

Corruption in the prison context of the Republic of Panama

Technical Advisory Opinion No. 004/2013 addressed to the National Authority for Transparency and Access to Information and the General Office of the Penitentiary System of the Republic of Panama

**UNODC Regional Office for Central America and the Caribbean in Panama-
UNODC ROPAN
Criminal Justice and Prison Reform Team**

CONSIDERING THAT,

Resolution 51/12¹ of the United Nations Commission on Narcotic Drugs established the mandate of UNODC in the area of Criminal Justice and Prison Reform and the contents of the UNODC Thematic Programme on Crime Prevention and Criminal Justice Reform²;

the mandate of UNODC as the United Nations agency responsible for the implementation of the United Nations Convention against Corruption (UNCAC) based on operative paragraphs 8 and 9 of Resolution 58/43³ of the General Assembly of the United Nations that approved this international instrument;

the practices adopted by UNODC ROPAN consist of preparing Technical Advisory Opinions designed to solve specific technical questions of government officials, and collaborating in the formulation of public policies that are in line with international law, especially with international standards regarding human rights⁴;

and the queries formulated by the National Authority of Transparency and Access to Information and the General Office of the Penitentiary System regarding the causes, risks and effects caused by corruption in the prison context of Panama.

¹ UNODC. Resolution 51/12. Available in: <http://www.unodc.org/documents/commissions/CND-Res-2000-until-present/CND-2008-Session51/CND-51-Res-2008-12e.pdf> .

² UNODC. Thematic Programme on Crime Prevention and Criminal Justice Reform. Available in: http://www.unodc.org/documents/justice-and-prisonreform/20120702_Thematic_Programme_Crime_Prev_and_Criminal_Justice_2012-2015_FINAL.pdf .

³ UN. Resolution 58/4, 2003, p. 3. Available in: http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/04-56163_S.pdf.

⁴ UNODC ROPAN. Technical Advisory Opinion No. 003/2013, "Intimate visits to people deprived of liberty in Panama," April 26, 2013, p.1.

This Technical Advisory Opinion is presented with support from leaders of the National Authority of Transparency and Access to Information and the General Office of the Penitentiary System of the Republic of Panama to build a policy to combat and prevent corruption in the prison context, and to identify the most vulnerable procedures to corrupt practices within the country. The proposal of an anti-corruption strategy is based upon the legal framework of the Republic of Panama, comparative law and international law surrounding the issue. In this regard, the design of an Anti-Corruption Strategy in Panama, as recommended in this Opinion, is guided by lessons learned from the penitentiary best practices implemented in different United Nations Member States, particularly those within the Latin American region.

Moreover, according to the understanding of UNODC ROPAN,⁵ this paper aims to contribute in defining the scope and content of the standards set forth by international human rights law, while providing guidelines for the formulation of a prison policy in harmony with this particular branch of international law.

It is necessary to clarify that although this document has a similar content to those issued by International Courts in the exercise of their advisory jurisdictions, UNODC ROPAN, as an operational UN agency, does not seek to repeat or compete in any way with these courts.⁶ Contrary to the opinions issued by the courts which seek to answer the questions formulated by State Parties to a Convention (through the usual diplomatic channels), UNODC ROPAN seeks to answer a specific query in its mandated areas formulated by a State to aid in the design of public policies in line with international human rights law. It is noteworthy that the requests from governmental authorities do not need to respect a solemn formality. They need only to send an official letter addressed to UNODC ROPAN with the question and background which led to that question.

At certain points, however, the Technical Advisory Opinions issued by UNODC ROPAN resemble those of judicial bodies, especially in regard to the following basic principles:

i. Publicizing

Like the advisory opinions issued by international courts, the Technical Advisory Opinions issued by UNODC ROPAN are public documents. Otherwise, it would not be possible for the understanding implemented by this agency to effectively contribute to the interpretation of the overall norms of public international law. *As a result, no governmental authority can request the comments to be of a secret or confidential nature.*

ii. Authority to specify, clarify or reformulate the questions presented

⁵ UNODC ROPAN. Advisory Opinion No. 001/2013, "Clothes for people deprived of liberty in Panamá", February 18, 2013 p. 2, and Advisory Opinion No. 002/2013 "The use of electronic monitoring bracelets as an alternative measure to prison in Panama," March 18, 2013, p. 1.

⁶ UNODC ROPAN. Advisory Opinion No. 002/2013 "The use of electronic monitoring bracelets as an alternative measure to prison in Panama," March 18, 2013, p. 2.

Under this principle, it is worth bringing up the rationale adopted by the Inter-American Court of Human Rights in Advisory Opinion No. 87, 1986⁷: "[...] By the way a request was drafted, the Court in the exercise of its functions, according to Article 64 of the Convention, may need to define or clarify and, **in some cases, reformulate the questions received, in order to clearly determine what it is being asked (UNODC ROPAN emphasis added).**" Using this same understanding, UNODC ROPAN reserves the right to clarify or reformulate the issues presented by the governmental authorities. However, the goal will never be to enlarge or reduce the scope of the issue brought to the appreciation of this office, but to adapt these questions to the logical structure used in the Technical Advisory Opinions of UNODC ROPAN.

iii. Practical application of the Technical Advisory Opinions

The third principle governing the views developed by UNODC ROPAN is the result of a similar interpretation of the advisory jurisdiction of the Inter-American Court of Human Rights. In Advisory Opinion No. 9 1987,⁸ the international court understood that requests for reviews cannot be merely academic speculations "[...] without an application to specific situations which justify the interest in the opinion of the Court." In this context, UNODC ROPAN recalls that its Technical Advisory Reviews seek to support the state authorities in the design of specific policies and have no vocation to answer an academic question without practical application.

1. MATTER OF PRIOR CONSIDERATION

1.1 The definition of the term "corruption".

Controversies about the word "corruption" have led experts to draft the UN Convention against Corruption without introducing a legal definition. As a result, the binding international law (international hard law) provides no positive definition of this concept. However, several international organizations have been dedicated for a long time⁹ to the task of defining corruption. The World Bank, for example, defines this phenomenon as "[...] the abuse of public power for private benefit".¹⁰ In the field of international law, a first attempt of definition can be extracted from the Code of Conduct for Law Enforcement Officials, approved by Resolution 3218 (XXIX)¹¹ of the UN General Assembly, which in Article 7.b states:

Article 7. (B) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance or in connection with one's duties, in response to gifts, promises or

⁷ Inter-American Court of Human Rights. Advisory Opinion No. 87 of August 29, 1986. Available in: http://www.corteidh.or.cr/docs/opiniones/seriea_07_esp.pdf.

⁸ *Ibidem*. Advisory Opinion No. 9 of 1987. Available: <http://biblio.juridicas.unam.mx/libros/5/2200/48.pdf>.

⁹ Discussions on the issue within the United Nations began in the early 1970s.

¹⁰ More information available at: <http://web.worldbank.org/>.

¹¹ UN. Resolution 3218. Code of Conduct for Law Enforcement Officials. Available at: <http://www.un.org/disarmament/convarms/ATTPrepCom/Background%20documents/CodeofConductforLawEnfOfficials-E.pdf>.

incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

As well as the already mentioned Code of Conduct, several both nationally and internationally non-binding legal instruments were approved to fight against corruption by the Member States¹².

However, it was the Seventh Congress of the United Nations on Crime Prevention and Treatment of Offenders, held in Milan, Italy, in 1985, which concluded that corruption has become an “[...] inevitable component of public administration”¹³. On this occasion, corruption was identified for the first time in an international context as undermining the credibility of governments and affecting public confidence in them, thus creating an alarming cynicism and opportunism among citizens.

More recently, the United Nations Commission for Human Rights in its commentary on "Corruption and its impact on the full realization of human rights, particularly economic, social and cultural aspects"¹⁴, 2003, concluded that:

[...] Corruption [...] can be defined in a broad sense to reflect the various dimensions that corrupt practices may make. It can also be defined in a more limited sense with a specific focus on certain expressions of corruption, such as the fraudulent acquisition by individuals or groups of individuals who take advantage of their privileged positions in the national political scene for their own enrichment, or at the international dimension such as criminal organizations who engage in money laundering regarding large sums of money coming from arms trafficking, drugs trafficking, human trafficking, terrorism, etc. [...]

It is noteworthy that although Article 2 of the UN Convention against Corruption is silent regarding the concept of the term corruption, important indications of the possible definitions of this term are drawn from the *travaux préparatoires* of the Convention. One of the proposals drafted by the Sub-Rapporteur of the first chapter of the Convention which was supported by the delegations of Azerbaijan, China, Slovenia and Ukraine¹⁵ was:

"Corruption" is the promise, request, offer, delivery or acceptance, directly or indirectly, of an undue advantage or the possibility to obtain it which distorts the proper

¹² An example of this non-binding international law (international soft law) approved by the UN General Assembly Resolution 51/191 is the United Nations Declaration against Corruption and Bribery in International Trade in December 1996.

¹³ UN. Seventh United Nations Congress on Crime Prevention and Treatment of Offenders, 1985 A / CONF.121 / 20 / Corr.1. Available at: http://www.asc41.com/UN_congress/7th%20UN%20Congress%20on%20the%20Prevention%20of%20Crime/027%20ACONF.121.20.Corr.1%20New%20Dimensions%20of%20Criminality%20and%20Crime%20Prevention%20in%20the%20Context%20of%20Development.pdf.

¹⁴ CDHNU. E / CN.4 / Sub.2 / 2003/18. May 14, 2003, p. 3. Available at: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G03/142/76/PDF/G0314276.pdf?OpenElement>.

¹⁵ UNODC. Travaux préparatoires of the UN Convention against Corruption, p. 31 Available at: http://www.unodc.org/documents/treaties/UNCAC/Publications/Travaux/Travaux_Preparatoires_-_UNCAC_S.pdf.

performance of any duty or behavior required for the recipient of the bribe, the undue benefit or the possibility to obtain it.

While many other delegations also presented definitions of the term, most of them divergent, the suggestion of the Colombian delegation not to include an explicit definition of corruption in this international instrument due to lack of consensus was accepted. Instead, "[...] the Convention [proposed to] identify and penalize corruption in the chapter on criminalization"¹⁶. As a result, Article 15 of the Convention¹⁷ was drafted in the following terms:

Article 15. Bribery of national public officials

Each State Party shall **adopt** legislation and other measures that may be necessary to establish criminal offences when committed intentionally:

- (a) A promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the benefit of the official or for another person or entity, so that an official act or refraining from such act was the exercise of his or her official duties;
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refraining from an act was an exercise of his or her official duties (**underlined by UNODC ROPAN**).

At the regional level, the Inter-American Convention against Corruption which was adopted within the Organization of American States in 1996 is the most important legal instrument in this field. The article covering definitions of different terms does not offer a definition of corruption. However, it is important to note that Article VI of the Convention provides important definitions of "acts of corruption", *in verbis*:

Article VI

Act of Corruption

1 This Convention is applicable to the following acts of corruption:

- a. The solicitation or acceptance, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other benefit, favor, promise or advantage for himself or for another person or entity in exchange the performance or omission of any act in the performance of his public functions;
 - b. The offering or granting, directly or indirectly, to a public official or a person who performs public functions, of any article of monetary value or other benefit, favor, promise or advantage for himself or for another public official person or entity exchange for the performance of any act or omission in the performance of his public functions;
- [...]

The articles of these international agreements have been translated into the law of Panama for the content of Articles 345 and 347 of the Criminal Code of the Republic of Panama¹⁸, as follows:

¹⁶ *Ibidem*, p. 31.

¹⁷ UNODC. United Nations Convention against Corruption. Available at: http://www.unodc.org/pdf/corruption/publications_unodc_convention-s.pdf.

¹⁸ Republic of Panama. Criminal Code. Available at: http://www.oas.org/juridico/mla/sp/pan/sp_pan-int-text-cp.pdf.

Article 345 – Any public official shall be punished with the imprisonment of two to four years who, personally or through another person, engages in the following conduct:

1. Accepts, receives or requests a gift, promise, money or any other benefit or advantage, to perform, delay or omit an act in violation of his obligations, or who accepts them as a result of not acting according to them.
2. Accepts, receives or requests a gift, promise, money or any other advantage or undue benefit to perform an act of his office or employment, without breaching his obligations, or as a result of the act already performed.

Article 347 - Whoever, in any form, offers, promises or gives to a public official a gift, promise, money or any benefit or advantage to perform, delay or omit any act of his own office or employment, or in violation of his duties, shall be punished with the imprisonment of three to six years.

Regarding the criminalization of bribery (one of the most important and obvious forms of corruption), it is important to note that there are two specific behaviors susceptible to criminalization: one by the public official (accept or request) and another by the individual who interacts with the public official (offer). Therefore, the law of the Federal Republic of Brazil¹⁹ can be taken as an example from the Latin American region as it separates the two offences into two different types- passive and active corruption:

Passive corruption

Art. 317 – To request or to receive by himself or by others, directly or indirectly, including outside the function or before taking it, to obtain an undue advantage or accept a promise of such advantages:

Penalty - imprisonment of two (2) to twelve (12) years and a fine.

§ 1 - The penalty is increased by one third if, as a result of the advantage or promise, the employee slows or ceases to perform any official act or practice violating official duties.

§ 2 - If the practice of employees diminishes or prevents an official act in violation of official duties, giving the orders or exercising influence over the others:

Penalty - imprisonment of three months to one year or a fine.

Active corruption

Art. 333 – To offer or to promise an undue advantage to a public official to induce him to practice, omit or delay any official act:

Penalty - imprisonment of two (2) to twelve (12) years and a fine (Modified by Law No. 10.763 of 12/11/2003).

Sole Paragraph - The penalty will be increased by one third if, because of the advantage or promise, the employee delays or omits an official act or practice violating official duties.

Having said that, UNODC ROPAN believes that although the concept of corruption must be addressed by each country in the exercise of its sovereignty, it is necessary that Member States at least adopt in their national legislature, criminal laws classified as of mandatory nature by the international agreements on the subject, such as bribery (active

¹⁹ Federative Republic of Brazil. Criminal Code. Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848.htm.

and passive mode). The criminalization of this behavior will have a particular impact on the development of policies to combat corruption in the prison system.

In addition, UNODC ROPAN believes that, apart from developing definitions of the term "corruption", it is necessary for governments and international organizations to establish in their internal policies links between corruption and gross violations of human rights, an issue which will be discussed in the next sub-item.

1.2 Links between corruption and gross violations of human rights

The link between corruption and human rights is easily identifiable, although international instruments covering both issues are not directly related. In an unprecedented publication, the International Council on Human Rights Policy found that "Corruption violates the human rights of those who harm and have a disproportionate impact on people belonging to particularly vulnerable groups (e.g. [...] prisoners and the poor)."²⁰ Similarly, UNODC has established that corruption is a crime against development because being a phenomenon deeply rooted in cultural elements it "[...] hinders economic growth and the improvement of the living conditions of the poorest people."²¹ This phenomenon reduces investment opportunities, and diminishes the attraction of societies and its economies for private sector investment and international cooperation, which creates a problem for developing countries.

In this context, UNODC also concluded that corruption is a crime against prosperity, since it "[...] is an obstacle to peace, stability, sustainable development and [to] democracy [...]." Another important conclusion is that corruption is particularly harmful for justice considering it has its roots in the lack of good governance practices, and finds a place in non-transparent governments. As it adversely affects the credibility of court proceedings, corruption serves to ensure impunity and protect the misuse of public resources, since societies suffering from endemic corruption completely lack the principles of good governance and accountability in governance.²²

The term accountability does not appear in any of the most important conventions and treaties on Human Rights.²³ However, this is an essential concept (and largely unexplored) to demonstrate the strong links between corruption and gross violations of human rights. The word, difficult to translate to Latin languages, gained special significance in the debate on the effectiveness of the Millennium Development Goals of the United Nations. In a joint publication of the Office of the High Commissioner for Human Rights and the Centre for Economic and Social Rights, titled "The Millennium

²⁰ ICHRP. Corruption and human rights. p. 7 Available at: http://www.ichrp.org/files/reports/40/131_web.pdf.

²¹ UNODC. Topics related to corruption. Available at: <http://www.track.unodc.org/CorruptionThemes/Pages/home.aspx>

²² *Ibidem*.

²³ OHCHR. The Millennium Development Goals: Who's accountable?. p. 5 Available at: http://cesr.org/downloads/OHCHR%20and%20CESR%20Expert%20Mtg%20Background%20doc_28%20Oct_final.pdf?preview=.

Development Goals: Who's accountable?"²⁴, the concept of accountability in the context of human rights was transcribed as:

“Accountability embodies in one word (at least in English) a central concern of human rights: **to regulate the exercise of power and ensure that those who wield power are answerable to those who do not.** From a human rights perspective, the relevance of the concept of accountability lies in its potential to **transform the asymmetrical relationship between those who exercise power and those on whose behalf it is exercised.** In the development context, a central feature of accountability from a human rights perspective is therefore that it converts passive beneficiaries of development efforts into **—rights-holders** and identifies states and other actors as **—duty-bearers** who can be held responsible for the discharge of their legal (not merely moral) obligations” (**underlined by UNODC ROPAN**).

Therefore, States are obliged to protect the minimum rights enshrined in the international treaties and avoid any violation against these rights: violations that may result from its direct action (with special attention regarding actions of corrupt public officials), or the inability to protect third parties from violating the minimum rights of citizens.

UNODC ROPAN is aware that corrupt practices can take many forms. For example, the diversion of funds originally addressed to public policies or social programs might be in violation of the rights of the people who do not receive these benefits and have no access to such rights. For this reason, Resolution 7/11 of the United Nations Human Rights Council,²⁵ in relation to the role of good governance in the promotion and protection of human rights, has recognized that the fight against corruption at all levels is essential for the protection and promotion of human rights and for building a favorable environment for their realization (especially for the rights of progressive realization). In relation to this understanding, the United Nations Commission on Human Rights²⁶ has also concluded that “[...] [c]orruption creates poverty, which in turn leads to the denial of economic, political, social, civil and cultural rights.”

Hence, the links between corruption and human rights cannot be clearer: diversion of funds which should contribute to finance basic public services such as education, security public and prison systems reduces the quality of public institutions and thus undermines the quality of the services provided. The result will always be the violation of one or more of the rights guaranteed by international instruments.

Regarding the rights of people deprived of liberty, it is important to note the contents of Article 10.1 of the International Covenant on Civil and Political Rights and Article 5.2 of the American Convention on Human Rights, which respectively state that:

Article 10.

²⁴ *Ibidem.*

²⁵ United Nations Human Rights Council. Resolution 7/11. Available at: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_11.pdf.

²⁶ United Nations Commission on Human Rights. Resolution 7/11. Available at: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_11.pdf.

1. All people deprived of their liberty **shall be treated with humanity and with respect for the inherent dignity of the human person (underlined by UNODC ROPAN)**.

Article 5. Right to Humane Treatment

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All people deprived of their liberty **shall be treated with respect for the inherent dignity of the human person (underlined by UNODC ROPAN)**.

The jurisprudence of the Inter-American Court of Human Rights interprets in the scope of the cited articles that all basic rights are guaranteed to people deprived of liberty, which are mostly consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The fulfilment of these rights and therefore of the Minimum Rules is obviously conditional to the adequate investment of public resources in order to provide the necessary support in the establishment for adequate space for each detainee, and allow them access to a balanced diet, quality health care, as well as educational and recreational programmes, etc.

In a rather perverse way, corruption can prevent public funding for prison systems from reaching their destination, which limits the exercise of the rights guaranteed to people deprived of their liberty established by the minimum standards of the international law of human rights. At another level, corruption practiced directly by prison officers can lead to abuses resulting in the prominence of certain groups of inmates at the expense of vulnerable inmates. These situations are considered more deeply in the following item of this Opinion.

Based on the above, **UNODC ROPAN IS OF THE OPINION** that corrupt practices at all levels lead to a direct violation of the rights guaranteed by international human rights instruments, especially for the vulnerable people, such as detainees. For this reason, UNODC ROPAN urges States to establish the link between corruption and human rights in its policies and legal systems, seeking the application of the principles of good governance, transparency and accountability, as will be discussed throughout this document.

2. CORRUPTION IN THE PRISON CONTEXT

The Inter-American Commission on Human Rights (IACHR) recently noted that "[...] prisons and detention centres have become areas of complete lack of supervision and control because arbitrariness and **corruption have traditionally prevailed**"²⁷ **(underlined from UNODC ROPAN)**. This regional organization highlighted in the "Report on Human Rights of People Deprived of Liberty in the Americas"²⁸ of 2011, that the lack of control by state authorities in prisons:

²⁷ IACHR. Presentations from the second regional seminar on best prison practices. Available at: <http://www.oas.org/en/iachr/pdl/docs/pdf/2nd.SeminarPPL.pdf>

²⁸ IACHR. Report on the Human Rights of People Deprived of Liberty in the Americas. p. 33. Available at: <http://www.oas.org/es/cidh/ppl/docs/pdf/PPL2011esp.pdf> 2011.

[...] can lead to really serious and complex situations, in which it is impossible for the custodial penalty to fulfil its purposes. Prisons have then become, as it was already said by IACHR, "**schools for crime and antisocial behaviour leading to recidivism instead of rehabilitation**", and a places where the human rights of prisoners and their families are systematically violated, especially of those in vulnerable conditions (**underlined ROPAN UNODC**).

For this reason, it is important to know the main causes and consequences of acts of corruption in the context of the prison system. Therefore, it is possible to identify the areas which are more susceptible to corruption and ultimately offer possible recommendations for the development of anti-corruption policies, with special attention to the prison context in the Republic of Panama.

2.1 Causes of corruption in the prison context.

Prisons are institutions particularly susceptible to corruption. The lack of transparency, connections to organized crime groups and lack of social interest are the perfect ingredients to make this an endemic problem in most prison systems in Latin America and the world. One of the diagnoses proposed by key UK public sectors was published by Transparency International and revealed "[...] that corruption in the prison system is more widespread and entrenched than it is recognized officially."²⁹

The United Nations Commission for Human Rights concluded that the main causes of corruption in the public sector are: (a) dictatorships and the lack of democracy, (b) impunity, (c) widespread poverty, (d) greed and materialism, (e) cultural backwardness and moral decline.³⁰ Further exploring the causes of this phenomenon, the article published by the International Monetary Fund called "Corruption around the world: causes, consequences, scope and cures"³¹ describes the main social, cultural and political factors that contribute to the existence of corruption. These include:

1) **Poor quality of bureaucracy:** this factor is related to the concept of the ideal Weberian bureaucracy, particularly with regards to ensuring fairness in the public service. Studies show that the more meritocratic (and therefore less staffed) the bureaucracy is, the lower the chances are of corrupt practices during the process of recruitment and promotion of civil servants.³²

2) **Low salaries of public officials:** some studies have shown a relationship between the number of cases of corruption and wages of civil servants, concluding that lower wage levels are associated with increased incidence of corruption cases.³³ On the other hand, the doctrine states that the policy of fighting against corruption just based on pay rises for public servants is very expensive and inefficient. Thus, to minimize the level of corruption, states would need to make a significant wage increase, that is, small

²⁹ International Transparency. Corruption in the UK. Available at: <http://www.transparency.org.uk/our-work/publications/10-publications/92-corruption-in-the-uk-part-two-assessment-of-key-sectors>.

³⁰ United Nations Commission for Human Rights. E / CN.4 / Sub.2 / 2003/18. May 14, 2003.

³¹ IMF. Corruption around the world: causes, consequences, scope and cures. Available at: <http://www.imf.org/external/pubs/ft/wp/wp9863.pdf>.

³² Rauch and Evans. Bureaucratic structure and bureaucratic performance in less developed countries. 1997.

³³ Rijckeghem and Weder. Corruption and the rate of temptation: do low wages in the public service cause corruption? 1997.

increases of wages which in the end are not effective in the fight against corruption. Some critics even suggest that increasing wages tend to decrease the number of corruption cases, but increases the value of these illegal transactions.

3) **Low probability of penalty:** This argument is based on the classical theory of Gary Becker about the possible influence between bribery and the risk of punishment. Some critics indicate that the result of an anti-corruption policy based on increasing penalty would have the same effect as the wage rise policy for public officials: increasing the risk of penalty would only serve to increase the value of corrupt transactions.

4) **The absence or malfunction of controlling bodies:** one particularly important aspect to ensure the promotion of the principles of transparency and accountability is the existence of effective control mechanisms for the acts of public administration. Among the leading theorists on the subject, the author Guillermo O'Donnell formulated the classical geometric theory of vertical *accountability* and horizontal *accountability*. The first one has its main control mechanism in the electoral process. The horizontal *accountability* is based on *checks and balances* between the different powers, and on the work of various internal control bodies of the public administration. When these controlling bodies do not fulfil their role, the risk of punishment for corrupt practices is basically non-existent.

5) **Bad examples by officials and leaders of the public administration:** in this specific point, most scholars argue that when political leaders do not provide a good example in the fight against corruption, the trend is for their subordinates not to act differently.

Considering those factors which contribute to the spread of corruption in the public administration in general, UNODC ROPAN will analyse the causes of corruption in the specific prison context of the Republic of Panama, whose problems are very similar to those of the prison systems in other developing and middle-income countries of the region.

a) Cultures favourable to corruption in the prison system

The first point to consider is that Panama, like other Latin American countries, has a culture particularly favourable to the proliferation of corrupt practices. Historical factors and culture, fuelled by a markedly unequal society³⁴, may be the key to understanding the high level of tolerance for corruption in Latin American societies. Proof of this is the poor performance of the countries in the region in various indices that measure the perception of corruption worldwide.

Noteworthy is that the Republic of Panama already has significant progress in creating a culture of anti-corruption. Among them can be mentioned the ratification of international instruments against corruption under the UN Convention against Corruption; the adoption of the Law No. 6 of 2002, called the Transparency Law; the establishment in Panama City of the headquarters of the Regional Anti-Corruption Academy (ARAC) funded by the Government of Panama and implemented by UNODC ROPAN; as well as the country's participation in the Alliance initiative for Open Government (Open Government

³⁴ The Gini coefficient of Panama is 51.9 according to the World Bank, and was therefore considered a more unequal country than several countries in the region Latin. More information at: <http://datos.bancomundial.org/indicador/SI.POV.GINI/countries/all?display=default>.

Partnership). It should be noted, however, that these developments contribute only in the medium and long term in creating a culture of anti-corruption.

On the other hand, representing one of the public services most neglected by civil society, and with a tangible connection to organized crime, prison systems are areas where the culture of corruption has the perfect ingredients for development. Moreover, corruption remains a taboo subject in the prison system. It is easy to see that this matter is reluctantly dealt with and there are no studies that diagnose the problem within the sector, nor a methodology to be applied periodically to measure the consequences of this phenomenon by the General Office of Prisons.

However, it must be remembered that the transformation of this culture is linked to the development of a comprehensive policy that takes into account other factors that are discussed below.

b) The salaries, hiring and training of prison staff

As noted above, only a part of the doctrine agrees that there is a direct relationship between wage levels in the public service and the number of corruption cases. UNODC ROPAN believes that although the low level of wages cannot be considered the only factor causing corruption in the prison system, this is definitely an ingredient that contributes to the system's vulnerability to corrupt practices. Furthermore, it should be noted that many of the detainees are likely to maintain strong links with organized crime and thus have easy access to finance illegal trade in drugs, weapons, etc. Therefore, it is not difficult for these detainees to obtain illegal benefits from the custodians.

In the case of Panama, according to the website of the General Office of the Penitentiary System, the average salary of the prison staff is USD 524.26³⁵. It is possible to verify then that this amount is well below the average salary of other public agencies working within the criminal justice system. Employees of the Public Ministry of Panama, for example, earn an average salary of USD 1,004.08,³⁶ while the average salary of National Police Agents amounts to USD 690.00³⁷. Also, when comparing similar functions between the General Office of the Penitentiary System and other public bodies, the situation is troublesome. The office of "Attorney I", for example, receives an average of USD 1,031.31³⁸ in the Judiciary of Panama, while for the same function the salary is USD 800.00 for the General Office of the Penitentiary System.

Another important aspect related to human resources of the prison system is the need to strengthen the training courses for prison staff through the Prison Training Academy. UNODC ROPAN considers positive all the efforts made so far by the Government of

³⁵ According to information from the General Office of the Penitentiary System

³⁶ Public Prosecutor of Panama. Transparency. Available at: <http://www.ministeriopublico.gob.pa/minpub/transparencia>.

³⁷ The General Controller of the Republic. Transparency. Available at: http://www.contraloria.gob.pa/archivos_planillagub/Index_planillagub3.asp.

³⁸ Judiciary of Panama. Transparency. Available at: <http://www.organojudicial.gob.pa/busqueda-en-planilla/>.

Panama, including the reopening of the Prison Training Academy supported by the Project "Supporting Prison Reform in Panama" developed by this Office of the United Nations. However, the Academy must ensure that the problem of corruption is treated transversely in the training of prison staff.

At the same time, UNODC ROPAN notes that the Government of Panama should promote the creation of a prison officer position that establishes objective criteria for hiring and promoting prison officials. The lack of a position can generate not only a lack of commitment by the officials of the institution, but also high rotation among prison staff, hindering the necessary continuity to ensure the technical quality of public administration.

c) Low level regulation of basic procedures and high discretion of officials

By analysing the prison regulations of Panama, it is possible to verify that many of the processes for granting benefits and rights for the people deprived of liberty are subject to a high discretionary power by officials of the prison system due to the lack of specific regulations. The lack of procedures with pre-adopted norms and the scarcity of resources in the prison system, would suggest that corruption might be a way to access some of the benefits or rights granted to detainees. This is a matter of particular concern to UNODC ROPAN who has already warned about the likelihood of corruption in the processes for granting benefits without protocols (Technical Advisory Opinion No. 003/2013).

It is important to emphasize that the prison system does not have a computerized system yet to provide direct access to information on the processes for granting rights and benefits for people deprived of liberty³⁹. As a result, those rights that have already established procedures and protocols for their granting are not properly published.

Some authors point out that mere legislation is not sufficient to prevent corrupt practices. Hence, the function of the mechanisms of control and transparency in each of the procedures for granting rights or benefits is very important.

d) Low level of punishment and few mechanisms for internal and external control

According to information from the General Office of the Penitentiary System of Panama, in the first five months of 2013, 82 public officials of the prison system have been sanctioned for corruption while only 24 officers have been dismissed. Overall, it is emphasized that most of the Latin American countries do not have the needed mechanisms for internal or external control in their prison systems. The lack of oversight by different bodies ensures a high level of impunity and tolerance of corruption in different countries of the region. However, the numbers presented by the Panamanian government show that the country is working to ensure that corruption in prisons is duly

³⁹ The lack of systems that use appropriate technology to ensure free access to public information, confidence and quality has motivated the Regional Congress for Prison Reform in Latin America organized in 2013 by the Inter-American Development Bank (IDB). More information at: <http://events.iadb.org/calendar/eventDetail.aspx?lang=Es&id=4066>.

punished. UNODC ROPAN encourages the Panamanian State to give continuity to this policy, further strengthening the existing control mechanisms of the General Office of the Penitentiary System.

2.2 Main corrupt practices in prisons.

As mentioned above, UNODC ROPAN claims that there are several corrupt practices. Analysing the main types of corruption affecting public service in general, the United Nations Commission on Human Rights has identified the following key behaviours: (a) misappropriation of funds and assets illegally sent abroad, (b) misappropriation of public funds, (c) money laundering, (d) bribery, and (e) abuse of power. The doctrine has designed an even more extensive classification of the possible manifestations of this phenomenon.

In addition to the above practices generally affecting the public administration, prison systems, both in Panama and other states, are often affected by other more specific types of corruption. According to the organization Transparency International,⁴⁰ "[...] corruption in prisons is strongly related to **trafficking drugs and products such as cell phones (underlined by UNODC ROPAN).**" Alcohol and cigarettes are also on the list of products subjected to increased smuggling in prisons worldwide.

However, according to Amnesty International, there are two ways commonly used by organized crime to corrupt prison officers: manipulation (when criminal groups use threats or intimidation to take advantage of prison staff) and infiltration (when custodians working directly for criminal organizations temporarily infiltrate the public service). In this regard, it is noteworthy that the existence of a prison officer position could prevent the occurrence of these phenomena.

Having briefly reviewed the main causes and forms of corruption affecting the prison system, it is worth bringing up the larger implications of this phenomenon for the prison system as it will be analysed in the next item.

2.3 Consequences of corruption.

It is clear that corruption leads to the violation of various rights guaranteed to detainees by international human rights instruments and prevents the implementation of the Standard Minimum Rules for the Treatment of Prisoners. However, there are some particularly disturbing manifestations of corruption in the prison system, and the largest and most extreme of all, is the formation of self-government within the prisons. Although the existence of this phenomenon has not been registered in the Republic of Panama, the growth of organized criminal groups' activities can lead to the creation of the perfect situation for the reproduction of this complex problem in the country's prisons, as in other countries of Central America, especially Honduras, Guatemala and El Salvador.

⁴⁰ Transparency International. Corruption in the UK . Available at: <http://www.transparency.org.uk/our-work/publications/10-publications/92-corruption-in-the-uk-part-two-assessment-of-key-sectors>.

The Subcommittee for the Prevention of Torture (SPT) of the United Nations carried out a visit in 2010 to Honduras, finding a connection of corruption and state chaos in two important prisons in Honduras: Marco Aurelio Soto Penitentiary in Tegucigalpa and the San Pedro Sula. The report published by the Subcommittee⁴¹ and mentioned by the Report of the Inter-American Commission on Human Rights of 2011, notes that:

The SPT noted that the limited personnel assigned to both centres [...] leads to a situation of self-government through the figures of "coordinators" and "sub-coordinators" adopted by prisoners who act as intermediaries between the authority and the rest of the prison population. [...] Through interviews with detainees, the Subcommittee learned that the coordinators and sub-coordinators have control over the order and allocation of space inside each pavilion. This was accepted by the official interviewed, who also said he never enters into certain pavilions such as the ones where gang members stay.

A sophisticated system of corruption "that includes procedures, stages and periods" was also observed. Inmates pay up to 25,000 "lempiras" for access to "VIP" areas in prison. The conclusion of SPT⁴² was incisive:

[...] **the phenomenon of corruption plays a fundamental role in the occurrence of torture and ill-treatment.** Inmates enter the system of corruption under coercion and they do so not to suffer abuses. Corruption permeates the prison system and involves all stakeholders: prison staff, inmates and outsiders. Corruption discriminates against the defaulted and places him in a position of extreme vulnerability, and defines a system of relations in which every aspect of daily life is subject to a financial transaction. If inmates do not engage in this behaviour, they will be obliged to stay in places where lives and safety are seriously endangered (**underlined by UNODC ROPAN**).

UNODC ROPAN notes that the occurrence of certain phenomena such as self-government, either by action or inaction of the prison guards, may have a particularly negative impact on the rights of the vulnerable prison populations. Moreover, in addition to self-government, it is important to illustrate that corruption generates a feeling of distrust between citizens and can feed a vicious circle in which the violation of the rights of people deprived of liberty promotes violence and can lead to the failure of the criminal justice system.

2.4 Procedures vulnerable to corruption in the prison context.

Once the main causes and consequences of corruption in the prison system are clarified, UNODC ROPAN will identify, using its perception and experience, the procedures vulnerable to corruption in this area. This vulnerability mapping, however, cannot be considered exclusively by the Government of Panama and UNODC ROPAN remarks the importance for the General Office of the Penitentiary System to be provided with a specific methodology to diagnose the problem of corruption within the prison context.

⁴¹ SPT. Report on the visit to Honduras by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading. Available at: www2.ohchr.org/.../CAT-OP-HND-1_sp.doc.

⁴² *Ibidem*.

2.4.1 Procedures for granting rights to people deprived of liberty

Articles 68 and 69 of Law No. 55, which reorganizes the penitentiary system of the Republic of Panama, provides a number of rights and benefits to people deprived of liberty in the country. Access to these rights, however, is subject to procedures which in many cases are not properly regulated by the Executive Decree No. 393 of 2005.

Based on the content of the Technical Advisory Opinion No. 003/2013 on access to the right to conjugal visits to people deprived of liberty in Panama, UNODC ROPAN has identified that this process lacks specific regulation particularly for the request of intimate visits by vulnerable inmates. This situation, added to the lack of specific spaces for granting such visits, could lead to the formation of a "market for private visits," where detainees need to pay "fees" to corrupt officials to obtain this right.

UNODC ROPAN notes that the occurrence of this extreme situation has not been proven in the Panama prison context, however this can still be considered as a constant threat to the directors and officers of the prisons across the country.

Moreover, as noted above, the mere drafting of rules for granting these rights would not be enough, it is necessary to design alternatives that facilitate access to information by the general public (especially by the family of women prisoners) about the requesting protocols and the reasons occasionally used to deny access to these rights by the prison administration. Such efforts of transparency in the requesting process, combined with control mechanisms and the proper work of an ombudsman could contribute to reducing the risks of corruption and grant rights to the prison population.

2.4.2 Weaknesses in the safety procedures and the entry of prohibited items in prisons

Cigarette, drugs, weapons and cell phones smuggling in prisons is not a unique problem of the Republic of Panama, even though this is a particularly important challenge for the country. The entry of these items occurs usually through visitors of the detainees and prison officials.

The principal safety measure used to avoid this problem is to conduct searches. Articles 104 to 107 of Law N ° 55 of the Republic of Panama regulate these procedures which need to be carried out "[...] **in all people entering a correctional facility (underlined UNODC ROPAN)**". Also, the final part of Article 105 of Law 55 states that the search: "[...] shall be made by an official of the same sex and the person must never be forced to be strip searched".

When performing a literal interpretation of the law of Panama, it shows that all people entering a prison must go through a search. It is therefore necessary for the General Office of the Penitentiary System to design a policy that considers different levels of searches according to the degree of risk of the visitor or officer.

As for the method used in conducting the seizure, UNODC ROPAN notes that Panamanian law is consistent with international human rights standards in relation to the limits of public authority. However, it is important to note that in many countries in the region, the lack of regulation of this process has led to many abuses by the government, especially against women. The main problem with such safety measures is that, according to Zaffaroni,⁴³ the authority "[...] that considers the appropriateness of this measure will always have the possibility for invoking the need for greater security." For this reason, the Inter-American Court of Human Rights ruled in the sense that the state power should always be limited by written law. On this subject it is worth knowing the opinion of this body:⁴⁴

Therefore, the protection of human rights requires that state actions that affect basic rights are not left to the discretion of the government, but they need to be surrounded by a set of guarantees intended to ensure that the inviolable rights of people are not violated [...].

The Colombian jurisprudence can also be taken as an example in this regard. The Constitutional Court of the Republic of Colombia⁴⁵ decided that:

Although the State has a duty to make reasonable searches, the Court is bound to recall that in the realization that these fundamental rights must be respected both for detainees and visitors and that any action that constitutes an abuse, including disqualifying or degrading treatment, which harms the physical and mental integrity of people and human dignity is prohibited.

From the international law perspective, the United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (the 'Bangkok Rules'), asserts unequivocally that inspection methods and searches must respect the fundamental rights of dignity and privacy:

Rule 20

Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

Rule 21

Prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.

Specifically about possible vaginal searches for inmates and visitors, the Inter-American Commission on Human Rights adopted the following position in its report 38/96 Case 10.506⁴⁶:

⁴³ ZAFFARONI, Eugenio Raúl. El enemigo en el derecho penal. Rio de Janeiro: Revan, 2007, p. 222.

⁴⁴ Advisory Opinion OC-6/86 of 9 May 1986, Series A, No. 6, paragraph 22.

⁴⁵ Constitutional Court of the Republic of Colombia. Decision T 0462 2009 Available at: http://juriscol.banrep.gov.co/contenidos.dll/Jurisprudencia/CorteConstitucional/2009/t_0462_2009__corte%20constitucional%20-%20original

73. The Commission believes that such a procedure must not be carried out unless it is absolutely necessary to achieve the security objective in the particular case. The requirement of necessity implies that inspections and searches of this kind should only be applied in specific cases where there is reason to believe either in the existence of a real threat to security or that the person in question may be carrying illegal substances [...].

74. The Commission considers that the practice of vaginal inspections and searches, and the consequent interference with visits, must not only satisfy an imperative public interest, but also that "if there are various options to achieve this objective, that which least restricts the right protected must be selected."

Therefore, UNODC ROPAN believes that while performing the necessary searches to visitors and staff entering prisons, public authorities must respect the fundamental rights of dignity and privacy of these individuals. For this reason, UNODC ROPAN recommends States to adopt standard protocols for searches for different levels of risk in accordance with safety norms and international standards of human rights.

2.4.3 Contracting processes with the private sector

Contracting processes with service providers are also particularly suitable for corruption practices. For this reason, states often adopt strict laws regarding public tenders. In this context, specifically analysing the case of the prison system, hiring firms to provide food services may represent one of the biggest vulnerabilities.

UNODC ROPAN considers it important that the process of hiring these companies is done in the most transparent way possible with the use of information technology in accordance with the standards established by Law No. 6 of 2002 (Transparency Act), and compliance with current standards in the legal system of the Republic of Panama.

3. ANTI-CORRUPTION POLICY

Considering the topics discussed in item 2 of this Opinion, UNODC ROPAN will recommend anti-corruption policies aimed at the Penitentiary System of the Republic of Panama.

In order to systematize the recommendations in the simplest possible way, the structure referred to in sub-item 2.1 will be used, giving recommendations for each of the four specific causes of corruption identified in the prison context. Therefore, UNODC ROPAN will address the good practices that are already being implemented by the State of Panama and other countries within the region.

3.1 Changing to a culture of zero tolerance against corruption in the prison system

⁴⁶ IACHR. Report No. 38/96. Case 10.506. Available at: <http://www1.umn.edu/humanrts/cases/1996/argentina38-96.htm>.

A first step in the fight against a favourable culture to corruption is to develop awareness campaigns warning of the existence of this endemic problem. In this regard, UNODC ROPAN, through the Project "Supporting Prison Reform in Panama," launched in 2012 the campaign "*No corruption in the prison system*" to make detainees and their families aware that no service or right provided by Act No. 55 involves any cost.

However, a true policy to fight against corruption must begin with the application of a methodology to assess the situation of corruption within the prison system. A good foundation for the development of this methodology may be contained in the implementation guide of the United Nations Convention against Corruption by the application of "Corruption Risk Assessments."

The need to understand the risks of corruption has its legal basis in Article 7 "d" of the United Nations Convention against Corruption:

Article 7. Public sector

1. Each State Party shall, [...]:

(d) Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training **to enhance their awareness of the risks of corruption inherent in the performance of their functions**. Such programmes may make reference to codes or standards of conduct in applicable areas (**underlined by UNODC ROPAN**).

The development of an assessment of the risks of corruption also implies the awareness of the authorities and public officials, through a focus group methodology. Moreover, it is noteworthy that the application of this methodology should be established as part of an initial dialogue on the subject, preferably with the participation of civil society and international organizations, in order to "break the taboo" that persists on this matter.

Another good practice to consider is the creation of a Unit to fight corruption within the General Office of the Penitentiary System, which can be composed of officials from various sectors of the General Office that have good reputations, in which the National Authority of Transparency and Access to Information can also be involved. In this context, this Unit would be responsible for the continued application of the methodology mentioned above, in compliance with Article 10 "c" of the United Nations Convention against Corruption, *in verbis*:

Article 10. Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and the decision making processes, where appropriate. Such measures may include, inter alia:

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Therefore, **UNODC ROPAN IS OF THE OPINION** that the Government of Panama, in collaboration with the United Nations Office on Drugs and Crime, should work in developing a diagnostic methodology to measure the risks of corruption in the prison system, in order to identify the most sensitive procedures to corrupt practices and educate the authorities, prison officials and the detainees and their families about the topic. This methodology could also be used as a model to be replicated in other countries in Central America, the Caribbean and the rest of the Americas.

3.2 Wages, hiring and training of prison staff.

Another package of anti-corruption policies should include improving working conditions for prison staff. In this regard, it is important to bring up the content of Article 7 of the UN Convention against Corruption:

Article 7. Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

- (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
- (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
- (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
- (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

By interpreting the contents of this article, it can be initially verified that the Republic of Panama should conduct a review of the pay scale of prison staff. Moreover, salaries of prison staff must ensure compliance with Rule 46.3, final part, of the Standard Minimum Rules for the Treatment of Prisoners, *in verbis*: "[...] Salaries shall be adequate to attract and retain suitable men and women."

At the same time, the Government of Panama should prioritize the creation of a prison officer position in order to comply with the provisions of Articles 46 and 47 of the Minimum Rules and Article 10 of the UN Convention against corruption:

Prison Staff

46. (1) The prison administration shall provide for the **careful selection** of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends. [...] (3) To secure the foregoing ends, personnel shall be appointed on a full-

time basis as professional prison officers and **have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.**

47. (1) **The personnel shall possess an adequate standard of education and intelligence.** (2) **Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.** (3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals (**underlined by UNODC ROPAN**).

The existence of a prison officer position would ensure technical continuity needed to ensure the quality of the prison service. In addition and without prejudice to the creation of a prison officer position, UNODC ROPAN believes that States should implement a strategy of rotation of officials in the prison system. The main objective of this practice is to prevent public servants from becoming familiar with certain populations within prisons, thus trying to avoid relationships that are conducive to corrupt practices.

In this context, taking into account the contents of the two above international standards, in particular Article 47.2 of the Minimum Rules, UNODC ROPAN considers reopening the Prison Training Academy positively, for which the Office of the United Nations will continue to offer help and support. UNODC ROPAN urges the Panamanian government to further strengthen this Academy and recommends that corruption be integrated in a cross-cutting and comprehensive way into the curriculum. To this end, UNODC ROPAN puts all its expertise available through the project "Supporting Prison Reform in the Republic of Panama" for the development of these and other activities that seek to strengthen and regionalize the Prison Training Academy.

Similarly, with regard to the training of prison staff, it is important to bring up the wording of Article 8 of the UN Convention against Corruption:

Article 8.

Codes of conduct for public officials

1. In order to fight corruption, each State Party **shall promote, inter alia, integrity, honesty and responsibility among its public officials**, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

[...]

And Rule 48 Standard Minimum Rules:

48. All members of the personnel shall at all times conduct themselves and **perform their duties as to influence the prisoners for good by their example and to command their respect.**

In line with the above-mentioned international standards, the General Office of the Penitentiary System has published a Code of Ethics for prison staff with the support of UNODC ROPAN in 2013. Therefore, UNODC ROPAN congratulates the Panamanian government for this initiative, which can be considered a good prison practice throughout Latin America.

UNODC ROPAN IS OF THE OPINION that the Republic of Panama, through the General Office of the Penitentiary System, should promote the creation of a prison officer position with a meritocratic basis for hiring and promotion. Moreover, UNODC ROPAN considers it important that adequate remuneration and continuous training of prison staff through the Prison Training Academy is guaranteed for all staff of the prison system.

3.3 Low level of regulation of basic procedures and high discretion of staff.

The jurisprudence of the Inter-American Court of Human Rights⁴⁷ has concluded that: "The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and, therefore, superior to state power." Such understanding has a special impact on the formulation of anti-corruption policies, considering the need for public authorities to limit the power of action, thus avoiding abuses by public officials. In this regard, UNODC ROPAN has stated in its Technical Advisory Opinion No. 003/2013 the dangers arising from the lack of clear and objective rules for applications for the exercise of rights or benefits provided to the detainees.

On this specific point, we should bear in mind that apart from proceeding beyond the regulation of the various prison procedures using "application protocols", it is necessary to establish mechanisms for computerizing these processes in order to ensure the maximum possible transparency in the administrative process. Article 10 of the UN Convention against Corruption provides that:

Article 10. Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;**
- (b) Simplifying administrative procedures**, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information**, which may include periodic reports on the risks of corruption in its public administration.

⁴⁷ IA Court HR. Velásquez Rodríguez, July 29, 1988, Series C, No.4, para. 165.

This article verifies the need for prison systems to develop processes that are simple and transparent, where access to public information prevails. This is also one of the fundamental principles of the Law No. 6 of 2002 of the Republic of Panama, called Transparency Act. UNODC ROPAN takes this opportunity to acknowledge the efforts of the General Office of the Penitentiary System to comply with the provisions of this legal instrument, particularly in relation to Article 9, given that all information provided as mandatory publication is available on the website of this body.

However, regarding the application procedures of rights and benefits of people deprived of liberty, the web portal of the prison system only provides a standard protocol, which does not allow detainees or other stakeholders (especially families) to track the processing of the application.

In connection with the smuggling of illegal goods in prisons, prison systems have a duty to ensure that the lists of banned products are of public knowledge, particularly to family members and other visitors of the people deprived of liberty. Furthermore, UNODC ROPAN claims that excessively prohibitive policies tend to contribute to the proliferation of corruption. At this point, it is considered that States should review the existence of excessively prohibitive policies that do not pose a threat to prison security. The prohibition of cigarettes, for example, could be revised. It is recommended that these items be regulated (with specific times and determining the appropriate spaces so as not to endanger the health of other people as well as limits on the amount, etc.).

Moreover, UNODC ROPAN reiterates the need to strengthen the prohibition of the entry of goods that represent security risks to prison (including proper and improper weapons, drugs, alcohol, etc.).

UNODC ROPAN IS OF THE OPINION that the General Office of the Penitentiary System of the Republic of Panama should regulate and create specific protocols for each right/eligibility application under Law No. 55. In this regard, taking into account the availability of resources of the prison system, it is important to implement a computerized mechanism to ensure an acceptable level of transparency and speed in processing administrative procedures conducted by this Directorate, in keeping within the content of the rules established by the United Nations Convention United against Corruption.

3.4 Low level punishment and few mechanisms for internal and external control.

The low level of sanctions against the corruption of officials of the prison system can be associated with the lack of a policy towards whistle-blower protection. The rationale behind this policy is in the content of Article 8, paragraphs 4 and 6 of the UN Convention against Corruption, *in verbis*:

Article 8.

Codes of conduct for public officials

[...]

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, **establishing measures and systems to facilitate the reporting by**

public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

[...]

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, **disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article (underlined by UNODC ROPAN).**

Another important aspect is the need to encourage the creation of control mechanisms, especially those that are external to the public service. This initiative is a direct response to the right to participation guaranteed to both detainees and their families by Article 25 of the International Covenant on Civil and Political Rights:

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) **To take part in the conduct of public affairs, directly** or through freely chosen representatives; [...]

This international instrument must be read in light of the following articles of the UN Convention against Corruption:

Article 5. Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that **promote the participation of society** and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, **to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or *ordre public* or of public health or morals.

Regarding the need for political participation and social control, it is important to bring up Rule 61 of the Standard Minimum Rules which state that "[...] the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. [...]".

In order to encourage citizen participation and social control over the prison system it is interesting to consider the good practices of the Federative Republic of Brazil. In this country, Article 61 of the Criminal Enforcement Act⁴⁸ establishes the creation of "community councils" (Section VII). Article 80 of this law states that these councils should involve representatives of civil society, including the Bar Association and the Office of the Public Defender. Article 81 of the law states:

Art. 81

The Community Council has the right to:

I - visit at least monthly, existing prisons in the judicial district;

II - interview prisoners;

III - provide monthly reports to judge the performance of the Penitentiary Council;

IV - work to obtain materials and human resources to better assist the inmates according to the direction of the prison.

Based on the above, **UNODC ROPAN IS OF THE OPINION** that the State should develop protective measures for whistle-blowers of corruption, by strengthening internal control mechanisms within the prison system. In the same direction, UNODC ROPAN considers it important to design policies to encourage the participation of civil society, such as community councils, with the participation of various control agencies of human rights such as the Office of the Public Defender.

Written in Spanish in the headquarters of the Regional Office of the United Nations Office on Drugs and Crime in Central America and the Caribbean in Panama (ROPAN UNODC), July 25, 2013.

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⁴⁸ Federative Republic of Brazil. Criminal Law on the Execution. Available at: http://www.planalto.gov.br/ccivil_03/leis/l7210.htm.