</sup>

496. In this regard, the IACHR emphasizes that, in addition to international standards applicable to the transfer of prisoners, the special duties of the State to respect and ensure the right to life and humane treatment of persons under their custody, is not restricted to the specific context of the centers of deprivation of liberty, but also remain in effect at all times that these persons are in the custody of the State; for example, while

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<sup>580</sup> United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 141.

<sup>581</sup> United Nations, CAT/OP/PRY/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Paraguay*, June 7, 2010, para. 67.

<sup>582</sup> Comité Contra la Tortura de la Comisión Provincial por la Memoria, Annual Report 2009: *El Sistema de la Crueldad IV* [The System of Cruelty IV], p. 151.

<sup>583</sup> United Nations, Joint Report of the Working Group on Arbitrary Detention; the Special Rapporteur on the Independence of Judges and Lawyers; the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Special Rapporteur on Freedom of Religion or Belief; and the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, E/CN.4/2006/120, adopted on February 27, 2006, para. 54.

they are transported to a detention center or from one center to other sites such as hospitals, courts, etc., or when they are transferred from one prison center to another. In such cases, the peremptory obligation of the State remains in effect to not subject these persons to cruel, inhuman or degrading treatment. Additionally, the transportation of persons deprived of liberty for official reasons shall always be done at the administration's expense.

497. Furthermore, by way of guarantor of the right to life and humane treatment of the persons under its custody, the State must refrain from transferring inmates to prison facilities where there are clear indications of risk that they will sustain irreparable harm. In such cases, authorities must act with due diligence and objectivity in assessing potential risk factors and the feasibility of the transfer. This same criterion is applicable to the relocation of inmates in different modules, wards or cell blocks or sectors within the same prison facility.

498. Moreover, international standards applicable to the transfer and transport of persons deprived of liberty also establish as measures of protection –for example, against disappearance and incommunicado solitary confinement- the right of all detainees or prisoner to immediately inform his family or a third party of his transfer to another facility;<sup>584</sup> the duty of the authorities to keep records of the persons who enter centers of deprivation of liberty, which have to include: the authority ordering and executing the transfer and the date and time of day when it was carried out.<sup>585</sup>

499. Compliance with these provisions pertaining to publicity and registration of transfers of inmates is particularly relevant in the case of collective or group transfers of inmates as a measure of security or as part of operations designed to guarantee internal security at jails. In this type of situation, not only does the individual right of each inmate to inform a third party of the transfer remain in effect, but the State also has the duty to inform as soon as possible of the new location and the personal conditions of the inmates.<sup>586</sup>

500. The IACHR considers that the State must ensure effective judicial control over transfers, as provided in Article 8 and 25 of the Convention and XVIII of the American Declaration. This means that regardless of what authority is competent to authorize and/or execute transfers,<sup>587</sup> the said authority must inform the judge or court that is in charge of the person deprived of liberty regarding the transfer prior to carrying it out or immediately

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<sup>584</sup> The Standard Minimum Rules for the Treatment of Prisoners (Rule 44.3); the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Principle 16); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 22); the European Prison Rules (Rule 24.8).

<sup>585</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle IX.2).

<sup>586</sup> In this regard, see for example, I/A Court H.R., Provisional Measures in the matter of Venezuelan Prisons, Order of the Inter-American Court of Human Rights, July 6, 2011, Having seen 11 and Considering paragraphs 10 and 12.

<sup>587</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle IX.4).

following it. The competent judicial authority should have the power to overturn said transfer if it deems the same as illegal, arbitrary or a violation of the fundamental rights of the inmate. In any case, the law should also make available suitable and effective judicial remedies to challenge said transfers when it is believed that they infringe the human rights of inmates.

### G. Conditions of imprisonment of death row inmates

501. In several OAS member States the death penalty is still a legal form of punishment and is carried out in practice;<sup>588</sup> for example, in the United States, the death row inmate population (persons sentenced to the death penalty regardless of their particular procedural status) in 2010 totaled 3,242 persons.<sup>589</sup> A few countries of the English-speaking Caribbean, who still have convicts in their jails sentenced to death, total about the same number altogether.<sup>590</sup>

502. In this context, in the last several years, the bodies of the Inter-American human rights system have made pronouncements, within the scope of their respective purview on different aspects relating to application of the death penalty in OAS member States. These pronouncements have encompassed issues such as the general trend toward abolishing the death penalty; the lack of any convention addressing the mandatory death penalty; the “test of the most rigorous scrutiny” of judicial guarantees in proceedings in which a person is sentenced to the death penalty; the application of standards of due process in entertaining requests for pardons, amnesty and commutations of sentence; and the so-called death row phenomenon,<sup>591</sup> which is the consequence of the mental anguish and uncertainty that is caused by waiting for a potential execution.

503. Additionally, the constant in most of these cases is that the conditions of imprisonment to which those condemned to capital punishment were subjected are usually worse than those of the rest of the prison population, characterized cruel, inhuman and degrading treatment.

504. For example, in its Reports on the Merits of the cases of *Whitley Myrie; Dave Sewell; Denton Aitken; Joseph Thomas; Leroy Lamey et al; and Desmond Mckenzie et al*, the IACHR addressed the conditions of imprisonment of death row inmates at the Penitentiary of the District of St. Catherine in Jamaica. In these cases, it was determined

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<sup>588</sup> In this regard, see also the information published by the Death Penalty Project, available at: [http://www.deathpenaltyproject.org/content\\_pages/5](http://www.deathpenaltyproject.org/content_pages/5).

<sup>589</sup> According to the Death Penalty Information Center, this information is available at: [http://www.deathpenaltyproject.org/content\\_pages/5](http://www.deathpenaltyproject.org/content_pages/5).

<sup>590</sup> Currently all of the Anglophone Caribbean countries maintain the death penalty in their legal systems, although very few still apply it in practice; also Guatemala in its criminal law retains the death penalty, although the State applied it for a last time over a decade ago.

<sup>591</sup> With regard to the death row phenomenon see, European Court of Human Rights, *Case of Soering v. The United Kingdom*, (Application no. 14038/88), Judgment of July 7, 1989, Court’s Plenary; and *Pratt & Morgan v. Attorney General of Jamaica*, 2 A.C.1, 4 All E.R. 769 (British Privy Council 1993). On this matter see also the information published by Death Penalty Information Center, available at: <http://www.deathpenaltyinfo.org/>.



that (a) the victims remained in conditions of confinement for more than 23 hours a day; (b) they were not given mattresses and, therefore, they had to sleep on the cement floor; (c) the only utensils that they had in their cells were a pitcher for drinking water and a bucket or receptacle to relieve themselves in, which they were only allowed to empty one time per day; (d) the cells were hot, uncomfortable and lacked sufficient ventilation; (e) the conditions of hygiene were deficient (the sewage drain across from the cell was always overflowing); (f) the food they were provided was insufficient and was served in poor condition; (g) they received no medical or adequate psychiatric care; and (h) they had no access to labor or educational activities.<sup>592</sup>

505. Similarly, in the cases of *Benedict Jacob*; *Paul Lallion*; and *Rudolph Baptiste*, the IACHR made a pronouncement regarding the conditions of imprisonment of the death row inmates at Richmond Hill Prison in Grenada, who were housed in individual 2 x 3 meter cells, without any natural light entering or sufficient ventilation. They would have to relieve themselves in a plastic bucket, which they were only allowed to empty once a day. They were only allowed visitors once a month for 15 minutes and to write or read one letter per month. Additionally, they were not allowed access to prison services such as the library or religious services.<sup>593</sup> Moreover, in the Reports on the Merits in the cases of *Chad Roger Goodman* and *Michael Edwards et al*, it was confirmed that the conditions of imprisonment on death row of Foxhill Prison in Bahamas were substantially similar to those present in the other countries of the Caribbean described above, with the main difference being that at this prison the victims were only taken out of their cells for 10 minutes for four days a week, and were confined to their cell the rest of the time.<sup>594</sup>

506. The IACHR recently approved its *Report No. 60/11* in which it finds admissible 14 petitions regarding the application of the death penalty in several states of the United States. In one of these petitions, conditions of death row inmates at Polunsky prison in Texas are described as follows:

Those sentenced to death are confined in cells 60 square feet (5.57 m2) and are completely segregated from the other inmates. They are denied any physical contact with relatives, friends and attorneys, even in the days and hours leading up to their execution. Inmates with disciplinary

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<sup>592</sup> IACHR, Report No. 41/04, Case 12.417, Merits, Whitley Myrie, Jamaica, October 12, 2004, paras. 17, 40-44; IACHR, Report No. 76/02, Case 12.347, Merits, Dave Sewell, Jamaica, December 27, 2002, paras. 110 y 111; IACHR, Report No. 58/02, Case 12.275, Merits, Denton Aitken, Jamaica, October 21, 2002, paras. 131-134; IACHR, Report No. 127/01, Case 12.183, Merits, Joseph Thomas, Jamaica, December 3, 2001, paras. 40, 42, 122, 130-132; IACHR, Report No. 49/01, Cases 11,826, 11,843, 11,846, 11,847, Merits, Leroy Lamey, Kevin Mykoo, Milton Montique, Dalton Daley, Jamaica, April 4, 2001, paras. 199-203; IACHR, Report No. 41/00, Cases 12.023, 12.044, 12.107, 12.126 and 12.146, Merits, Desmond McKenzie *et al.*, Jamaica, April 13, 2000, paras. 286-288.

<sup>593</sup> IACHR, Report No. 56/02, Case 12.158, Merits, Benedict Jacob, Grenada, October 21, 2002, paras. 91, 95 and 97; IACHR, Report No. 55/02, Case 11.765, Merits, Paul Lallion, Grenada, October 21, 2002, paras. 84, 88 and 90; IACHR, Report No. 38/00, Case 11.743, Merits, Rudolph Baptiste, Grenada, April 13, 2000, paras. 134, 137-138.

<sup>594</sup> IACHR, Report No. 78/07, Case 12.265, Merits, Chad Roger Goodman, Bahamas, October 15, 2007, paras. 31, 83, 84 and 87; IACHR, Report No. 48/01, Case 12.067, Merits, Michael Edwards *et al.*, Bahamas, 12.067, 12.068, 12.086, paras. 192-194.

problems –most inmates with mental conditions have disciplinary problems– are allowed outside of their cells only three to four hours per week, and only in what amounts to small “cages.” [...] She [the petitioner] observes that conditions on death row in Texas are harsher than in many of the maximum-security prisons elsewhere in the country.<sup>595</sup>

507. Moreover, in six of the fourteen known petitions which make up this case, it is argued that the victims suffered from what’s known as “death row syndrome,” due to the excessively protracted period of time they await execution. In this regard, the argument is made that: (a) Clarence Allen Lackey (Texas) was executed almost two decades after being convicted, and that he was allegedly forced to prepare for imminent execution on five occasions (two of which were stayed hours before the scheduled execution time); (b) Anthony Green (South Carolina) was on death row for 14 years; (c) Robert Karl Hicks (Georgia) had awaited execution for 18 years; (d) Troy Albert Kunkle (Texas) had been waiting for 19 years; (e) David Powell (Texas) had been tried three times and had been waiting on death row for 30 years; and (f) Ronnie Gardner (Utah) had awaited 25 years to be executed.<sup>596</sup>

508. Likewise, in the context of precautionary measures granted on behalf of Mr. Manuel Valle (MC-301-11), who was sentenced to death in Florida, the IACHR noted that he had waited on death row for 33 years, since 1978.<sup>597</sup>

509. The conditions of detention of persons sentenced to death have been the subject of the merits in several judgments of the Inter-American Court. For example, in the case of *Hilaire, Constantine and Benjamin et al.*, expert witness Gaietry Pargass (*Privy Council Officer*) described the following regarding death row at the Penitentiary of Port of Spain in Trinidad and Tobago:<sup>598</sup>

Attorneys are not permitted to visit death row and hence a great deal of reliance is place on the information provided by the inmates themselves. There is one exception and this relates to the reading of the death

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<sup>595</sup> IACHR, Report No. 60/11, Admissibility, Petitions 11.575, 12.201, 2566-02, 4538-02, 4659-02, 784-03, 580-04, 607-04, 187-05, 1246-05, 360-06, 1232-07, 873-10, 907-10, Clarence Allen Lackey *et al.*, United States, March 24, 2011, para. 90. In this regard and with respect to the Polunsky Prison in Texas, see, IACHR, Report No. 90/09, Merits, Case 12.644, Medellín, Ramírez Cárdenas and Leal García, United States, August 7, 2009, para. 60.

<sup>596</sup> IACHR, Report No. 60/11, Petitions 11.575, 12.201, 2566-02, 4538-02, 4659-02, 784-03, 580-04, 607-04, 187-05, 1246-05, 360-06, 1232-07, 873-10, 907-10, Merits, Clarence Allen Lackey *et al.*, United States, March 24, 2011, paras. 41-47.

<sup>597</sup> On September 28, 2011, and in spite of the precautionary measures still in force at that timem Manuel Valle was executed in a prison on the state of Florida. IACHR, Press Release 106/11 - IACHR Condemns Execution of Manuel Valle in the United States. Washington, D.C., October 6, 2011.

<sup>598</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 77 c); expert evidence from Gaietry Pargass submitted to the Court on January 22, 2002, pages 3-7, available at: [http://www.corteidh.or.cr/expediente\\_caso.cfm?id\\_caso=71](http://www.corteidh.or.cr/expediente_caso.cfm?id_caso=71). See also, IACHR, Report No. 28/09, Case 12.269, Merits, Dexter Lendore, Trinidad y Tobago, March 20, 2009, paras. 28-29. In this case the IACHR ruled with regard to the conditions of imprisonment in the death row of the Port Spain Prison, in Trinidad and Tobago.

warrant, in which case all interviews between the inmate and his attorney take place in the section of death row where the execution chamber is located.

The cells on death row are poorly ventilated and as a result are extremely hot and uncomfortable. Additionally, very little natural light enters the cells of inmates on death row. As a result, and notwithstanding the fact that fluorescent lights located just outside the cells are kept on 24 hours, the cells in the section of death row where the execution chamber is located were observed to be very dull and gloomy. The fluorescent lights, which are kept on 24 hours, affect the inmates' ability to sleep and the heat emitted by the lights exacerbates the already hot conditions of the cells.

There are no proper toilet facilities. Inmates are provided with a plastic bucket (slop pail) for this purpose, which are emptied twice a day. The smell, which emanates from their slop pails, is unbearable. The pail has to be used in the cell and with no privacy in front of other inmates and the security guards. During those periods when the water supply is cut off and the truck-borne supply is delayed, inmates are either unable to empty their pails or the pails are emptied but not washed.

Death row inmates are locked in their cells for up to 23 hours or more a day. They are allowed to leave their cell for approximately 15 minutes in the morning to empty their slop pail, fill their quota of drinking water and have a shower.

Moreover, they are only taken out of their cells to air from one to four times a week, and during this time each prisoner remains handcuffed. The airing area is small and tends to be crowded making even walking difficult. In addition, toilets are situated close to the airing area and the smell emanating from the toilets is unpleasant.

510. In the case of *Raxcacó Reyes*, expert witness Aida Castro-Conde submitted an analysis of the situation of persons sentenced to death in sector 11 of the Men's Preventive Detention Center of Zone 18 and the Maximum Security Center of the Model Rehabilitation Farm, Canada de Escuintla ("The little hell") in Guatemala.<sup>599</sup> According to the aforementioned expert's report, there were 35 people on death row in Guatemala at that time.

511. Psychologist Castro-Conde noted that convicts sentenced to death who were held in sector 11 of Zone 18 Preventive Detention Center lived in conditions of total

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<sup>599</sup> I/A Court H. R., *Case of Raxcacó Reyes V. Guatemala*. Judgment of September 15, 2005. Series C No. 133, para. 37.e); expert evidence from Aída Castro-Conde submitted to the Court on May 20, 2005; See also, I/A Court H. R., *Case of Fermín Ramírez V. Guatemala*. Judgment of June 20, 2005. Series C No. 126. paras. 47.d), 54.54-54.61, 111-121.

confinement, and were never offered any opportunity to do exercise outside. She also indicated that permission to take part in recreational, educational or labor activities and even to attend religious services are systematically denied. Moreover, she reported that the only labor-related activities that the death row inmates engaged in were arts and crafts to make things with materials that they themselves had to try to gather or were provided by their family members or friends.

512. Dr. Castro Conde also put on the record that medical care was insufficient and mental health care practically non-existent for death row inmates, for whom the stress of imprisonment and the uncertainty of the sentence increases the incidence of mental health problems and, consequently, physical health problems. According to this expert's report, death row inmates are under constant threat of being executed, and that this circumstance is terrifying to them, causes depression in them, causes sleep loss, gives them nightmares and even thoughts of suicide. Additionally, the uncertainty due to waiting for a decision on their appeals or an adverse decision is another important factor of stress and depression. In short, "persons sentenced to death are in a situation that affects their mental health and produces psychosomatic illness." In her conclusions, Dr. Castro-Conde claimed that the conditions of imprisonment of death row inmates are highly restrictive, and that this increases despair and psychological and psychosomatic harm.<sup>600</sup>

513. In light of the foregoing considerations, the IACHR reaffirms that all persons deprived of liberty must receive humane treatment, in accordance with respect for the dignity inherent to them. In this regard, the duties of the State to respect and ensure the right to humane treatment of all persons under their jurisdiction apply regardless of the nature of the conduct for which the person in question has been deprived of his liberty.<sup>601</sup> This means that the conditions of imprisonment of persons sentenced to death must meet the same international norms and standards that apply in general to persons deprived of liberty. In particular, they must have access on an equal footing to the health care services of the jail; to education, job and training programs; to work shops and reading materials; and to cultural, sports and religious activities; and to contact with the outside world and their family members.<sup>602</sup>

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<sup>600</sup> In this regard, Ms. Castro-Conde mentioned among the general recommendations of her opinion the following:

- (a) create permanent programs for psychosocial rehabilitation psychotherapy, (b) conduct a thorough examination of individual psychotherapy of the persons sentenced to death, (c) provide family group psychotherapy to strengthen the inmate's individual therapy, teaching them techniques for managing stress and depression and rethink new relationships between the inmate and the family supported by the analysis of past and present relationships, and (d) facilitating access to health care to provide appropriate treatment and medication to each inmate sentenced to death.

<sup>601</sup> IACHR, Report No. 41/00, Cases 12.023, 12.044, 12.107, 12.126 and 12.146, Merits, Desmond McKenzie *et al.*, Jamaica, April 13, 2000, para. 288.

<sup>602</sup> See, in general, UNODC, *Handbook on prisoners with special needs*, 2009, pp. 171-173, available at: <http://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>.

514. Death row inmates' access to these activities is essential in order to help these individuals to better endure the mental anguish that is typical of their status, and because, in the final analysis, to exclude them from such activities would amount to a form of discriminatory treatment.

515. Therefore, there is no valid justification to subject this category of inmates to more restrictive or harsher conditions than those of the rest of the inmates. If they are subjected to such conditions, the State would be adding an extra measure of suffering to a plight which, in and of itself, is already anguish-producing enough to those who are facing potential execution, which could be delayed for years and even decades before there is a final outcome. On the contrary, prison authorities must adopt measures of protection to mitigate this level of suffering which is inherent to the condition of persons sentenced to death.

516. In keeping with the UN standards currently in effect,<sup>603</sup> States must adopt concrete measures with regard to inmates sentenced to death, such as: (a) create adequate conditions to ensure that they have regular and effective access to their defense attorneys and their consular representatives, should they be foreign nationals;<sup>604</sup> (b) order that prison staff that directly guards these persons be carefully selected and trained for such duties, particularly, they should be capable of identifying the signs of anguish and mental disorder, and to react quickly to such situations; (c) provide regular psychological and/or psychiatric care; and (d) establish links with NGOs that have support programs for death row inmates and promote visits and assistance by such organizations.

517. In conclusion, persons deprived of liberty who are sentenced to death should not be subjected to harsher conditions of imprisonment than those of the rest of the prison population just because of their status. In particular, they should not be subjected to segregation or solitary confinement as a regular condition of imprisonment,<sup>605</sup> but solely as a disciplinary punishment in those instances and under the same conditions in which these measures apply to the rest of the inmates. It is not reasonable to presume that all convicts sentenced to capital punishment necessarily have to be imprisoned under maximum security.

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<sup>603</sup> UNODC, *Handbook on prisoners with special needs*, 2009, pp. 169-172, available at: <http://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>.

<sup>604</sup> These measures in particular are based on the State's reinforced duty to ensure the rights to judicial guarantees and judicial protection in cases of persons prosecuted for crimes that support capital punishment or who have been sentenced to this punishment. On this matter, see also the Safeguards Guaranteeing Protection of the Rights of Those Facing Death Penalty, adopted by the Economic and Social Council in its resolution 1984/50, of May 25, 1984 (Articles 4-6); and, I/A Court H.R., *Hilaire, Case of Constantine and Benjamin et al. V. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 148.

<sup>605</sup> According to the Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on 9 December 2007, during the International Psychological Trauma Symposium, it should be prohibited solitary confinement for persons sentenced to death on the basis of their condemnation of the death penalty. See also, UNODC, *Handbook on prisoners with special needs*, 2009, p. 161, available at: <http://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>.

## H. Recommendations

518. With regard to respecting and ensuring the right to humane treatment of persons deprived of liberty, the IACHR reiterates the recommendations put forth in Chapter II of this report, with regard to:

1. Maintaining effective control over centers of deprivation of liberty and preventing acts of violence.
2. Judicial control over the deprivation of liberty.
3. Entry, registration and initial medical examination of persons deprived of liberty.
4. The use of force by authorities in charge at centers of deprivation of liberty
5. The right to medical care of persons deprived of liberty.

Additionally, the IACHR recommends to the State, the following:

6. Promote a policy of general prevention of acts of torture and cruel, inhuman and degrading treatment by their agents and third parties. For this purpose, public campaigns should be waged in repudiation of torture and the culture of violence and impunity.
7. Publish, in a visible spot that is also available to the public at all police stations and facilities where persons deprived of liberty are held, information on the prohibition of torture, cruel, inhuman and degrading treatment and on how and to whom to report such acts.
8. Train police personnel to systematically inform persons under arrest or detainees of their rights and to provide assistance for the exercise of such rights from the time of the detention. The police training should be of a preventive nature.
9. Adopt measures necessary to ensure that those who file reports or complaints of torture are protected against retaliation.
10. Adopt measures necessary to ensure that statements or confessions obtained under any type of duress are not accepted as evidence; for in this regard, the authorities should carry the burden of proof that the statement were voluntarily made. No statement or confession made by a person deprived of liberty that is not given in the presence of a judicial authority or of his attorney should have any probative value, except as evidence against those charged with obtaining these statements by illegal means.

11. Ensure that all persons accused of a crime are assisted by an attorney or public defender as of the time when they must give their first statements.
12. Draft clear protocols and procedures establishing how to conduct interrogations, and periodically review this practice. The identity of the officials who carry out the arrest and the interrogation must be properly recorded. Both defendants and their attorneys, as well as judges, must have access to this information.
13. Adopt the legislative, administrative and institutional measures necessary to ensure that the exercise of disciplinary functions at centers of deprivation of liberty are duly regulated. Additionally, it is strongly recommended that States eradicate for good the practice of delegating disciplinary powers to the inmates themselves, particularly the ability to apply sanctions.
14. Establish a uniform system of registry of disciplinary measures, indicating the identity of the offender, the punishment given, the duration thereof and the official who ordered it.
15. Adopt the legislative, administrative and institutional measures necessary to ensure that solitary confinement is truly used as an exception, for the shortest period of time possible, subject to judicial control and medical supervision, and in the conditions set forth in the chapters on the topic in this report.
16. Make sure that disciplinary rules are known by the authorities and officials who are in charge of centers of deprivation of liberty, and that they are widely disseminated among the inmate population, and available to any other interested party.
17. Adopt the measures of control and monitoring necessary to ensure that bodily searches at centers of deprivation of liberty are conducted in such a way as to respect the right to personal integrity of inmates, in particular, so that officials do not resort to the disproportionate use of force, nor use the procedure of searching as a form of assault and humiliation of prisoners.
18. Adopt any measures that may be necessary, as provided in this report, to ensure that persons deprived of liberty are imprisoned in dignified conditions that are consistent with the principle of humane treatment. In particular, adopt concrete measures of immediate and medium and long term impact to prevent and eradicate overcrowding.
19. Establish effective systems of supervision or internal control over the conditions of imprisonment and of treatment received by persons

deprived of liberty at police headquarters and stations. Additionally, to the extent possible, allow persons deprived of liberty at police headquarters or stations for more than 24 hours to have a chance to exercise outside of their cells, at least once a day, for no less than one hour.

20. Ensure that the procedures and guidelines established in the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* –commonly known as the Istanbul Protocol– are systematically followed by the authorities in charge of investigating, assessing and reporting allegations of torture. Such guidelines are crucial given that most torture methods are often designed to have maximum impact while leaving minimum detectable signs.



## V. MEDICAL SERVICES<sup>606</sup>

### A. Basic standards

519. The obligation to provide adequate medical care for persons deprived of their liberty arises directly from the State's duty to ensure the humane treatment of such persons under Articles 1.1 and 5 of the American Convention and Article I of the American Declaration. In this respect, the IACHR has established that "where persons deprived of liberty are concerned, the obligation of States to respect their physical integrity, not to use cruel or inhuman treatment, and to respect the inherent dignity of the human person, includes guaranteeing access to proper medical care."<sup>607</sup>

520. The Inter-American Court has established as follows:

Under Article 5 of the American Convention, the State has the duty to provide prisoners with regular health screening and adequate care and treatment when necessary. Furthermore, the State must allow and assist prisoners to be seen by a consulting physician chosen by them or their legal representatives or guardians,<sup>608</sup> according to the specific requirements of the actual case.<sup>609</sup>

521. With respect to the general content and scope of the right to medical care of persons deprived of their liberty, Principle X of the Commission's Principles and Best Practices establishes as follows:

Persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being, including amongst other aspects, adequate medical, psychiatric, and dental care; permanent availability of suitable and impartial medical personnel; access to free and appropriate treatment

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<sup>606</sup> The Commission received technical support in preparing this chapter from the GDR team (Gender, Diversity and Human Rights Office) of the Pan American Health Organization, which provided valuable assistance with respect to international data, studies, and standards.

<sup>607</sup> IACHR, Application to the I/A Court H.R. in the *Case of Pedro Miguel Vera Vera*, Case 11.535, Ecuador, February 24, 2010, para. 42. The IACHR has also established that "[i]f the State does not fulfill its obligation, by action or omission, it violates Article 5 of the Convention and, in cases of deaths of prisoners, violates Article 4 of the Convention." *Third Report on the Human Rights Situation in Colombia*, Ch. XIV, para. 33.

<sup>608</sup> I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006, Series C No. 150, para. 102. I/A Court H.R., *Case of García-Asto and Ramírez-Rojas V. Peru*. Judgment of November 25, 2005, Series C No. 137, para. 127. I/A Court H.R., *Case of Tibi V. Ecuador*. Judgment of September 7, 2004, Series C No. 114, para. 156.

<sup>609</sup> I/A Court H.R., Provisional measures for María Lourdes Afiuni, Venezuela. Order of the President of the Inter-American Court of Human Rights of December 10, 2010, recital 11. In this case, given the specific conditions of the beneficiary and of the measures and the conduct of the State, the Court held that, without prejudice to the medical care available from State institutions, the State should take the necessary steps for Ms. Afiuni to be seen by physicians of her choosing in the event that she required specialized medical attention (recital 12 and operative paragraphs 2 and 3).

and medication; implementation of programs for health education and promotion, immunization, prevention and treatment of infectious, endemic, and other diseases; and special measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, such as: the elderly, women, children, persons with disabilities, people living with HIV/AIDS, tuberculosis, and persons with terminal diseases.

522. Regarding the quality of medical care, Principle X establishes that “treatment shall be based on scientific principles and apply the best practices” and that “the provision of health services shall, in all circumstances, respect the following principles: medical confidentiality;<sup>610</sup> patient autonomy; and informed consent to medical treatment within the physician-patient relationship.”

523. The IACHR has consistently considered, as applicable international standards the Rules 22 to 26 of the United Nations Standard Minimum Rules for the Treatment of Prisoners,<sup>611</sup> as well as the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment,<sup>612</sup> which establish the following basic principle:

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees, have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained. (Principle 1)

524. However, when the Rapporteur on the Rights of Persons Deprived of Liberty visited Suriname, the majority of inmates interviewed in the adult prisons reported

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<sup>610</sup> In practice, medical personnel only need to disclose on rare occasions the patient’s confidential information to the prison director or other authorities (such as when the interests of the inmates or the outside community are at risk). Also, given that the prisoner must be guarded while he or she is in the medical facilities, steps should be taken to ensure that the guards can see the prisoner without overhearing the conversation. The principle of confidentiality also implies the need for due precautions to ensure that the institution’s medical personnel alone have access to the prisoners’ medical records.

<sup>611</sup> See, e.g., IACHR, Report No. 67/06, Case 12.476, *Oscar Elías Biscet et al., Cuba*, October 21, 2006, Merits, para. 155.

<sup>612</sup> Adopted by the United Nations General Assembly in its resolution 37/134 of December 18, 1982. Another relevant standard is the Oath of Athens, which was adopted by the International Council of Prison Medical Services in 1979 and is available at: <http://www.medekspert.az/pt/chapter1/resources/The%20Oath%20of%20Athens.pdf>. The oath asks health professionals to endeavor to provide the best possible health care for those who are incarcerated in prisons for whatever reasons, without prejudice and in accordance with their respective professional ethics. Specifically, they are required (1) to abstain from authorizing or approving any physical punishment; (2) to abstain from participating in any form of torture; (3) not to engage in any form of human experimentation amongst incarcerated individuals without their informed consent; (4) to respect the confidentiality of any information obtained in the course of their professional relationships with incarcerated patients; and (5) to base their medical judgments on the needs of their patients, which must take priority over any non-medical matters.

that they received deficient medical care and were not given proper medication. Some said that checkups were extremely superficial and brief and that the doctors prescribed only analgesics, without paying much attention to their symptoms.<sup>613</sup> During the Rapporteur's visit to Uruguay, he found that the free dental care provided to the inmates of the ancient Cabildo women's facility was limited to tooth extractions.<sup>614</sup>

525. As has been already established, persons deprived of their liberty are in a position of subordination vis-à-vis the State, meaning they are dependent in law and in fact for all of their needs. By depriving a person of liberty, the State acquires a special level of responsibility and becomes the guarantor of the person's fundamental rights, including his or her rights to life and humane treatment. Thus, it owes a duty to protect the health of prisoners by providing them, among other things, the required medical care.<sup>615</sup>

526. Adequate medical care is a minimum and indispensable material requirement for the State to be able to ensure the humane treatment of prisoners in its custody.<sup>616</sup> Loss of liberty should never mean loss of the right to health. Incarceration may not be allowed to compound the deprivation of liberty with illness and physical and mental distress.<sup>617</sup>

527. As the Inter-American Court has indicated, this duty of the State "does not imply the existence of a duty to satisfy all wishes and preferences of a person deprived of liberty regarding medical assistance, but only those real needs consistent with the actual circumstances and condition of the detainee."<sup>618</sup> Therefore, "lack of adequate medical assistance could be considered *per se* a violation of Articles 5(1) and 5(2) of the Convention, depending on the specific circumstances of the person, the type of disease or ailment, and the time spent without medical attention and its cumulative effects."<sup>619</sup>

528. In reference to the content and scope of Article 3 of the European Convention, the European Court has established that the demands of imprisonment, health, and well-being must be adequately secured by, *inter alia*, providing the requisite

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<sup>613</sup> IACHR, Press Release 56/11, "Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname," Washington, D.C., June 9, 2011, Annex, para. 11.

<sup>614</sup> IACHR, Press Release 76/11, "IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay," Washington, D.C., July 26, 2011, Annex, para. 30.

<sup>615</sup> I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 198. Cf. also IACHR, Report No. 67/06, Case 12.476, *Oscar Elías Biscet et al., Cuba*, Merits, October 21, 2006, para. 155.

<sup>616</sup> I/A Court H.R., *Case of García-Asto and Ramírez-Rojas V. Peru*. Judgment of November 25, 2005, Series C No. 137, para. 126.

<sup>617</sup> According to Article 6 of the Code of Conduct for Law Enforcement Officials, "Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required."

<sup>618</sup> I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006, Series C No. 150, para. 102.

<sup>619</sup> I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006, Series C No. 150, para. 103.

medical assistance.<sup>620</sup> Consequently, depending on the specific circumstances of the case, the absence of adequate medical attention may constitute a violation of the right to humane treatment.<sup>621</sup>

529. Similarly, the Constitution of the World Health Organization (WHO) establishes as a fundamental international principle that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.”<sup>622</sup> The right to the enjoyment of the highest attainable standard of health (hereinafter “the right to health”) can be secured only by complying with the obligations of international human rights. As all of the member States of the Pan American Health Organization (PAHO)<sup>623</sup> have agreed and documented in Directing Council resolution CD50.R8 (Health and Human Rights),<sup>624</sup> and as this chapter illustrates, international human rights offer a valuable conceptual and legal framework for unifying strategies to improve the health of the poorest, most excluded segments of society, which include the group of persons deprived of their liberty.

530. The State’s duty to provide adequate and appropriate medical care to people in its custody is all the greater where a prisoner’s injuries or health concerns are the direct result of action by the authorities.<sup>625</sup> The same is true where persons deprived of their liberty suffer from diseases that may prove deadly if left untreated.

531. It is also important to underscore that even when the State has outsourced prison health care to private companies or agencies —as is the case of Colombia, for example— it remains responsible for the adequacy of such care. This has a general foundation in well-developed and well-established Inter-American human rights system doctrine, which holds that States are responsible not only for the direct actions of their agents but also for that of third parties acting at the request of the State or with its tolerance or acquiescence.

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<sup>620</sup> European Court of Human Rights, *Case of Mouisel v. France*, (Application no. 67263/01), Judgment of November 14, 2002, First Section, para. 40; European Court of Human Rights, *Case of Kudla v. Poland*, (Application no. 30210/96), Judgment of October 26, 2000, Grand Chamber, para. 94.

<sup>621</sup> European Court of Human Rights, *Case of Keenan v. the United Kingdom*, (Application no. 27229/95), Judgment of April 3, 2001, Third Section, para. 111; European Court of Human Rights, *Case of of İlhanm v. Turkey*, (Application no. 22277/93), Judgment of June 27, 2000, Grand Chamber, para. 87.

<sup>622</sup> WHO Constitution, available at: <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>.

<sup>623</sup> The Pan American Health Organization (PAHO) is an international public health agency with over 100 years of experience working to improve health and living standards of the people of the Americas. It enjoys international recognition as part of the United Nations system, serving as the Regional Office for the Americas of the World Health Organization, and as the health organization of the Inter-American System.

<sup>624</sup> PAHO, Resolution CD50.R8, Health and Human Rights, adopted on September 29, 2010.

<sup>625</sup> I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 302.

532. In the *Ximenes Lopes* case, for example, the Inter-American Court established as follows:

Acts performed by any entity, either public or private, which is empowered to act in a State capacity, may be deemed to be acts for which the State is directly liable, as it happens when services are rendered on behalf of the State. [...] States must regulate and supervise all activities related to the health care given to the individuals under the jurisdiction thereof, as a special duty to protect life and personal integrity, regardless of the public or private nature of the entity giving such health care.<sup>626</sup>

The IACHR considers that the State's duty to regulate and monitor medical care provided by private agencies is even greater in the case of persons deprived of liberty in the broadest sense,<sup>627</sup> precisely because of the special position of guarantor that the State assumes with respect to the persons under its custody.

533. The absence of adequate medical services and the medical care required to control contagious diseases in correctional facilities constitutes a particularly serious situation that can become a public health problem, as will be discussed later in this chapter in the section of contagious diseases. Prisons and detention centers are not isolated, self-contained environments. They are places with a constant flow of people (in addition to the inmates themselves, employees, visitors and so forth). This creates high risk for the spread of the contagious diseases present in correctional facilities (such as HIV/AIDS, tuberculosis, hepatitis, sexually transmitted diseases, and neglected diseases) and can have serious consequences for the surrounding communities and the population at large.

534. Moreover, besides the existence of important considerations regarding the basic human rights of persons deprived of liberty, the States must give priority to the health conditions in prisons as a fundamental component of any public health policy. In this connection, the IACHR has established as follows:

The State shall ensure that the health services provided in places of deprivation of liberty operate in close coordination with the public health system so that public health policies and practices are also applied in places of deprivation of liberty.<sup>628</sup>

In this regard, the IACHR considers it crucial to take a preventive approach to the presence of disease in prisons and organize prison health care systems or mechanisms around it.

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<sup>626</sup> I/A Court H.R., *Case of Ximenes-Lopes V. Brazil*. Judgment of July 4, 2006. Series C No. 149, paras. 87 and 89.

<sup>627</sup> As defined in the General Provision of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

<sup>628</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle X); in accordance with the Standard Minimum Rules for the Treatment of Prisoners (Rule 22.1).

535. Additionally, the IACHR reiterates the necessity for States to adopt special measures to address the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, such as the elderly, women, children, persons with disabilities, people living with HIV/AIDS and tuberculosis, and persons with terminal diseases.<sup>629</sup> However, comprehensive analysis of States' obligations vis-à-vis such groups would require a much more extensive, in-depth study and is beyond the scope of this report.

**B. Main challenges and applicable standards**

536. The principle deficiencies in the region's prisons noted by the IACHR include:

- (a) Lack of appropriate and sufficient medical personnel;
- (b) Inadequate medicine and medical supplies and equipment;
- (c) Deficiencies in the infrastructure of prison clinics and hospitals;
- (d) Inadequate working conditions for health professionals to carry out their professional duties, and inadequate security;
- (e) Shortage of items such as furniture, stretchers, bedclothes, cleaning materials and other basic materials for providing health care in minimally acceptable conditions; and
- (f) Absence of clear, effective procedures to ensure that inmates requiring specialized medical care or procedures that are not available in the prison can obtain care and be taken with due haste to hospitals where such procedures can be performed.

**1. Challenges on the lack of access to the medical services**

537. The widespread reality is that the majority of the region's countries do not have sufficient medical personnel assigned to their prisons to meet the minimum necessities of the prison population. Doctors —especially specialists— are often available sporadically, for a few days a week or a few hours a day. As a result, the services provided generally do not meet minimum standards of care.

538. The following situation described by the United Nations Special Rapporteur on Torture after his 2000 visit to Brazil is illustrative of this reality:

In the *casa de detenção* of Carandiru (São Paulo), the Special Rapporteur noted with concern a sign on the fifth floor stating that the prison

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<sup>629</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle X).

infirmery had “no medication”, that the doctor would come once a week and that only the names of 10 prisoners would be handed to the doctor for treatment. Medical treatment outside the prisons was reportedly arranged unwillingly and rarely. The alleged unavailability of vehicles or military police personnel to accompany the transport to hospital, lack of planning or appointments and, in some cases, the unwillingness of doctors to treat prisoners often lead to the denial of prompt and appropriate medical treatment.<sup>630</sup>

539. Furthermore, in many of the region’s prisons, responsibility for medical services falls mainly to non-doctor health professionals such as paramedics, nurses, or nurse’s aides, who often handle delicate and highly complex medical situations beyond their capabilities. There are even reported cases in which the inmates themselves are informally employed to perform medical duties that by their nature should not be assigned to them. This does not mean that there should not be work opportunities for prisoners in clinics or hospitals, but only that such work should be within their capabilities.

540. Another widespread and deep-seated problem in the region’s correctional institutions involves the lack of access to medical care or barriers to such access.<sup>631</sup> In prisons with self-governance or power-sharing systems, where the prison authorities delegate or hand over power to certain inmates, these inmates decide who will or will not obtain medical care. In some prisons, there is a practice of collecting money (*derechos de paso*) for the “right to transit” on certain areas, which prevents or seriously impedes access to medical services for prisoners who do not have the resources to move about the prison.

541. In other cases, it is the security officers or civil authorities themselves who charge prisoners to let them out of their cells and take them to clinics, or who decide which prisoners will receive medical attention arbitrarily, without applying any urgency or pathology based selection criteria or following scientific medical care guidelines of any kind. In some cases, the authorities themselves or certain prisoners run illegal rackets, selling medicines that should be distributed free by the State<sup>632</sup> at inflated prices, medical prescriptions, transfers to outside hospitals, and more.

542. As a result, the prisoners with the most power or money frequently receive preferential treatment, monopolizing scarce available health resources to the detriment of the rest of the prison population. The resulting web of real power relationships and corruption effectively prevents prisoners who really need medical care from accessing it.

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<sup>630</sup> United Nations, E/CN.4/2001/66/Add.2, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Visit to Brazil*, March 30, 2001; Section II. Protection of Detainees against Torture, para. 125.

<sup>631</sup> See, e.g., IACHR, Press Release 64/10, IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

<sup>632</sup> See, e.g., IACHR, Press Release 76/11, IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay, Washington, D.C., July 25, 2011, Annex, para. 55.

543. Another *de facto* situation with a serious impact on the availability and adequate delivery of health care is the lack of prison security. One of the arguments for provisional measures initially presented by the petitioners in *Mendoza Prisons* was that doctors would not enter the cell blocks for fear of their lives and physical safety, forcing inmates to initiate habeas corpus proceedings in order to see a doctor.<sup>633</sup> In fact, it was found that even the prison employees rarely entered the cell blocks. In this respect, as indicated earlier in this report, the State has the unavoidable duty to enforce prison order, which is an essential condition for access to health care.

544. The IACHR also notes that, as a general rule in the region, the availability of medical services in police stations and other temporary detention facilities is even more uncertain than in correctional institutions.<sup>634</sup> Generally, facilities intended for temporary detention have neither adequate medical services nor, in many cases, the capacity to take detainees to outside hospitals if necessary. In addition, the police agents, who usually have no medical training, decide whether persons deprived of liberty will have access to medical care.

545. During his visit to Suriname, for example, the Rapporteur on the Rights of Persons Deprived of Liberty noted that at the Geysersvlijt Police Station, regular medical care consisted of a nun who came once a week to provide nursing services.<sup>635</sup>

546. In the case of *Pedro Miguel Vera Vera et al.*, recently decided by the Inter-American Court, the Commission established that the victim, who had received a gunshot wound to the abdomen during his arrest, had died from complications due to inadequate medical treatment while in police custody during the first days of his detention.<sup>636</sup>

547. These considerations are important because many of the States of the region use police stations and other detention facilities as regular prisons for large number of persons already convicted. Even though these facilities were not designed for such purposes and do not have the services required for housing people for prolonged periods of time. The lack of capacity of formal prisons and the overpopulation of the same creates this situation.

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<sup>633</sup> I/A Court H.R., Provisional measures, Matter of *Mendoza Prisons*, Order of the Inter-American Court of Human Rights, June 18, 2005, Recital 9(f).

<sup>634</sup> See in this regard, United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, paras. 177-178; United Nations, CAT/OP/PRY/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Paraguay*, June 7, 2010, para. 129.

<sup>635</sup> IACHR, Press Release 56/11, Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname, Washington, D.C., June 9, 2011, Annex, para. 20.

<sup>636</sup> IACHR, Application to the I/A Court H.R., *Case of Pedro Miguel Vera Vera*, Case 11.535, Ecuador, February 24, 2010, paras. 21-32.



548. At such facilities, prisoners generally do not undergo intake medical examinations to evaluate their health or check for recent injuries. If they do, the exam is either cursory or performed by health professionals who lack the necessary independence.<sup>637</sup>

549. As previously mentioned, in the vast majority of the countries of this region persons deprived of liberty find themselves forced to depend largely on their families or third parties for their basic needs, including medicine, special diets, and other prisoner health care necessities such as glasses and prostheses. The IACHR reaffirms the State's duty to supply prisoners with certain basic necessities, such as medicine, especially in the case of those who do not have the resources to purchase them themselves. In any case, when prisoners' needs are met by family members or third parties, controls intended to intercept illegal substances should not hinder the delivery of basic necessities.

550. In very specific contexts, such as the repression of political prisoners in Cuba, the IACHR has noted the use of the withholding of medical care as a very real form of aggression against prisoners and has repeatedly expressed concern:

The Commission has previously expressed its concern regarding the large number of political prisoners reportedly suffering from chronic visual, renal, cardiac, and pulmonary ailments and not receiving appropriate medical attention, including several prisoners of advanced years. Moreover, the IACHR is aware that the prison authorities prevent the relatives of imprisoned political dissidents from supplying them with medicines needed to treat their illnesses and not provided by the Government.<sup>638</sup>

## **2. Challenges on the lack of access to the specialized medical care**

551. There are also recurring shortcomings involving the transfer of prisoners to outside clinics and hospitals for specialized treatment or treatment unavailable in correctional facilities.<sup>639</sup> Causes include the inefficiency of the judicial or administrative

<sup>637</sup> See in this regard, United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, paras. 130-139; United Nations, CAT/OP/PRY/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Paraguay*, June 7, 2010, paras. 91-98; United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, paras. 152-156.

<sup>638</sup> IACHR, *Annual Report 2010*, Chapter IV, Cuba, OEA/Ser.L/V/II.Doc.5 corr. 1, March 7, 2011, para. 361; IACHR, *Annual Report 2009*, Chapter IV, Cuba, OEA/Ser.L/II, Doc. 51 corr. 1, December 30, 2009, para. 281; IACHR, *Annual Report 2008*, Chapter IV, Cuba, OEA/Ser.L/V/II.134, Doc. 5, rev. 1, adopted on February 25, 2009, para. 197; IACHR, *Annual Report 2007*, Chapter IV, Cuba, OEA/Ser.L/II.130, Doc. 22 Rev.1, December 29 2007, para. 110; IACHR, *Annual Report 2006*, Chapter IV, Cuba, OEA/Ser.L/V/II.127, Doc. 4 ver. 1, March 3, 2007, para. 70. Cf. also IACHR, Report No. 67/06, Case 12.476, Merits, IACHR, Report No. 67/06, Case 12.476, *Oscar Elías Biscet et al., Cuba*, October 21, 2006, para 157.

<sup>639</sup> See in this regard, IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, para. 60; IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, Ch. VI, para. 291; IACHR, *Report on the Situation of Human Rights in Brazil*, Ch. IV, para. 16.

authorities who must authorize the transfers; the unavailability of vehicles or personnel to conduct the transfers; the arbitrary, unjustified refusal of the authorities or, quite simply, the geographic isolation of the correctional institution in question.

552. In emergency situations, failure or delay in transporting prisoners to hospitals can result in death or other irreversible harm. In other situations, it can cause prisoners to forfeit doctor's appointments or the continuity of treatment essential for their particular medical condition.

553. The IACHR's Special Report on the Human Rights Situation at the Challapalca Prison in Peru gives a clear example of this problem:

Using the prison's only vehicle, a mid-sized cargo truck, it takes more than five hours to get to the nearest hospital in the town of Juliaca. This has led to situations of such magnitude as those that affected prompt care for prisoner Manuel Ipanaqué Tovar, who died October 13, 1999, at the Hospital Regional de Juliaca after having suffered injuries to his neck and chest, apparently due to an accident with steel weaving needles (or reeds), at about 2 p.m. that day and not having received medical care until 9 p.m., when he entered the hospital.<sup>640</sup>

554. In some cases, prisoners receive discriminatory or unequal treatment in outside hospitals simply because they are prisoners. On this subject, the United Nations Basic Principles for the Treatment of Prisoners establish that "prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation." The United Nations Special Rapporteur on Torture has subsequently underscored that "[s]tates are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including persons deprived of their liberty, to preventive, curative and palliative health services."<sup>641</sup>

### **3. The Impact of the conditions of imprisonment on the health of persons deprived of their liberty**

555. In other cases, the correctional institution's location itself puts the inmates' health at risk. During a visit to the Challapalca Prison in Peru, for example, the Commission noted that, owing to its location at 4,600 meters above sea level, the air was thin, making inmates prone to acute mountain sickness or *orocho*, which could become chronic (also known as "monk's disease"). The problem was intensified by the inadequacy of the prison's health services, as well as the fact that many of the inmates came from areas close to sea level.<sup>642</sup>

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<sup>640</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, para. 66.

<sup>641</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 56.

<sup>642</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, paras. 62-63.

556. In addition to previously mentioned factors, the IACHR attributes the health care shortcomings in the region's prisons to two other fundamental problems: (1) the absence of preventive measures and (2) overpopulation and overcrowding. Due attention to these two aspects of prison administration can lead to much sounder, more efficient use of the available medical services.

557. With respect to the first point, the Commission emphasizes the need to give priority attention to structural, health, and hygiene conditions in prisons; to ensure sufficient natural lighting and ventilation; to provide prisoners with sufficient quality food, as well as safe drinking water; and to perform intake medical examinations and provide adequate treatment for incoming prisoners with contagious diseases. It also emphasizes the implementation of health education and promotion programs; as well as employee training; immunization, prevention, and treatment for infectious, endemic, and other diseases; distribution of condoms and lubricants, and other similar measures.<sup>643</sup> Even the isolation cells used for disciplinary purposes should be evaluated by the medical authorities in order to prevent psychological disturbances, including suicide.<sup>644</sup>

558. The other problem with serious consequences for prison health is overcrowding. Its effects include the overwhelming of medical care facilities; the spread of contagious diseases of all kinds; uncertain availability of space to provide adequate treatment for inmates requiring special treatment; and, as previously noted, increased friction and quarreling among prisoners that often results in serious injury, including death.<sup>645</sup>

559. The Commission highlights that, regardless of its economic difficulties at any given moment, by depriving a person of liberty, the State has acquired an unavoidable duty to provide adequate medical attention, which includes preventive measures, diagnosis and treatment. In its view, moreover, responsibility for compliance with this duty of the State is not the sole responsibility of medical staff. Fundamental responsibility lies with prison management and with the authorities whose job it is to develop public health policy and allocate the implementing resources.

#### **4. Medical personnel**

560. Medical personnel should not treat inmates in an authoritarian or arrogant manner or behave in a way that suggests that they are doing inmates a favor or

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<sup>643</sup> See, e.g., IACHR, Press Release 56/11, "Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname," Washington, D.C., June 9, 2011, Annex, para. 13.

<sup>644</sup> This obligation derives from the general duties of the doctors or competent health authority to inspect, evaluate and advise the management of detention centers in regards to the sanitary conditions and hygiene of the establishment, and constantly monitor the health conditions of persons subject to isolation as a disciplinary sanction. See, Standard Minimum Rules for the Treatment of Prisoners (Rules 26.1 and 32.3), and European Penitentiary Rules (Rule 44.b).

<sup>645</sup> As an specific example of this, the SPT during its visit to Mexico reported on the case of a person that lost his life as a result of a serious overcrowding situation. United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 177.

that medical care is a privilege. This kind of behavior is contrary to the ethical principles that should guide the actions of health personnel,<sup>646</sup> compromises the quality of care and does not promote patient trust.

561. To safeguard against the torture and physical or mental abuse of prisoners, it is crucial for health professionals providing medical care to persons in State custody to operate with due autonomy and independence, free from any form of interference, coercion or intimidation by other authorities.<sup>647</sup> This independence and autonomy should cover not only for members of prison medical staff but also the outside hospital personnel who provide medical care to detainees and prisoners brought to them for medical care under certain circumstances.

562. The Istanbul Protocol<sup>648</sup> recognizes that doctors working with State security services encounter circumstances where:

The interests of their employer and their non-medical colleagues may be in conflict with the best interests of the detainee patients. Whatever the circumstances of their employment, all health professionals owe a fundamental duty to care for the people they are asked to examine or treat. They cannot be obliged by contractual or other considerations to compromise their professional independence. They must make an unbiased assessment of the patient's health interests and act accordingly.

563. During his visit to Uruguay, the Rapporteur on the Rights of Persons Deprived of Liberty noted as a good practice: that prison medical care there is gradually being handed over to the State Health Services Administration (ASSE)<sup>649</sup>. This transfer of duties, which has been implemented in four correctional institutions, presents various advantages, both in terms of quality of care and in terms of the institutional independence of health care staff, who are not under the authority of the Ministry of the Interior.

564. According to the Istanbul Protocol, doctors working with State security services must refuse to comply with any procedures that may harm patients or leave them physically or psychologically vulnerable to harm. Where the detainee is a minor or a

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<sup>646</sup> Laid down *inter alia* in the *Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment*, adopted by the United Nations General Assembly in its resolution 37/134; and the *Oath of Athens*, adopted by the International Council of Prison Medical Services in 1979.

<sup>647</sup> I/A Court H.R., *Case of Vélez Loor V. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 236; I/A Court H.R., *Case of Bayarri V. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, para. 92; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 102.

<sup>648</sup> *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, Office of the United Nations High Commissioner for Human Rights, para. 66.

<sup>649</sup> IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011, Annex, para. 13.

vulnerable adult, doctors have an additional duty to act as an advocate.<sup>650</sup> Doctors also have a duty to speak out and to report any unethical, abusive, or inadequate treatment of patients by members of their employing security services, but without exposing patients, their families, or themselves to foreseeable serious risk of harm.<sup>651</sup>

## 5. Prevention and treatment of contagious diseases

565. Although the list of contagious diseases prevalent in correctional facilities is extensive, we will focus specifically on issues relating to HIV/AIDS and to tuberculosis and other neglected diseases (primarily skin disease). This does not mean, however that these diseases are more important than the many others that are a fact of prison life, including, for example, hepatitis, sexually transmitted diseases and gastrointestinal diseases.

### *HIV/AIDS*

566. Inside prisons, people living with HIV are often the most vulnerable and stigmatized segment of the prison population. Fear of HIV and AIDS often places HIV-positive prisoners at increased risk of social isolation, violence and human rights abuses from both prisoners and prison staff. This fear is often fed by misinformation about routes of transmission, as well as the closed, intimate nature of the prison environment and/or stigma and discrimination against vulnerable groups such as sex workers, drug users, and LGTB people.<sup>652</sup>

567. According to information received by the IACHR in the context of a thematic hearing on the human rights situation in the province of Buenos Aires, the principle causes of prison deaths in 2009 were HIV/AIDS and opportunistic disease. According to information supplied by the Committee against Torture of the Provincial Memory Commission:

[In Buenos Aires province,] the death of a detainee with HIV/AIDS is classified by the correctional services as “non-traumatic” or “natural.” This classification rules out any court-led investigation into the treatment impact of the kind and conditions of detention (poor diet, bad hygiene, unsuitable building conditions, absence or inadequacy of medical care, or inadequate or sporadic treatment).<sup>653</sup>

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<sup>650</sup> The duty of health personnel to refrain from participating in any way in acts that violate the right to the integrity of the persons in custody of the State is widely developed in the Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>651</sup> *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, Office of the United Nations High Commissioner for Human Rights, para. 67.

<sup>652</sup> WHO, *Health in Prisons: a WHO guide to the essentials in prison health*, 2007, p. 61, available at: [http://www.who.int/hiv/pub/idu/euro\\_health\\_prison/en/index.html](http://www.who.int/hiv/pub/idu/euro_health_prison/en/index.html).

<sup>653</sup> IACHR, Public hearing: *Human Rights Situation of Persons Deprived of Liberty in the Province of Buenos Aires*, 141<sup>o</sup> Ordinary Period of Sessions, requested by: State of Argentina, Centro de Estudios Legales y Sociales (CELS), Comisión Provincial por la Memoria de la provincial de Buenos Aires, March 28, 2011. See also, Continues...

568. The IACHR urges States to adopt any legislative, institutional, or other measures needed to prevent and eliminate discrimination against inmates with HIV/AIDS. Prisoners discriminated against by reason of their gender, sexual orientation, religion, or race can be victims of multiple discrimination when they are also HIV-positive.<sup>654</sup> Particular attention should be paid to the question of sexual orientation-based discrimination against HIV-positive prisoners. In the words of the UN Special Rapporteur:

Attitudes and beliefs stemming from myths and fears associated with HIV/AIDS and sexuality contribute to stigma and discrimination against sexual minorities. In addition, the fact that members of these minorities are perceived as transgressing gender barriers or challenging predominant conceptions of gender roles seems to contribute to their vulnerability to torture as a way to “punish” their unaccepted behavior.<sup>655</sup>

569. In *Jorge Odir Miranda Cortez et al.*, the Inter-American Court ruled, *inter alia*, on the State’s duty to protect HIV-positive individuals. Following the line of European Court case law, it found that the effectiveness of legal remedy for protecting the rights of such persons is inextricably linked to prompt delivery of the decision. In the above case, the IACHR held that what was at issue in the victims’ petition for *amparo* was not health alone but survival and that the national courts therefore had a duty to accelerate the judicial decision-making process. Thus, the IACHR has established that in situations of this nature the courts processing such petitions must give them priority, regardless of their other caseload.<sup>656</sup>

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Comité Contra la Tortura de la Comisión Provincial por la Memoria, Annual Report 2010: *El Sistema de la Crueldad V* [The System of Cruelty IV], p. 98.

<sup>654</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 63.

<sup>655</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 64.

<sup>656</sup> IACHR, Report No. 27/09, Case 12.249, Merits, *Jorge Odir Miranda Cortez et al.*, El Salvador, March 20, 2009, paras. 47-48 and 52-53. On this matter, see also, United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 59.

*Tuberculosis<sup>657</sup> and other neglected diseases<sup>658</sup>*

570. As the IACHR has observed, tuberculosis (TB) is another disease prevalent in prisons.<sup>659</sup> Despite the importance of this subject and the fact that most of the regional and international human rights mechanisms working in the prison context consider it a priority, the Commission finds a lack of comprehensive, in-depth studies on how best to approach the question of TB in prisons from the human rights perspective, so that the necessary efforts are made to combat the stigma and discrimination attached to inmates suffering from this disease.

571. As discussed previously, correctional institutions are not closed environments. Security personnel, health workers, technical staff, and manual laborers come and go daily, in addition to the visitors, who go in and out after close and frequent contact with the inmates. As major reservoirs of tuberculosis, correctional institutions expose inmates to the disease, in violation of their right to health, and threaten the population in general. Tuberculosis in prisons is therefore a major public health concern and a reason why government authorities should make correctional health a part of health policy.

572. The TB/HIV coinfection in prisons also represents a serious health problem because of the high transmission rates for both diseases. The gradually deteriorating immunity of HIV-positive individuals makes them prone to opportunistic infections like tuberculosis. For this reason, it is impossible to address the control of TB prisons without also addressing the prevention and control of HIV.

573. In this context, as the United Nations Special Rapporteur on torture has emphasized:

To deny detained persons access to HIV-related information, education and means of prevention, voluntary testing, counseling, confidentiality, and HIV-related health care and access to and voluntary participation in treatment trials could constitute cruel, inhuman or degrading treatment.<sup>660</sup>

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<sup>657</sup> See, PAHO, *Guide for Tuberculosis Control in Populations Deprived of Liberty in Latin American and the Caribbean*, 2008, available at: <http://www.paho.org/english/ad/dpc/cd/tb-prisiones-guia-ctl.htm>.

<sup>658</sup> See, PAHO, *Report on the Elimination of Neglected Diseases and Other Poverty-Related Infections*, CD49/9, adopted on July 10, 2009, available at: <http://new.paho.org/hq/dmdocuments/2009/CD49-09-e.pdf>; PAHO, Resolution on the Elimination of Neglected Diseases and Other Poverty-Related Infections, CD49.R19, adopted on October 2, 2009, available at: [http://joomla.salumedia.com/index.php?option=com\\_docman&task=doc\\_details&gid=3124&Itemid=4031](http://joomla.salumedia.com/index.php?option=com_docman&task=doc_details&gid=3124&Itemid=4031).

<sup>659</sup> See in this regard, IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, Ch. VI, para 292. In addition to the materials presented in the present section, see also, ICRC/TBCTA, *Guidelines for control of tuberculosis in Prisons* (2009), available at: [http://www.tbcta.org/Uploaded\\_files/Zelf/GuidelineTBPrisons1252321251.pdf](http://www.tbcta.org/Uploaded_files/Zelf/GuidelineTBPrisons1252321251.pdf).

<sup>660</sup> United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Third Report to the [former] Commission on Human Rights, E/CN.4/2004/56, adopted on December 23, 2003, para. 54.

574. The Commission underscores that, as with all diseases in the prison environment, it is crucial to take a preventive approach to HIV/AIDS. In this connection, carriers should receive free treatment and should not be isolated solely because they are infected.<sup>661</sup>

### **C. Recommendations**

575. The Commission makes the following recommendations with respect to the State's duty to provide medical care to persons deprived of their liberty:

1. Adopt and implement comprehensive public policies to ensure healthy conditions in correctional facilities. These policies should focus on the prevention, diagnosis, and timely treatment of diseases, as well as on attention to at-risk groups in the prison population, as outlined in this chapter and in accordance with the health-related regional and international human rights instruments.<sup>662</sup> Concretely, States should:
  - a. Incorporate regional and international human rights norms and standards into national policies on persons deprived of their liberty and legislation drafted in this area;
  - b. Promote and improve the knowledge of prison health personnel with respect to international human rights instruments relevant to the prison context;
  - c. Seek technical assistance from entities and agencies specializing in development, review, and, where necessary, reform of correctional health-related national plans and legislation;
  - d. Participate in regional events to learn about relevant best practices in other countries and discover examples of how to encourage recognition of the right to health as a fundamental right of persons deprived of their liberty.
2. Budget sufficient funds in the context of the above-mentioned government policies to ensure that correctional facilities have qualified health personnel and sufficient medicine, equipment, and supplies for the population they house.
3. Implement external supervision and monitoring mechanisms for prison health care and adopt the legislative, administrative, budgetary, and

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<sup>661</sup> With regard to the confinement of persons with HIV/AIDS see also the European Penitentiary Rules (Rule 42.3.i).

<sup>662</sup> See, PAHO, Resolution on Health and Human Rights (CD50/R.8), adopted on September 29, 2010.



other measures needed to insure that such health care is provided by persons who are not responsible to the correctional authorities.

4. Approach access to health care in correctional facilities as a public health concern. The Commission suggests that the various ministries involved in prison health care coordinate their efforts and establish joint priorities for protecting and promoting universal access to health care for persons deprived of their liberty.
5. Cooperate with existing human rights mechanisms working to protect the basic rights of persons deprived of their liberty. This includes:
  - a. Facilitating initiatives with regional and international human rights mechanisms by extending invitations for country visits and organizing and implementing them;
  - b. Taking the steps needed to comply with recommendations made by rapporteurs, committees, and other human rights mechanisms following official country visits;
  - c. Promoting the ratification of any human rights instruments relating to persons deprived of their liberty that have not yet been ratified (e.g. Optional Protocol to the Convention against Torture/OP-CAT).
6. Adopt the measures required to guarantee the independence, at all times, of medical personnel who provide health care for persons in State custody, in order to ensure that they are free from the interference, intimidation, or influence of other, non-medical authorities in the course of their work. For this purpose, the Commission recommends widely promoting and distributing the contents of the Protocol and best Protocol implementation practices among prison administrators.
7. Streamline procedures in order to ensure timely transportation for prisoners requiring medical care outside the prison. Ensure that these prisoners do not receive discriminatory, inferior quality treatment or face barriers of any kind to medical care.
8. Take the steps necessary to ensure that prisoners have free, fair, and transparent access to correctional facility medical services that meet their medical needs effectively.
9. Promote a system of comprehensive, systematic medical record-keeping. Promote the right of prisoners to have access to a medical professional at all times, without charge. States have a duty to adopt measures to enforce this right. Prisoners must be able to consult medical professionals

confidentially, without having their requests blocked or filtered by guards or other prisoners.

10. Adopt policy guidelines to keep prisoners' clinical records strictly confidential and accessible only to medical staff. Adopt appropriate administrative measures to ensure that the inmates' clinical records accompany them, including when prisoners are transferred to different correctional facilities, and that they are kept for a reasonable period of time, in the event that former inmates reenter the system.
11. Encourage all relevant stakeholders, including civil society, to participate in the analysis of best practices for combating prison overcrowding. This analysis should take into consideration the negative consequences of overcrowding at every level and should treat it as a public health issue in the case of infectious diseases like HIV/AIDS or TB.
12. Adopt comprehensive public health policies to prevent and treat diseases with high prison incidence such as HIV/AIDS, tuberculosis and other neglected diseases, hepatitis, sexually transmitted diseases, and gastrointestinal disorders (caused by bacteria, protozoa, parasitic worms, or viruses), as outlined in this chapter.
13. Contribute to the knowledge of neglected infectious diseases by developing joint studies and participating in national, regional, and international workshops aimed at quantifying the prison incidence of the different neglected infectious diseases, particularly skin diseases. The Commission also recommends analyzing best practices for caring for the specific needs of these groups. Such activities should be aimed at helping to combat discrimination against this segment of the prison population.
14. Provide training for prison health workers in neglected infectious diseases, their modes of transmission, and prevention and treatment methods.
15. Make a commitment to eliminate or reduce neglected infectious diseases and other poverty-related infections. To this end, the Commission urges States to determine which neglected infectious diseases should take priority in the prison context.

## VI. FAMILY RELATIONS OF INMATES

### A. Basic standards<sup>663</sup>

576. The IACHR has established that the State has the obligation to facilitate and regulate contact between inmates and their families, and to protect their fundamental human rights against all abusive and arbitrary interference. In this respect, the IACHR has reiterated that family visitation to prisoners is a fundamental element of the right to the protection of the family of all parties in this relationship that are affected; therefore:

Because of the exceptional circumstances that imprisonment creates, the State is obligated to take steps to effectively ensure the right to maintain and cultivate family relationships. The need for any measures that restrict this right must fit the usual and reasonable requirements of incarceration.<sup>664</sup>

577. Out of the general obligations to respect and guarantee the human rights established in Article 1.1 of the Convention and the specific obligation to protect the family imposed in its Article 17.1, stems the positive obligation of the State, as guarantor of the rights of persons under its custody, to create the conditions necessary for enabling contact between persons deprived of liberty with their families (which as a general rule occurs in three ways: mail, visits, and telephone calls). In particular, the State must correct all structural deficiencies that keep contact and communication between inmates and their families from taking place on a sufficiently regular basis under secure conditions that respect their dignity.

578. For persons deprived of liberty, family support is essential in many areas and ranges from the emotional support to material assistance. In the majority of prisons in the region, the items that prisoners need to meet their most basic needs are not provided by the State, as they should be, but by their own families or third parties. Furthermore, at the emotional and psychological level, maintaining family contact is so important for inmates that its absence is considered an objective factor contributing to a heightened risk of their resorting to suicide.<sup>665</sup>

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<sup>663</sup> In the case of children and adolescents, the subject of family and community contact is extensively developed by the IACHR at: IACHR, *Juvenile Justice and Human Rights in the Americas*, paras. 389-405.

<sup>664</sup> IACHR, Report No. 67/06, Case 12.476, Merits, Oscar Elías Biscet *et al.*, Cuba, October 21, 2006, para. 237; IACHR, Report No. 38/96, Case 10.506, Merits, X and Y, Argentina, October 15, 1996, para. 97- 98. Similarly, the European Court has indicated that any deprivation of liberty carried out in accordance with the law by its nature involves a limitation on private and family life. However, it is an essential part of every prisoner the respect to the right for family life and that prison authorities provide the necessary facilities so they can maintain contact with their family. European Court of Human Rights, *Case of Messina v. Italy* (No. 2), (Application no. 25498/94), Judgment of September 28, 2000, Second Section, para. 61.

<sup>665</sup> World Health Organization (WHO), *Preventing Suicide in Jails and Prisons*, (update 2007), p. 16, available at: [http://www.who.int/mental\\_health/prevention/suicide/resource\\_jails\\_prisons.pdf](http://www.who.int/mental_health/prevention/suicide/resource_jails_prisons.pdf).

## B. Main challenges and applicable standards

579. The IACHR has observed that there are essentially two major obstacles to maintaining normal interaction between inmates and their families: (a) lack of conditions that allow visits to be made in a manner that respects their dignity; that is, under acceptably private, sanitary, and secure conditions; and (b) humiliating or degrading treatment of inmates' families by prison authorities on visiting days. This type of situation, in addition to directly affecting the prisoners' families, constitutes a disincentive for them to visit, which definitely affects maintenance of the inmates' family ties.

### 1. Lack of conditions that allow visits to be made in a manner that respects their dignity, under acceptably private, sanitary, and secure conditions

580. The IACHR has observed that in the majority of the countries in the region, prisons lack the basic facilities and conditions to enable visits to be made in an environment that offers a minimum of privacy, sanitation, and security for visitors. In many cases, the lack of appropriate spaces obliges families to meet in cells, hallways, cell blocks, and internal areas where the inmates are housed; and in many cases as well, relatives who come to visit are exposed and even subjected to the dynamics of violence that prevail in the prisons.

581. Thus, for example, in a recent thematic hearing on the situation of persons deprived of liberty in Venezuela, the petitioners said that the violence that inmates experience in prisons also affects their families,<sup>666</sup> and provided information that in 2010 four relatives of inmates had been murdered with guns in incidents in three correctional facilities.<sup>667</sup>

582. Likewise, based on information that was widely broadcast, the IACHR took note of the fact that in August 2010 a Dutch national held in San Pedro (formerly Lurigancho) Prison, in Peru, had killed his girlfriend on visiting day and buried her inside his cell. The victim's body was found three months later after the presumed culprit confessed.<sup>668</sup>

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<sup>666</sup> See also, I/A Court H.R., Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison) regarding Venezuela, Order of the Inter-American Court of Human Rights of February 2, 2007, Having seen, para. 2(g).

<sup>667</sup> IACHR, Public hearing: *Situation of Persons Deprived of Liberty in Venezuela*, 141<sup>o</sup> Ordinary Period of Sessions, requested by: State of Venezuela, Center for Justice and International Law (CEJIL), Observatorio Venezolano de Prisiones (OVP), Comisión de Derechos Humanos de la Federación de Abogados de Venezuela, March 29, 2011.

<sup>668</sup> See in this regard, Perú 21, *Holandés mató y enterró a mujer en penal*, November 29, 2010, available at: <http://peru21.pe/noticia/676510/holandes-mato-enterro-pareja-penal>; RPP, *Separan a funcionarios por asesinato de mujer en penal de Lurigancho*, November 29, 2011, available at: [http://www.rpp.com.pe/2010-11-29-separan-a-funcionarios-por-asesinato-de-mujer-en-penal-de-lurigancho-noticia\\_314749.html](http://www.rpp.com.pe/2010-11-29-separan-a-funcionarios-por-asesinato-de-mujer-en-penal-de-lurigancho-noticia_314749.html); La República, *Reo Holandés asesina a joven peruana y la entierra en su celda de Lurigancho*, November 30, 2010, available at: <http://www.larepublica.pe/30-11-2010/reo-holandes-asesina-joven-peruana-y-la-entierra-en-su-celda-de-lurigancho>; El Comercio, *Familiares de mujer asesinada en penal de Lurigancho reconocieron el cadáver en la morgue*, november 29, 2010, available at: <http://www.larepublica.pe/30-11-2010/reo-holandes-asesina-joven-peruana-y-la-entierra-en-su-celda-de-lurigancho>.

583. In addition, relatives and others visits in correctional facilities run by systems of “self-governance” or “shared governance” are directly exposed to kidnapping, extortion, acts of forced prostitution, and all types of abuse and assault perpetrated by those who *de facto* exercise control in these prisons. These cases represent the State’s neglect of its international responsibilities by failing to maintain a system that protects the lives and integrity of people who visit the prisons and allowing and tolerating the violation of their rights by third parties.

584. It is likewise unacceptable from any standpoint that prison authorities demand payment or other actions from inmates in return for visitation days or permission to use the public telephones or to send letters.<sup>669</sup> The State has the obligation to detect and eliminate these types of practices and to investigate and punish employees who commit them or cover them up.

585. Maintaining a proper visitation system also implies that visits take place in locations other than those in which the inmates are housed. The State has the obligation to create adequate facilities for visits to take place in a manner respectful of dignity under secure conditions, without having relatives, including children, to enter internal areas devoted to inmate housing and activities. States should eliminate these type of practices, even though they are deeply rooted, and regardless if the prisoners themselves prefer them. Efforts should also be made to ensure that children and adolescents who enter correctional facilities as visitors are accompanied at all times by a relative, guardian, or someone that he or she appoints.

586. States must likewise guarantee that the conjugal visits of both male and female inmates take place in a manner that respects their dignity under basic conditions of sanitation, security, and respect on the part of prison staff. This implies creating rooms for this purpose and avoiding the practice of inmates receiving their partners in their own cells. Furthermore, States should adequately supervise and strictly monitor how such visits are arranged to prevent any type of irregularity, both in granting authorization for conjugal visits and how they are handled. The lack of supervision in this area facilitates irregularities ranging from the extortion of money for the authorization of this type of visit<sup>670</sup> to illegal prostitution.<sup>671</sup>

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<sup>669</sup> See, e.g., the IACHR Turing its 1997 *in loco* visit to Colombia the Commission “received reiterated information indicating that in some prisons the detainees or their families must secretly pay for visitation authorization”. *Third Report on the Human Rights Situation in Colombia*, Ch. XIV, para. 40.

<sup>670</sup> For example, during the work visit by the Commissioner Rodrigo Escobar Gil to Mexico in September 2011, he received a report by the Human Rights Commission in the Federal District which stated that: “Another persistent problem is the lack of specific requirements in the regulations of the detention centers that allow for criteria for access to conjugal visits, which are favored by corrupt practices for the conduct of clandestine private visits, as in the case of the North, East and South Prison of the Federal District, where this practice has been documented within the so-called “cottages” (*cabañas*) Report prepared for purposes of the above-mentioned visit, entitled *La Figura del Arraigo y la Situación de las Personas Privadas de Libertad*. Likewise, the UN Rapporteur on Torture during his visit to Paraguay on 2006 noted “the establishment of so-called *privados*, small rooms for intimate meetings. However, he received repeated allegations that detainees have to pay substantial sums of money to be allowed to use a *privado*, both officially and unofficially. This means, on the one hand, that poor detainees are deprived of this right and, on the other hand, that *privados* contribute to the corruption in the prison system”. ONU, United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. Continues...

## 2. Humiliating or degrading treatment of inmates' relatives

587. During visits to prisons, the detainees' relatives, who are generally women, children, and elderly people, must often wait their turn for several hours, often outdoors and carrying packages; submit to close examinations of their body and belongings, which in many cases are degrading; and finally, submit to the police or military guards responsible for the external security of the prisons – personnel who as a rule are not properly trained to deal with visitors and who are not subject to civilian authorities but answerable only to their chain of command, a situation that creates opportunities for arbitrary behavior with no supervision or accountability.

588. In this respect, one problem that has been amply documented by both the IACHR and UN mechanisms is the practice of subjecting female visitors to degrading searches, which may include vaginal and anal searches. Thus, for example, during its on-site visit to Peru in 1998, the IACHR reported after visiting several jails, that:

Women, for example, are generally subjected to a denigrating check, including a vaginal inspection, which is reportedly performed using the same glove for all the women who visit a given prison. It is added that women are then required to jump, half-naked, and crouching, and that they are touched.<sup>672</sup>

589. Special note was taken of this practice of conducting degrading, intrusive bodily searches of women and girls who visit prisons by the IACHR Rapporteur on the Rights of Persons Deprived of Liberty during his mission to Chile in 2008 and El Salvador in 2010<sup>673</sup> and by other UN mechanisms, such as the UN Subcommittee on Prevention of

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...continuation

IV: *Conditions of detention*, para. 72. Similarly, the IACHR, as part of a thematic hearing held in 2006, received information that Paraguay had been observed in the widespread practice of charging fines to women prisoners to exercise their right to conjugal visits. IACHR, Public hearing: *Situation of Women Deprived of Liberty in Argentina, Bolivia, Chile, Paraguay and Uruguay*, 126<sup>o</sup> Ordinary Period of Sessions, Participants: Center for Justice and International Law (CEJIL), Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo, Coordinadora de Derechos Humanos de Paraguay (CODEHUPY), Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP), CLADEM-Chile, Universidad Diego Portales, October 24, 2006.

<sup>671</sup> See, e.g., IACHR, Public hearing: *Situation of the Prison System in Brazil*, 138<sup>o</sup> Ordinary Period of Sessions, requested by: State of Brazil, Justiça Global, Comissão Parlamentar de Inquérito (CPI) do Sistema Carcerário Brasileiro, Núcleo de Estudos Pela Paz e Direitos Humanos da Universidade de Brasília (UnB), Pastoral Carcerária Nacional, Associação dos Cristãos para a Abolição da Tortura (ACAT Brasil), Centro Feminista de Estudos e Assessoria (CFEMEA), Comissão de Direitos Humanos e Minorias (CDHM) da Câmara dos Deputados, Associação de Advogados de Trabalhadores Rurais no Estado de Bahia (AATR), March 19, 2010. In this regard, see the report: *Sistema Carcerário Brasileiro* (2009), pp. 260-262 presented in the said hearing available at: [http://bd.camara.gov.br/bd/bitstream/handle/bdcamara/2701/cpi\\_sistema\\_carcerario.pdf?sequence=1](http://bd.camara.gov.br/bd/bitstream/handle/bdcamara/2701/cpi_sistema_carcerario.pdf?sequence=1).

<sup>672</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, Ch. IX, para 19. See also, IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, Ch. VI, para 298; IACHR, *Third Report on the Human Rights Situation in Colombia*, Ch. XIV, para. 41.

<sup>673</sup> IACHR, Press Release 104/10 - IACHR Office of the Rapporteur Attests to Structural Deficiencies in Prison System of El Salvador. Washington, D.C., October 20, 2010; IACHR, Press Release 39/08 - Rapporteurship on the Rights of Persons Deprived of Liberty concludes visit to Chile. Santiago, Chile, August 28, 2008.

Torture in its mission to Mexico in 2008<sup>674</sup> and the Special Rapporteur on Torture during his mission to Brazil in 2000.<sup>675</sup> The use of these types of practices in Brazil was also recently exposed during a thematic hearing held at the headquarters of the IACHR in March 2010, during its 138th Session.<sup>676</sup>

590. Under the standards set by the IACHR in its Principles and Best Practices (Principle XXI), bodily searches of persons deprived of liberty and their visitors shall not be conducted indiscriminately, but must meet the criteria of necessity, reasonableness, and proportionality. In addition, they shall be carried out “under adequate sanitary conditions by qualified personnel of the same sex, and shall be compatible with human dignity and respect for fundamental rights. In line with the foregoing, member States shall employ alternative means through technological equipment and procedures, or other appropriate methods.” Moreover, “[i]ntrusive vaginal or anal searches shall be forbidden by law.”<sup>677</sup>

591. The IACHR reiterates that the States not only have the authority but the obligation to maintain security and order inside prisons, which implies proper control of the entry of illicit articles such as weapons, drugs, liquor, cell phones, etc. However, implementation of these security systems must take place in a way that respects the fundamental rights of inmates and their families. It is essential that prison guards and external security personnel be trained to strike a balance between exercising their security functions and treating visitors with dignity.

592. It is important to have clear standards and information about the types of items that are allowed to enter the prison or are prohibited, and that relatives be made aware of them. A best practice in this respect is to hang posters or signs in locations visible to the public. The important thing is to create a system in which variations are infrequent and these standards are applied in a consistent and organized manner to reduce opportunities for arbitrariness and maintain a climate of mutual respect between authorities and visitors.

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<sup>674</sup> United Nations, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum, Visit by the Special Rapporteur to Brazil, E/CN.4/2001/66/Add.2, adopted on March 30, 2001, para. 122.

<sup>675</sup> United Nations, CAT/OP/MEX/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, May 27, 2009, para. 267.

<sup>676</sup> IACHR, Public hearing: *Situation of the Prison System in Brazil*, 138<sup>o</sup> Ordinary Period of Sessions, Participants: State of Brazil, Justiça Global, Comissão Parlamentar de Inquérito (CPI) do Sistema Carcerário Brasileiro, Núcleo de Estudos Pela Paz e Direitos Humanos da Universidade de Brasília (UnB), Pastoral Carcerária Nacional, Associação dos Cristãos para a Abolição da Tortura (ACAT Brasil), Centro Feminista de Estudos e Assessoria (CFEMEA), Comissão de Direitos Humanos e Minorias (CDHM) da Câmara dos Deputados, Associação de Advogados de Trabalhadores Rurais no Estado de Bahia (AATR), March 19, 2010. In this regard, see the report: *Sistema Carcerário Brasileiro* (2009), presented in the said hearing available [HERE](#).

<sup>677</sup> This new standard set forth by the IACHR in its Principles and Best Practices constitutes a progressive advance of its own decision delivered twelve years earlier in the case of X and Y, Argentina, Report No. 38/96, in which the Commission held that vaginal searches could be permissible as long as they meet certain specific requirements, e.g., its authorization by a competent judge.

593. Furthermore, in practice, degrading or arbitrary treatment of inmates' relatives is a factor that significantly raises tension and stress levels in the prison population, which can eventually result in violence or protest demonstrations.

### C. Transfers to distant locations

594. When access to detention centers and prisons makes it extremely difficult or onerous for families, to the point of making regular contact impossible, it inevitably infringes on the right of both parties to maintain family relations. Therefore, depending on the particulars of each case, this may constitute a violation of the right to family protection, and eventually, of other rights such as the right to personal integrity or due process.

595. Thus, for example, the IACHR has determined that the geographic conditions of Challapalca Prison in Tacna, Peru make family visits so difficult that they constitute an undue infringement of this right. This prison is located in the Andes at an elevation of 4,600 meters above sea level and is two days' journey from Lima, requiring relatives to take turns to make the weekly visits. Moreover, the high elevation makes visits by children and the elderly impossible.<sup>678</sup>

596. In the case of *Oscar Elías Biscet et al.*, the IACHR concluded that the deliberate transfer of political prisoners to prisons located extreme distances from their families and the arbitrary restrictions on family visitation and conjugal visits were violations of the right to the formation and protection of the family.<sup>679</sup>

597. Moreover, in the context of the general monitoring of the human rights situation in Cuba, the IACHR has verified that one of the principal punitive and humiliating measures deliberately employed by the government against political dissidents is their incarceration in prisons located at extreme distances from their home. In this regard, the IACHR has received information according to which:

They are held in prisons far away from their home towns in order to make visiting difficult; family visits are restricted or denied; foodstuffs or medicines sent by their relatives are restricted or denied; and they are kept from meeting with officials from international human rights bodies.<sup>680</sup>

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<sup>678</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, paras. 20, 88-89 and 117.

<sup>679</sup> IACHR, Report No. 67/06, Case 12.476, Merits, Oscar Elías Biscet *et al.*, Cuba, October 21, 2006, paras. 239-240. See also, IACHR, Report No. 3/11, Petition 491-98, Admisibility, Néstor Rolando López y otros, Argentina, January 5, 2011. In this case, the IACHR established the prima facie characterization of the alleged violations of Articles 17 (right of the family) and 5 (right to humane treatment) of the Convention, in relation to the transfer of inmates from the province of Neuquén to Federal Prison Service Units, which are considerably far from their home towns.

<sup>680</sup> IACHR, *Annual Report 2008*, Chapter IV, Cuba, OEA/Ser.L/V/II.134, Doc. 5, rev. 1, adopted on February 25, 2009, para. 194. See also, IACHR, *Annual Report 2010*, Chapter IV, Cuba, OEA/Ser.L/V/II.Doc.5 rev. 1, adopted on March 7, 2011, para. 362.



[...] [I]n most cases prisoners are only allowed one family visit per month and in some cases, for no particular reason, only once every three months. The Commission was also informed that in several cases, when relatives have arrived on visiting day, having waited for weeks and traveled large distances to the prisons, they are forbidden entry without any explanation given and forced to return home and wait another month.<sup>681</sup>

598. Likewise, during the course of his recent visit to Argentina the Rapporteur on the Rights of Persons Deprived of Liberty verified the Buenos Aires Penitentiary Service's practice of repeatedly transferring inmates, compelling them to move from one prison to another in the vast territory of the province of Buenos Aires, which in the majority of cases subjects them to excessive isolation from their families for prolonged periods.<sup>682</sup> This practice is particularly hard on poor families, as travel to distant locations is excessively onerous.

599. In addition, confining persons in places extremely far from their homes, and, in many cases, from the courts in which their cases were adjudicated, can be a circumstance that impedes access to their defense counsel and their very appearance at their trial or other procedure in which their presence is required.<sup>683</sup> Moreover, in the case of indigenous persons, distancing them from their communities can also unleash a series of consequences that must be analyzed from the standpoint of the significance to these people of maintaining ties to their place of origin.<sup>684</sup>

600. With respect to transfers, the Principles and Best Practices state:

Principle IX (4). The transfers of persons deprived of liberty shall be authorized and supervised by the competent authorities, who shall, in all circumstances, respect the dignity and fundamental rights of persons deprived of liberty, and shall take into account the need of persons to be deprived of liberty in places near their family, community, their defense counsel or legal representative, and the tribunal or other State body that may be in charge of their case.<sup>685</sup>

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<sup>681</sup> IACHR, *Annual Report 2005*, Chapter IV, Cuba, OEA/Ser.L/V/II.124. Doc. 5, adopted on February 27, 2006, para. 78.

<sup>682</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

<sup>683</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, Ch. IX, para 21; IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, Ch. VI, paras. 161-162.

<sup>684</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, para. 65.

<sup>685</sup> In the same vein, the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Principle 20); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 30); and the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (Principle 7.2).

601. While in some cases the transfer of a person to a location far from his home might be justified, it is important that the domestic law regulate this matter according to clear criteria that prevent the potential arbitrary or unjustified use of this measure. Moreover, in any case in which the person deprived of liberty believes that he/she has suffered specific harm or the infringement of some of his/her fundamental rights as a result of his/her transfer, he/she should be able to seek remedies from the competent judicial authority.

602. In light of these considerations, the IACHR observes that the State should take all steps conducive to ensuring that persons deprived of liberty are not confined to facilities located at extreme distances from their community, family, and legal representatives. The State should likewise examine the individual case of each prisoner and wherever possible, arrange for transfer to a prison located near family's residence.<sup>686</sup>

603. In many cases, the incarceration of prisoners in facilities far from their homes is a consequence of the overpopulation of the prisons in their jurisdiction. It is therefore essential that the States correct the structural deficiencies that lead to the concentration of prisoners exclusively in certain geographical areas and build prisons in jurisdictions where the judicial activity demands it so as to maintain a rational geographical distribution of the prison population.

#### **D. Recommendations**

604. With respect to maintaining the family ties of inmates and their contact with the outside world, the IACHR recommends:

1. Regulating by law all aspects related to visitation in order to promote and guarantee maintenance of the family ties of persons deprived of liberty.
2. Providing adequate physical spaces in detention centers for visits to be made under secure and sanitary conditions that permit privacy.
3. Setting clear standards for visitation and the entry of items by visitors—standards that should be posted for public viewing.
4. Properly training security personnel at prisons in security and searches, as well as how to treat visitors to the facility. Also, implement means of regular searches and inspections, and by using technological and other appropriate methods, including searches to personnel, in order to not subject the families of the inmates to humiliating body searches.
5. Ensuring that the security personnel in direct contact with visitors are prison staff specialized in the work of correctional institutions and are accountable to civilian authorities, and not army or police personnel.

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<sup>686</sup> United Nations, CAT/OP/HND/1, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, February 10, 2010, para. 248.

6. Providing for conjugal visits, regulating them without distinctions based on considerations of gender or sexual orientation. Moreover, undertaking all the necessary improvements and adaptations to ensure the conjugal visits are conducted under sanitary conditions with dignity and privacy.
7. Providing condoms, lubricants, and basic information on sexual and reproductive health available to inmates who will be receiving conjugal visits.
8. Taking the necessary steps to ensure that persons deprived of liberty are confined to prisons located at a reasonable distance from their family, community, legal representatives, and the courts with jurisdiction over their respective cases, save in exceptional situations where such measures are duly justified.
9. Implementing medium- and long-term plans of action to guarantee rational and proportional distribution of the prison population by geographic area and existing penal jurisdictions.
10. Ensuring that each prison has enough public telephones to guarantee the inmates' communication with the outside world according to the regulations.

## VII. CONCLUSION

### A. Purpose of prison sentences: content and scope of Article 5.6 of the American Convention

605. Article 5.6 of the American Convention states that: “[p]unishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.” This provision constitutes a standard with its own scope and content, whose effective enforcement implies that the States must adopt all measures necessary to achieve those purposes. Using similar terms, Article 10.3 of the International Covenant on Civil and Political Rights states that: “[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation [...]”.

606. Likewise, according to the information provided by the States that responded to the questionnaire sent for the purposes of this report, the Constitutions of Bolivia (Article 74), Ecuador (Article 201), El Salvador (Article 27.3), Guatemala (Article 19), Mexico (Article 18), Nicaragua (Article 19), Panamá (Article 28), Paraguay (Article 20), Peru (Article 139.22), Uruguay (Article 26), and Venezuela (Article 272) expressly attribute purposes to sentences that deprive persons of liberty that are consistent with those established in international human rights law.

607. Moreover, the IACHR, in an evolved interpretation of the aforementioned Article 5.6 of the Convention, established in the Preamble to Principles and Best Practices that “punishments consisting of deprivation of liberty shall have as an essential aim the reform, social readaptation, and personal rehabilitation of those convicted; the reintegration into society and family life; as well as the protection of both the victims and society;” this clause is further developed in Principles XII and XIV.

608. Thus, even though there exists a close relation between the deprivation of liberty as punishment and the prevention of crime and violence (the protection of victims and society),<sup>687</sup> the mandate of Article 5.6 of the Convention mainly refers to the obligation of the State to provide the necessary assistance and opportunities to convicted persons, so they can develop their individual potential and deal with their return to society.<sup>688</sup> In other words, the direct object of the norm is the person convicted, which necessarily implies that inmates should have real access to productive activities designed to foster his/her rehabilitation.<sup>689</sup>

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<sup>687</sup> IACHR, *Report on Citizen Security and Human Rights*, para. 155.

<sup>688</sup> For example, in its *Report on the Situation of Human Rights in the Challapalca Prison*, the IACHR considered that the policies of the National Penitentiary and the prison not only did not provide the means for detainees work programs or productive activities, but actually restricted the few initiatives of legitimate economic activities of the inmates as an additional circumstance for them to experience the rigor of the sentence imposed. IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, para. 107.

<sup>689</sup> IACHR, Report No. 118/10, Case 12.680, Merits, Rafael Arturo Pacheco Teruel *et al.*, Honduras, October 22, 2010, para. 86.

609. Thus, the States must adopt comprehensive public policies aimed at rehabilitating convicts and reintegrating them into society. Meeting those objectives necessarily depends on developing a comprehensive system in which the States devise plans and programs for work, education, and other activities to provide prisoners with the tools they need for their eventual return to society.<sup>690</sup>

610. The IACHR observes that one of the most serious and widespread problems in the region, is precisely the lack of public policies that promote the rehabilitation and reintegration into society of persons that have been deprived of their liberty.<sup>691</sup> In this regard, the fact the prison population of the State is significantly young makes it all the more necessary to carry out effective rehabilitation policies that include opportunities for study and work because this represents a group of people who could have a productive life in the future. This is not done, that population runs the risk of remaining in a cycle of social exclusion and criminal recidivism.<sup>692</sup>

611. In this respect, the IACHR emphasized that the basic condition for achieving the purposes of the sentence is for the State, as guarantor of the rights of persons deprived of liberty, to take the necessary steps to respect and guarantee the right to life and personal integrity of prisoners and to ensure conditions of confinement compatible with human dignity. Any expectation of personal rehabilitation and reintegration into society is impossible in correctional systems where systematic torture and cruel, inhumane, and degrading treatment of inmates by the authorities themselves occur; in which high indices of prison violence are reported; existence of prisons where the actual control of internal security is exercised by the prisoners themselves and not the competent authorities; and in which the State does not provide the minimum space, nourishment, sanitation, and medical attention.

612. Another serious structural deficiency that hinders effective implementation of any inmate activity system is overpopulation. Overcrowding in prisons impedes access to the few work and educational opportunities for the majority of inmates, making their proper classification impossible;<sup>693</sup> this creates a situation that is *de facto* contrary to the system established in Article 5.6 of the Convention. Therefore, fulfillment of

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<sup>690</sup> IACHR, Press Release 56/11, "Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname," Washington, D.C., June 9, 2011, Annex, para. 17

<sup>691</sup> A recent study by ILANUD concluded that of the five major problems or needs of the prison systems in Latin America, the first is the lack of comprehensive policies that include, among other things, the rehabilitation of prisoners. Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y Tratamiento del Delincuente (ILANUD), *Cárcel y Justicia Penal en América Latina y el Caribe*, 2009, pp. 28-31.

<sup>692</sup> IACHR, *Report on the Situation of Human Rights in Brazil*, Ch. IV, para. 24. See also, United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the mission to Paraguay, A/HRC/7/3/Add.3, adopted on October 1, 2007. Ch. IV: *Conditions of detention*, para. 76.

<sup>693</sup> According to the Standard Minimum Rules for the Treatment of Prisoners, the classification of inmates by category has among its essential purposes to attend the individual needs of prisoners with regard to rehabilitation or self-development (Rule 67). Likewise, the Rule 63(3) establishes that, "[i]t is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible."

the essential purpose of the sentence through appropriate treatment in prison necessarily assumes the elimination of overpopulation and overcrowding.<sup>694</sup>

613. If States fail to guarantee basic conditions in which the human rights of inmates are respected and fail to allocate sufficient resources to permit the implementation of these plans and projects, the rehabilitation and reintegration of prisoners into society claimed by the legal order—and political discourse—as the purpose of the penitentiary system will have no relevant practical impact. Therefore, the first step in any comprehensive policy devised by the State to fulfill the purposes of the sentence must be to correct structural deficiencies.

614. The IACHR observes that the execution of rehabilitation programs can also be affected, among other things, by the following factors: (a) lack of transparency and equity in the assignment of slots to participate in these activities;<sup>695</sup> (b) lack of technical staff to conduct the assessments necessary for inmates to enter the programs;<sup>696</sup> (c) judicial delays, which, moreover, contribute to the increasing overpopulation;<sup>697</sup> (d) geographic dispersal and distancing from urban centers,<sup>698</sup> (e) the arbitrary exclusion of

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<sup>694</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, Ch. III, para. 236.

<sup>695</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010; see also on this matter: IACHR, Press Release 56/11, "Office of the Rapporteur on the Rights of Persons Deprived of Liberty Concludes Visit to Suriname," Washington, D.C., June 9, 2011, Annex, para. 16.

<sup>696</sup> See in this regard, IACHR, Public hearing: *Human Rights Violations in Prisons in Panama*, 131<sup>o</sup> Ordinary Period of Sessions, requested by: State of Panama, Comisión de Justicia y Paz de la Conferencia Episcopal de Panamá, Centro de Iniciativas Democráticas (CIDEM), Harvard University. March 7, 2008. In this regard, see the report: *Del Portón para Acá se Acaban los Derechos Humanos: Injusticia y desigualdad en las cárceles panameñas*, p. 108 presented in the said hearing available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HarvardClinicPanamaprison.pdf>. See also, IACHR, Public hearing: *Situation of the Persons Deprived of Liberty in Honduras*, 124<sup>o</sup> Ordinary Period of Sessions, requested by: State of Honduras, Center for Justice and International Law (CEJIL), Comité para la Defensa de los Derechos Humanos en Honduras (CODEH), Comité de Familiares de Detenidos y Desaparecidos de Honduras (COFADEH) and Centro para la Prevención, Tratamiento y Rehabilitación de las Víctimas de Tortura (CPTRT). March 7, 2006. In this regard, see the report: *Situación del Sistema Penitenciario en Honduras*, drafted by CPTRT and COFADEH, pp. 37-38, presented in the said hearing available at: <http://www.cptrt.org/pdf/informesistemapenitenciarioCIDH.pdf>; and IACHR, Public hearing: *Human Rights Situation of Persons Deprived of Liberty in Guatemala*, 141<sup>o</sup> Ordinary Period of Sessions, requested by: State of Guatemala, Center for Justice and International Law (CEJIL), Unidad de Protección de Defensores y Defensoras de Derechos Humanos (UDEFEQUA), Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), March 29, 2011.

<sup>697</sup> See, e.g., IACHR, *Report on the Situation of Human Rights in Ecuador*, Ch. VI,

<sup>698</sup> For example, in the context of a thematic hearing on the situation of persons deprived of liberty in the Atlantic Coast of Nicaragua, the IACHR received information that the conditions of confinement in the Penitentiary Center of Bluefields and in police cells Puerto Cabezas are extremely poor, and that prisoners have no possibility of accessing the same work program like inmates of other areas of the country, so neither can access the sentence reductions for work performed. For this reason, many of the inmates in this area, which are mostly people of African descent or belonging to Miskito communities, ask to be transferred to other prisons, which often brings problems of discrimination and uprooted from their communities and their families. IACHR, Public hearing: *Prison conditions of persons deprived of liberty on Nicaragua's Atlantic Coast*, 133<sup>o</sup> Ordinary Period of Sessions, requested by: State of Nicaragua, Center for Justice and International Law (CEJIL), Centro Nicaragüense de Derechos Humanos, October 27, 2008.

certain groups of prisoners;<sup>699</sup> (f) lack of enough security personnel to supervise educational, work, and cultural activities; and (g) the constant arbitrary transfer of inmates, which interrupts the continuity of any productive activity in which they are engaged.<sup>700</sup>

615. Furthermore, participation of inmates in these activities must always be voluntary and not coerced, since the current concept of rehabilitation entails that real personal changes and self-development stem from the choice of the prisoners themselves.<sup>701</sup> This also implies that treatment in prison should be geared to fostering the self-respect of inmates and developing their sense of responsibility.<sup>702</sup>

616. In this regard, the educational model adopted by the State should not be designed solely to treat the possible psychological deficiencies of criminals, foster their moral development, or be conceived merely as a means of providing job training for inmates; instead, the main concern in prison education should be human dignity. Human dignity implies respect for the individual, in his/her actuality and also in his/her potential. Therefore, education must be geared to the integral development of the individual.<sup>703</sup>

617. In terms of what the nature of prison work should be, the Standard Minimum Rules state *inter alia* that it must be “productive”; that “[s]o far as possible the work provided shall be such as will maintain or increase the prisoners’ ability to earn an honest living after release”; and that “Vocational training in useful trades shall be provided for prisoners able to profit thereby.”<sup>704</sup> That is, in addition to promoting a work ethic and combating idleness, prison work should be useful for the good operation of the prison and/or the training of the inmate himself.

618. Concerning this matter, one of the items in the questionnaire distributed for purposes of this report inquired about the percentage of the country’s prison population that participates in work or educational programs (whether intra- or extramural). The information provided by the States that responded to this question is the following:

Argentina	In penitentiaries of the Federal Prison System, by the end of the 2009 academic cycle, 1.3% (of the total 4,560 inmates) had attended literacy programs; 34% primary education; 19.35%
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<sup>699</sup> For example, in the context of Rafael Arturo Pacheco Teruel case established that inmates associated with the "Mara Salvatrucha (MS-13)" are in fact excluded from most of the productive activities that had access to the rest of the criminal inmates of San Pedro Sula in Honduras. IACHR, Report No. 118/10, Case 12.680, Merits, Rafael Arturo Pacheco Teruel *et al.*, Honduras, October 22, 2010, para. 86.

<sup>700</sup> See in this regard, IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

<sup>701</sup> Penal Reform International (PRI), *Manual de Buenas Prácticas Penitenciarias: Implementación de las Reglas Mínimas de Naciones Unidas para el Tratamiento de los Reclusos*, 2002, p. 117.

<sup>702</sup> Standard Minimum Rules for the Treatment of Prisoners (Rule 65).

<sup>703</sup> United Nations Special Rapporteur on the Right to Education, *Report on the right to education of persons in detention*, A/HRC/11/8, adopted on April 2, 2009, paras. 17-18.

<sup>704</sup> Standard Minimum Rules for the Treatment of Prisoners (Rules 71.3, 71.4 and 71.5).

	intermediate-level <i>polymodal</i> ; and 3.8% of the total prison population had received university-level instruction. Moreover, the State indicated that 48% of the total prison population had participated in working programs.
Brazil	Of the country's 1,148 prisons, 448 have structures in place for productive activities (38%). Within this context, 89,009 prisoners work, representing 24% of the country's prison population.
Chile	(1) In the traditional prison system, with approximately 31,200 inmates, on December 31, 2009, 6,302 inmates were enrolled in basic education (5,674 men and 628 women) and 6,278 in intermediate education (5,805 men and 473 women); moreover, on that date, 16,497 were participating in working programs. (2) Also on December 31, 2009, in private prisons (under concession contracts with the government), 28% of convicted inmates were enrolled in educational activities, and 32% of the prison population was engaged in work activities.
Colombia	On May 12, 2010, 25,408 inmates were participating in educational programs, 22,927 in working programs, and 945 in training programs, for a total of 49,280 inmates; this represented 61% of the resident population on that date.
Costa Rica	In 2010 the percentage of students at the different educational levels was 43% of the total prison population, whether indicted or sentenced (an estimated total of 9,793 persons). In the sentenced population, students accounted for 59% of the rough total of 6,164 prisoners.
Ecuador	In June 2010, 39.86% of the 11,440 inmates were engaged in some sort of working activity (this figure does not include minor offenders).
Guatemala	In 2010, 843 out of 10,512 inmates participated in educational programs in the Guatemalan prison system.
Mexico	The national percentages for inmate participation in productive activities are 50% in working activities and 45% in educational activities.
Nicaragua	Some 40% of the total prison population participates in educational and vocational training programs. In addition, 193 inmates in an open regimen participate in community programs.
Panama	The following figures were provided: 2,273 inmates were participating in educational programs; 15 had permission to study outside the prison; 1,001 were participating in work activities inside the prison; 30 had permission to work outside the prison; 150 were doing community service; and 51 were in a home detention program. This, out of a total prison population of 12,172 in August 2010 (4,760 sentenced and 7,412 indicted).
Suriname	Less than 15% of the inmates participate in training programs; these activities are not regulated by the legal system.
Trinidad and Tobago	The percentages of participation in education and work programs in the period from January to December 2009 were, 20% of convicted male inmates, 18% of convicted female inmates, 58% of children and adolescents deprived of liberty; and roughly 40% of the population in preventive detention.



Uruguay	The number of working and educational slots throughout the country increased in 2004 from 1,103 and 435, respectively, to 2,444 and 1,313 slots, respectively, in 2010 (all filled), representing 42% of the prison population.
Venezuela	Up to March 2010, 7,141 inmates were participating in working activities in the various correctional facilities, and 6,042 were enrolled in formal educational programs. Moreover, at that time, a total of 98 academic training courses (non-formal education) were being offered, in which 1,875 persons deprived of liberty participated. In 2009 the prison population numbered 32,624.

619. Notwithstanding the official figures that the States tend to provide, the IACHR has observed that a constant in prison systems is the lack of work opportunities for inmates, especially productive work. Normally, due to their very nature, prisons use inmates for janitorial and kitchen work, service in kiosks and the prison store, and even as assistants in certain office work (photocopying, etc.) but these cannot be the only work options always offered to prisoners. States must take the necessary steps to implement other initiatives and projects, and, in observance of the current legal requirements and controls, to promote extramural work for inmates much more.

620. At the same time, the IACHR has observed, on various occasions, that national authorities often provide information about the implementation of work and vocational training programs, such as workshops on carpentry, cabinetmaking, bread making, etc., but the reality is different. These workshops often lack the basic equipment needed for their operations, and, in many cases, it has even been observed that the inmates themselves must procure the materials and supplies. Generally the product of these workshops is little more than a crafts activity in which few inmates participate. Likewise, many prisons in the region award preferentially to certain inmates, the lightest work slots and where the environment is safer and more comfortable.

621. It has also been observed that a large number of inmates engages in informal activities, such as selling candies, cigarettes, groceries or toiletries, shining shoes, among other similar things, which cannot be described as work *per se*, since it is not productive in terms of the prison's operations, nor does it develop the inmates' capacities or potential.

622. Something similar happens *mutatis mutandis* with educational activities; a large number of inmates are enrolled on paper in courses and programs of all types, but the figures do not necessarily reflect the reality, because records are not always kept on the number of inmates who actually attended the classes on a regular bases or on the number who completed them.

623. Likewise, several States in the region have enacted laws (known as the "2x1" or "3x1" laws) whereby days worked or spent in educational activities are deducted from the inmate's sentence as an incentive to participate in them. The IACHR positively considers these kinds of legislative initiatives; which can constitute, if properly implemented, valuable tools for achieving the purposes of the sentence. In this regard, the IACHR reiterates that the main thing is for States, in addition to adopting these norms, to

develop plans and projects to create the necessary work and/or educational slots so that prisoners have real access to these options established by law.<sup>705</sup> In addition, the competent prison and judicial authorities must exercise the necessary control so that these mechanisms for sentence reduction are not used fraudulently by certain prisoners as a pathway to impunity, destroying the original purpose of the incentive and promoting corruption.

624. Furthermore, the IACHR stresses that correctional policies must include programs and projects aimed to released prisoners that provide the assistance and opportunities to enable them to readapt to their communities and to reduce the bias against them.<sup>706</sup> This post-prison assistance can be achieved with the involvement and aid of the community and public and private institutions and along with due respect for the interests of the victims. In this regard, the incentives, including fiscal incentives that the State can offer private businesses that actively participate in these plans can play an important role.

625. In the case of children, adolescents and young people released from prison, this assistance is even more necessary, as they are in the most productive stage of their lives and it is important to prevent recidivism.<sup>707</sup> Noting the importance of post-prison assistance for children and adolescents, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty states that: “[a]ll juveniles should benefit from arrangements designed to assist them in returning to society, family life, education, or employment after release. Procedures, including early release, and special courses, should be devised to this end.”<sup>708</sup>

626. Finally, the IACHR reiterates that work and education are economic, social, and cultural rights recognized for all persons at the Inter-American and universal level, and whose full effect the States have committed to gradually implementing to the maximum of their available resources.<sup>709</sup> Thus, the State is obligated to improve the situation involving those rights and, at the same time, to prohibit any reduction in the protection of those rights or their abolition without sufficient justification.<sup>710</sup> Indeed, this obligation translates into the State’s duty to adopt public policies aimed at steadily

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<sup>705</sup> IACHR, Press Release 76/11 - IACHR Recommends Adoption of a Comprehensive Public Policy on Prisons in Uruguay. Washington, D.C., July 25, 2011, Annex, para. 56.

<sup>706</sup> Standard Minimum Rules for the Treatment of Prisoners (Rule 64); and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 80).

<sup>707</sup> In this regard, the IACHR stresses that the objectives of sanctions on juvenile justice require the implementation of educational programs, including formal schooling, vocational training and work, and recreational and sports. This subject is extensively developed by the IACHR in its Report on Juvenile Justice and Human Rights in the Americas, OEA/Ser.L/V/II. Doc. 78, adopted on July 13, 2011, paras 474-517.

<sup>708</sup> Standard Minimum Rules for the Treatment of Prisoners (Rule 64); and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 80).

<sup>709</sup> On this matter, see, the Protocol of San Salvador (Articles 1, 6, 7 and 13) and the International Covenant on Economic, Social and Cultural Rights (Articles 2, 6, 7 and 13).

<sup>710</sup> IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.132 Doc. 14, adopted on July 19, 2008, para. 6

increasing the quality, availability, and scope of educational, cultural, and work activities designed to fulfill the purposes of sentences that deprive persons of liberty.

**B. Groups at particular risk or historically subjected to discrimination**

627. As already mentioned, the objectives of this report are to identify the main challenges to the OAS member States in respecting and guaranteeing the rights of persons deprived of liberty; reiterate and set the applicable standards for protecting those rights; and formulate pertinent recommendations for effective enforcement of those standards. Understandably, there are a whole range of fundamental issues that are addressed in the present report due to its scope and orientation.

628. These matters include but are not limited to: the excessive use of pretrial detention; isolation and the conditions of detention for persons deprived of liberty who are awaiting trial; judicial monitoring during execution of the sentence depriving a person of liberty; the right to consular assistance for the accused; conjugal visits; and particularly, the special obligations of the State to protect persons deprived of liberty who are at risk of experiencing violations of their human rights, namely: women, especially those who are pregnant or nursing; children; older persons; persons with disabilities; and lesbians, gays, bisexuals, and trans (LGTBI communities), who, taken as a whole represent a significant percentage of the population deprived of liberty in the Americas.

629. Therefore, given the importance and complexity of these issues, the Inter-American Commission on Human Rights and its Rapporteurship on the Rights of Persons Deprived of Liberty will explore these issues in future studies.

**C. Recommendations**

630. Concerning fulfillment by the States of the purposes of sentences that deprive persons of liberty, the IACHR recommends:

1. Adopting comprehensive prison policies geared to the personal rehabilitation and reintegration of convicts into society. A basic element of these policies should be opportunities for work, vocational training, and education for persons deprived of liberty, and the necessary human and financial resources should be allocated for their implementation.
2. Establishing nimble, equitable, and transparent mechanisms for the awarding of slots or places in educational, vocational training, and work programs. In this respect, the activity of the Technical Boards or Councils should be reviewed in order to adapt their capabilities to the needs of the prison population.
3. Adopting the legislative, institutional, and other measures necessary to guarantee effective judicial monitoring of the enforcement of sentences that deprive persons of liberty. In particular, judges that oversee the execution of sentences should be given the material and human

resources necessary to exercise their mandate under the proper conditions, including provision of the necessary means that allow them to visit regularly correctional facilities.

4. Adopting the measures necessary for providing public legal aid to persons serving their sentence who are in a position to request prison benefits.
5. Monitoring the activities and decisions of administrative and judicial authorities with respect to the assignment of work, vocational training, and education slots; the bestowing of prison benefits; and the adoption of decisions pertaining to the sentencing execution phase to prevent, investigate, and sanction any irregularities and corruption.
6. Guaranteeing that notification of release orders effectively reaches inmates or their legal representatives, and that they are immediately carried out. In addition, maintaining systems that make it possible to determine the potential existence of persons deprived of liberty who have already finished serving their sentence.
7. Setting up databases with personal and judicial information on all persons subject to criminal proceedings so that the information is easy accessible to the competent authorities and the families and legal representatives of the inmates.
8. Implementing post-prison follow-up and support programs for the reintegration of persons who have finished serving their prison term into society and family life. In this regard, the importance of coordinating these measures with existing community services and even the private sector should be borne in mind.