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**OPEN-ENDED INTERGOVERNMENTAL EXPERT GROUP  
ON THE STANDARD MINIMUM RULES FOR THE  
TREATMENT OF PRISONERS**

**VIENNA, AUSTRIA, 25 – 28 March 2014**

**REVISION OF THE UNITED NATIONS STANDARD MINIMUM  
RULES FOR THE TREATMENT OF PRISONERS<sup>1</sup>**

**Prepared by**

Inter-American Commission on Human Rights, Organization of American States<sup>2</sup>

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<sup>2</sup> The opinions expressed in this report are those of the authors and do not necessarily reflect those of the United Nations Office on Drugs and Crime.



**ORGANIZATION OF AMERICAN STATES**  
WASHINGTON, D.C. 20006 USA

October 8, 2013

**REF: Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners**

Dear Sirs,

I have the honor to address you on behalf of the Inter-American Commission on Human Rights' Rapporteurship on the Rights of Persons Deprived of Liberty, in order to provide the main standards of the Inter-American System of Human Rights (IACHR) on each of the nine spheres of the Standard Minimum Rules for the Treatment of Prisoners that are currently under a process of revision initiated by the political organs of the United Nations Organization. This information is submitted with the purpose of being taken into account during the upcoming meeting of the Open-ended Intergovernmental Expert Group that will take place in Brasilia at the end of this year.

The IACHR recognizes that Even though the Standard Minimum Rules continue to be vital and are considered to be among the most important soft-law instruments for the interpretation of various aspects of the rights of prisoners, it may be important to adjust their content to the current challenges faced by the different States in respecting and ensuring the human rights of persons deprived of liberty, to the up-to-date standards of international human rights law, and to the progress reached by other disciplines related to this field.

In this regard, the IACHR considers that a true process of revision of the Standard Minimum rules should, first and foremost, be open and inclusive, and take into account as valid the information provided by non-state actors, such as civil society organizations and the academia, the regional human rights mechanisms, and the United Nations' own human rights bodies whose mandate is related to the scope of the Standard Minimum Rules. In this sense, the IACHR endorses the recent Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, directed to this ongoing process of revision of the Standard Minimum Rules (A/68/295). Moreover, the IACHR deems that such process should allow the comprehensive assessment of the whole text of the Standard Minimum Rules for the sake of the consistency of the text and the coherence among its different rules, among other reasons.

United Nations' Office on  
Drug and Crime (UNODC)

On the other hand, in spite of the positive results that could stem from a process of revision of the Standard Minimum Rules, the IACHR considers that the major challenges in the respect and protection of persons deprived of liberty are related to the effective compliance with the existing international norms and standards, as a consequence the efforts of the States should be oriented to that aim. The IACHR also recognizes the remarkable developments reached by the jurisprudence of the international human rights tribunals and other universal and regional treaty bodies, all of which complement the existing treaty law norms and soft-law sources.

Furthermore, the IACHR highlights the importance of the consultation process conducted at a regional level by UNODC which includes the expert meeting that took place in Santo Domingo, Dominican Republic, from August 3 to 5, 2011, and particularly, the General Report of the Permanent Committee of Latin America for the Revision and Update of the Standard Minimum Rules<sup>1</sup>, for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, organized in Salvador de Bahia, Brazil, from April 12 to 19, 2010.

The document attached to this cover letter provides the standards of the Inter-American System on each of the nine spheres opened for discussion in the present process: (a) respect for prisoners' inherent dignity and value as human beings (p. 3); (b) medical and health services (p. 5); (c) disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (p. 26); (d) investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (p. 38); (e) protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances (p. 42); (f) the right of access to legal representation (p. 44); (g) complaints and independent inspection (p. 44); (h) the replacement of outdated terminology (p. 49); and (i) training of relevant staff to implement the Standard Minimum Rules (p. 49).

Those standards are enshrined firstly in the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, adopted by the IACHR through its Resolution No. 1/08. This document is in itself a revision of the Standard Minimum Rules and other current universally and regionally accepted standards on persons deprived of liberty. The Principles and Best Practices are available in the four official languages of the OAS<sup>2</sup>.

The document attached also contains the pertinent parts of the *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, adopted by the IACHR on December 31, 2011, in which the IACHR analyzes the main challenges faced in the region with regard to the persons deprived of liberty in light of the international human rights law. This report is available at: <http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>

Sincerely,



Emilio Álvarez Icaza L.  
Executive Secretary

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<sup>1</sup> Available in Spanish at: <http://observatoriocorreccionalpr.org/wp-content/uploads/2011/01/PROYECTO-DE-REVISI%C3%93N-DE-LAS-REGLAS-M%C3%8DNIMAS-DE-NACIONES-UNIDAS-PARA-EL-TRATAMIENTO-DE-LOS-RECLUSOS1.pdf>

<sup>2</sup> At the following links:

- ESP: <http://www.cidh.oas.org/pdf%20files/RESOLUCION%201-08%20ESP%20FINAL.pdf>
- ENG: <http://www.oas.org/en/iachr/mandate/Basics/20.Persons%20deprived%20of%20liberty.pdf>
- POR: <http://www.oas.org/pt/cidh/mandato/Basicos/principiosPPL.pdf>
- FRA: <http://www.cidh.oas.org/Basicos/French/s.1.privees.de.liberte.htm>

## **The scope of the concept of “deprivation of liberty”:**

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.

### **(A) Respect for prisoners' inherent dignity and value as human beings;**

#### A.1) PPBBPP / Principle I: Humane treatment:

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.

They 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.

Circumstances such as war, states of exception, emergency situations, internal political instability, or other national or international emergencies may not be invoked in order to evade the obligations imposed by international law to respect and ensure the right to humane treatment of all persons deprived of liberty.

#### A.2) Report on PDL / Ch. II – A: The principle of humane treatment / Paras. 66 -71:

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>3</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.

68. [...]

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>4</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>5</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>6</sup>

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

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<sup>3</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.

<sup>4</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>5</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>6</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.

dignity of his or her person, while at the same time seeking to facilitate reinsertion of the prisoner in society.<sup>7</sup>

## **(B) Medical and health services**

### B.1.1) PPBBPP / Principle IX(3): Medical examination (intake)

#### 3. Medical examination

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 treatment of any relevant health problem; or to investigate complaints of possible ill-treatment or torture.

The medical or psychological information shall be entered into the respective official register, and when necessary taking into account the gravity of the findings, it shall be immediately transmitted to the competent authority.

### B.1.2) PPBBPP / Principle X: Health:

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 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. Treatment shall be based on scientific principles and apply the best practices.

The provision of health services shall, in all circumstances, respect the following principles: medical confidentiality; patient autonomy; and informed consent to medical treatment in the physician-patient relationship.

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.

Women and girls deprived of liberty shall be entitled to access to specialized medical care that corresponds to their physical and biological characteristics, and adequately meets their reproductive health needs. In particular, they shall have access to gynecological and pediatric care, before, during, and after giving birth, which shall not take place, as far as possible, inside the place of deprivation of liberty, but at hospitals or appropriate institutions. If a child is born in a place of deprivation of liberty, this fact shall not be mentioned in the birth certificate.

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<sup>7</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.

In women's or girls' institutions there shall be special accommodation, as well as adequate personnel and resources for pre-natal and post-natal care and treatment of women and girls. Where children of parents deprived of their liberty are allowed to remain in the place of deprivation of liberty, the necessary provisions shall be made for a nursery staffed by qualified persons, and with the appropriate educational, pediatric, and nutritional services, in order to protect the best interest of the child.

B.1.3) PPBBPP / Principle XII: Accommodation, hygiene, and clothing:

### 1. Accommodation

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 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.

### 2. Hygiene

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.

### 3. Clothing

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.

B.2.1) Report on PDL / Ch. II – D: Intake, registration, and **initial medical examination** / Paras. 162 – 170, 261:

162. [...]

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>8</sup> The initial medical examination of people who are

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<sup>8</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.

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>9</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>10</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 that records be kept of these medical examinations and that they include any traumatic injuries detected.<sup>11</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>12</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>13</sup>

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<sup>9</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>10</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

<sup>11</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>12</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>13</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.



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 others at risk? (d) Is their mental state causing them to be a threat or are they likely to be violent?<sup>14</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.

261. Recommendations:

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.

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<sup>14</sup> World Health Organization (WHO), *Health in Prisons: a WHO guide to the essentials in prison health*, 2007, pp. 24-25.

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.

B.2.2) Report on PDL / Ch. IV – E: 2 Accommodation, hygiene and clothing / Paras. 467 – 474, 518:

467. [...]

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>15</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>16</sup>

470. [...]

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>17</sup>

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<sup>15</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

<sup>16</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.

<sup>17</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).

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>18</sup> The IACHR has further established that the concept of “separate bed,” according to current use of the term, implies that the furniture or structure must have a mattress.<sup>19</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. [...]

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>20</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.

518. Recommendations:

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.

B.2.3) Report on PDL / Ch. V: Medical services / Paras. 519 - 575:

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

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<sup>18</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).

<sup>19</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>20</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.

inhuman treatment, and to respect the inherent dignity of the human person, includes guaranteeing access to proper medical care.”<sup>21</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>22</sup> according to the specific requirements of the actual case.<sup>23</sup>

521. [...]

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>24</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>25</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>26</sup> which establish the following basic principle:

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<sup>21</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>22</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>23</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).

<sup>24</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>25</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>26</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

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 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>27</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>28</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>29</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>30</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>31</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>32</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

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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.

<sup>27</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>28</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>29</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>30</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>31</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>32</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.

specific circumstances of the person, the type of disease or ailment, and the time spent without medical attention and its cumulative effects.”<sup>33</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 medical assistance.<sup>34</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>35</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>36</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>37</sup> have agreed and documented in Directing Council resolution CD50.R8 (Health and Human Rights),<sup>38</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>39</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.

532. In the *Ximenes Lopes* case, for example, the Inter-American Court established as follows:

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<sup>33</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.

<sup>34</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>35</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 İlhanm v. Turkey*, (Application no. 22277/93), Judgment of June 27, 2000, Grand Chamber, para. 87.

<sup>36</sup> WHO Constitution, available at: <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>.

<sup>37</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>38</sup> PAHO, Resolution CD50.R8, Health and Human Rights, adopted on September 29, 2010.

<sup>39</sup> I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 302.

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>40</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>41</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>42</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.

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>43</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.

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<sup>40</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>41</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>42</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).

<sup>43</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (Principle X).

## **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 infirmary 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>44</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

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<sup>44</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.



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>45</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>46</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.

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>47</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>48</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.

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<sup>45</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>46</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.

<sup>47</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>48</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.

545. During his visit to Suriname, for example, the Rapporteur on the Rights of Persons Deprived of Liberty noted that at the Geyersvlijt Police Station, regular medical care consisted of a nun who came once a week to provide nursing services.<sup>49</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>50</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.

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>51</sup>

549. As previously mentioned, in the vast majority of the countries of this regions 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>52</sup>

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<sup>49</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>50</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.

<sup>51</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>52</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;

## 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>53</sup> Causes include the inefficiency of the judicial or administrative 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>54</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>55</sup>

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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>53</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.

<sup>54</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, para. 66.

<sup>55</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.

### 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 *soroche*, 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>56</sup>

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>57</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>58</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>59</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

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<sup>56</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, paras. 62-63.

<sup>57</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>58</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>59</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.

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 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>60</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>61</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>62</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>63</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.

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<sup>60</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>61</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>62</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>63</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.

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 vulnerable adult, doctors have an additional duty to act as an advocate.<sup>64</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>65</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>66</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>67</sup>

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

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<sup>64</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>65</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>66</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>67</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, 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.

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>68</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>69</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>70</sup>

#### *Tuberculosis<sup>71</sup> and other neglected diseases<sup>72</sup>*

570. As the IACHR has observed, tuberculosis (TB) is another disease prevalent in prisons.<sup>73</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.

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<sup>68</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>69</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>70</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.

<sup>71</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>72</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>73</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).

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>74</sup>

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>75</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>76</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;

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<sup>74</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.

<sup>75</sup> With regard to the confinement of persons with HIV/AIDS see also the European Penitentiary Rules (Rule 42.3.i).

<sup>76</sup> See, PAHO, Resolution on Health and Human Rights (CD50/R.8), adopted on September 29, 2010.



- 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 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.

**(C) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet**

C.1.1) PPBBPP / Principle XXII: Disciplinary regime:

1. Disciplinary sanctions

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.

2. Due process of law

The imposition of disciplinary sanctions or measures and the supervision of their execution shall be the responsibility of competent authorities who shall act in all circumstances 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.

3. Measures of solitary confinement

The law shall prohibit solitary confinement in punishment cells.

It shall be strictly forbidden to impose solitary confinement to pregnant women; mothers who are living with their children in the place of deprivation of liberty; and children deprived of liberty.

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 and 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.

In cases of involuntary seclusion of persons with mental disabilities it shall be ensured that the measure is authorized by a competent physician; carried out in accordance with officially approved procedures; recorded in the patient's individual medical record; and immediately notified to their family or legal representatives. Persons with mental disabilities who are secluded shall be under the care and supervision of qualified medical personnel.

4. Prohibition of collective sanctions

The imposition of collective punishments shall be prohibited by law.

5. Disciplinary competence

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.

C.1.2) PPBBPP / Principle XI: Food and drinking water:

### 1. Food

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 food shall be provided at regular intervals, and its suspension or restriction as a disciplinary measure shall be prohibited by law.

### 2. Drinking water

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.

C.2.1) Report on PDL / Ch. IV – C: Disciplinary measures in prison / Paras. 371 – 418, 518:

#### 1. **Fundamental aspects**<sup>77</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>78</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>79</sup>

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

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<sup>77</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>78</sup> On this matter, the European Prison Rules Establish that, “[w]henver 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>79</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 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.

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>80</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. [...]

377. IACHR also considers that the law must determine:<sup>81</sup> (a) the acts and omissions of persons deprived of liberty that constitute disciplinary offenses; (b) the procedures to follow in such cases;<sup>82</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>83</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>84</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.

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<sup>80</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>81</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>82</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>83</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>84</sup> Standard Minimum Rules for the Treatment of Prisoners (Regla 30.1); see also, European Prison Rules (Rule 63).

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>85</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>86</sup> Moreover, the rules, sanctions and proceedings of the disciplinary regime 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>87</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>88</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>89</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

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<sup>85</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>86</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 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>87</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>88</sup> On this matter, the European Prison Rules establish that, “Punishment shall not include a total prohibition on family contact” (Rule 60.4).

<sup>89</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).

corporal punishments, as well as to prevent their imposition inasmuch as they constitute, in any circumstance, cruel, inhuman or degrading treatment or punishment.”<sup>90</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 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>91</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>92</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>93</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>94</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

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<sup>90</sup> IA Court of HR, *Case of Caesar vs. Trinidad and Tobago*. Judgment of March 11, 2005. Series C No. 123, para. 57-70.

<sup>91</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>92</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>93</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>94</sup> IACHR, *Annual Report 2005*, Chapter IV, Ecuador, OEA/Ser.L/V/II.124. Doc. 7, adopted on February 27, 2006, para. 185.

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 use of solitary confinement in subhuman conditions.<sup>95</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>96</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>97</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>98</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>99</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>100</sup>

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

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<sup>95</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>96</sup> IACHR, Public hearing: *Information on Alleged Acts of Torture in Chile*, 117<sup>9</sup> Ordinary Period of Sessions, requested by: Center for Justice and International Law (CEJIL), March 24, 2003.

<sup>97</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>98</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, para. 80.

<sup>99</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>100</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.



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>101</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. 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>102</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>103</sup> (c) as an administrative

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<sup>101</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).

<sup>102</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>103</sup> Solitary confinement and “*incommunicado* detention” are situations of different nature, although in some cases both can be used concurrently on the same person.

measure to control particular groups of inmates;<sup>104</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>105</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.

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>106</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

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<sup>104</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>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.cpttrt.org/pdf/informesistemapenitenciarioCIDH.pdf>.

<sup>105</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.

<sup>106</sup> IACHR, *Special Report in the Human Rights Situation at the Challapalca Prison*, para. 70.

constant psychological abuse. The inmates may remain in these conditions for periods even longer than one year.<sup>107</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>108</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 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>109</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>110</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>111</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

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<sup>107</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>108</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.

<sup>109</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>110</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>111</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.

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>112</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>113</sup>

407. [...]

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>114</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>115</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>116</sup> Additionally,

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<sup>112</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>113</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.

<sup>114</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>115</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>116</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,

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>117</sup> as does the uncertainty of the duration of the same.<sup>118</sup> In fact, solitary confinement can be utilized as a means of torture,<sup>119</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 suffering, the act of putting or keeping someone in solitary confinement may amount to torture.<sup>120</sup>

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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 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>117</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>118</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>119</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.

<sup>120</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.

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>121</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>122</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>123</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>124</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 issue recommendations to the appropriate authorities.<sup>125</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.

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<sup>121</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>122</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>123</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>124</sup> On this matter, see the Standard Minimum Rules for the Treatment of Prisoners (Rule 23.3).

<sup>125</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).

518. Recommendations:

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.

**(D) Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners**

D.1) Report on PDL / Ch. III – A: The right to life / Basic standards / Paras. 270, 271, 284, 325 and 327:

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>126</sup> bearing in mind that the responsibility of the State must be presumed regarding what happens to those who are under its custody.<sup>127</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>128</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

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<sup>126</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>127</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>128</sup> ECtHR, *Case of Salman v. Turkey*, Judgment of 27 June 2000 (Grand Chamber), para. 99.

time and not as a mere formality.<sup>129</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.

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.

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>130</sup> Therefore, the fact that evidence might initially suggests 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>131</sup> even assuming he did, whether the authorities were in any way responsible for a failure to prevent it.<sup>132</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>133</sup>

327. Recommendation:

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

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<sup>129</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.

<sup>130</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>131</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>132</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>133</sup> IACHR, Report No. 172/10, Case 12.651, Merits, César Alberto Mendoza *et al.*, Argentina, November 2, 2010, paras. 277-282.



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.

D.2) Report on PDL / Ch. IV – A: The rights to humane treatment / Basics standards / Paras. 344 – 350, 364(b):

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>134</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>135</sup> This investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth,<sup>136</sup> and be conducted within a reasonable time, which should be ensured by the intervening judiciary bodies.<sup>137</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

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<sup>134</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 Loo* 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 Loo V. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 21, para. 240.

<sup>135</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>136</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>137</sup> I/A Court H. R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 114.

they are able to freely perform the required medical evaluations, and adhere to established standards in the practice of their profession.<sup>138</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, the victims are in an 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>139</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>140</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>141</sup> In these circumstances, the burden of proof is on the State.<sup>142</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>143</sup> In the absence of such an explanation, State responsibility for what has happened to these people under its custody should be presumed.<sup>144</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>145</sup>

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<sup>138</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.

<sup>139</sup> IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997, para. 394.

<sup>140</sup> IACHR, Report No. 172/10, Case 12.651, Merits, César Alberto Mendoza *et al.*, Argentina, November 2, 2010, para. 311.

<sup>141</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>142</sup> I/A Court H.R., *Case of Neira Alegría 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>143</sup> I/A Court H. R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 127.

<sup>144</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>145</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.

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 accused. In reality, the two rights are harmoniously interlinked to legitimize the judicial system of a human rights-abiding State.<sup>146</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.

364(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>147</sup> Acts of torture must be subject to effective investigation, which lead to prosecution and punishment of the culprits.

#### **E) Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances**

##### **E.1) PPBBPP / Principle II: Equality and non-discrimination:**

Every person deprived of liberty shall be equal before the law and be entitled to equal protection of the law and the tribunals. They shall also have the right to maintain their guarantees and exercise their fundamental rights, except for those rights which exercise is temporarily limited or restricted by law and for reasons inherent to their condition as persons deprived of liberty.

Under no circumstances shall persons deprived of liberty be discriminated against for reasons of race, ethnic origin, nationality, color, sex, age, language, religion, political or other opinion, national or social origin, economic status, birth, physical, mental, or sensory disability, gender, sexual orientation, or any other social condition. Therefore, any distinction, exclusion, or restriction that is either designed to or has the effect of undermining or impeding the recognition, enjoyment, or exercise of the internationally recognized rights of persons deprived of liberty, shall be prohibited.

Measures designed exclusively to protect the rights of women, particularly the rights of pregnant women and nursing mothers; of children; of the elderly; of those who are sick or suffering from infections such as HIV-AIDS; of persons with a physical, mental, or sensory disability; as well as of indigenous peoples, afro-descendants, and minorities shall not be considered discriminatory. These measures shall be applied in accordance with the law and

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<sup>146</sup> IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997, para. 397.

<sup>147</sup> IACHR, *Report on the Situation of Human Rights in Mexico*, Ch. IV, para. 327.

international human rights law, and shall always be subject to review by a judge or other competent, independent, and impartial authority.

Persons deprived of liberty in the context of an armed conflict shall be afforded special protection and attention in conformity with the special juridical regimen established by the norms of international humanitarian law, complemented by the norms of international human rights law.

The measures and sanctions imposed on persons deprived of liberty shall be applied impartially, based on objective criteria.

E.2) PPBBPP / Principle III(3): Special measures for persons with mental disabilities:

[...]

The health systems of the Member States of the Organization of American States shall apply in conformity with the law a series of measures in favor of persons with mental disabilities, with a view to gradually de-institutionalizing these people, and organizing alternative service models that facilitate the achievement of objectives that are compatible with an integrated, continuing, preventative, participatory, and community-based psychiatric care and health system, and in this way avoid unnecessary deprivation of liberty in hospitals or other institutions. The deprivation of liberty of a person in a psychiatric hospital or other similar institution shall be applied as a measure of last resort, and solely when there is serious likelihood of immediate or imminent harm to that person or to others. The mere existence of a disability shall in no case justify a deprivation of liberty.

[...]

E.3) PPBBPP / Principle XIX: Separation of categories:

The different categories of persons deprived of freedom shall be kept in separate places of deprivation of liberty or in different sections within the same institution, taking account of their sex, age, the reason for their deprivation of liberty, the need to protect the life and integrity of persons deprived of liberty or personnel, special needs of attention, or other circumstances relating to internal security.

In particular, arrangements shall be made to separate men and women; children and adults; the elderly; accused and convicted; persons deprived of liberty for civil reasons and those deprived of liberty on criminal charges. In cases of deprivation of liberty of asylum or refugee status seekers, and in other similar cases, children shall not be separated from their parents. Asylum or refugee status seekers and persons deprived of liberty due to migration issues shall not be deprived of liberty in institutions designed to hold persons deprived of liberty on criminal charges.

Under no circumstances shall the separation of persons deprived of liberty based on categories 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. The same criteria shall be observed during transfers of persons deprived of liberty.

## **(F) The right of access to legal representation**

F.1) PPBBPP / Principle V: Due process of law:

[..]

All persons deprived of liberty shall have the right to a defense and to legal counsel, named by themselves, their family, or provided by the State; they shall have the right to communicate privately with their counsel, without interference or censorship, without delays or unjustified time limits, from the time of their capture or arrest and necessarily before their first declaration before the competent authority.

[...]

## **(G) Complaints and independent inspection**

G.1.1) PPBBPP / Principle VII: Petition and response:

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.

G.1.2) PPBBPP / Principle XXIV: Institutional inspections:

In accordance with national legislation and international law, regular visits and inspections of places of deprivation of liberty shall be conducted by national and international institutions and organizations, in order to ascertain, at any time and under any circumstance, the conditions of deprivation of liberty and the respect for human rights.

As a minimum, such inspections shall be carried out with full access to places of deprivation of liberty and their installations, access to the information and documentation relating to the institution and the persons deprived of liberty therein; and the possibility of conducting private and confidential interviews with persons deprived of liberty and personnel.

The mandate of the Inter-American Commission on Human Rights and its Rapporteurships, in particular the Rapporteurship on the Rights of Persons Deprived of Liberty, shall be respected in all circumstances, so that they may verify the respect for the dignity and the fundamental rights and guarantees of persons deprived of liberty in Member States of the Organization of American States.

These provisions shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1997, nor the

opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

G.2) Report on PDL / Ch. II – G: The right of persons deprived of liberty to lodge judicial remedies and complaints to the administration / Paras. 241 – 258, 265:

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>148</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>149</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.

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>150</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>151</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

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<sup>148</sup> IACHR, *Democracy and Human Rights in Venezuela*, Ch. VI, para. 851.

<sup>149</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Ch. III, para. 176.

<sup>150</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>151</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).

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>152</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. [...]

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>153</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>154</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>155</sup> Therefore, it is not enough for there to be a judgment recognizing the existence of

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<sup>152</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.

<sup>153</sup> I/A Court H.R., *Case of Velásquez Rodríguez V. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 66.

<sup>154</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>155</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.

certain rights and ordering the adoption of particular measures or structural reforms; it is also necessary that those decisions be complied with and produces the effects granted by law.

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. [...]

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 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.

265. 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.

#### **(H) The replacement of outdated terminology**

N/A

#### **(I) Training of relevant staff to implement the Standard Minimum Rules**

##### I.1) PPBBPP / Principle XX: Personnel of places of deprivation of liberty:

The personnel responsible for the direction, custody, care, transfer, discipline and surveillance of persons deprived of liberty shall at all time and under any circumstances respect the human rights of persons deprived of liberty and of their families.

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. As a general rule, 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.

Places of deprivation of liberty for women, or the women's sections in mixed institutions shall be under the direction of female personnel. The custody and surveillance of women deprived of liberty shall be performed exclusively by female personnel, although staff with other capacities or skills, such as doctors, teachers, or administrative personnel may be male.

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. 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.

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.

I.2) Report on PDL / Ch. II – E: Prison personnel: suitability, training and working conditions / Paras. 171 – 219, 263:

171. [...]

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. [...]

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>156</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

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<sup>156</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.

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>157</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 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>158</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>159</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>157</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, Ch. IV, para. 36.

<sup>158</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>159</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>160</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>161</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 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

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<sup>160</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>161</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.

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>162</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>163</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 prison guards who demand sexual services from female prisoners in exchange for food, hygiene products or other goods.<sup>164</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>165</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.

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<sup>162</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Ch. III, para. 201.

<sup>163</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.

<sup>164</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>165</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.

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>166</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>167</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.

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>168</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>169</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. [...]

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<sup>166</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>167</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).

<sup>168</sup> IACHR, Public hearing: *Human Rights Violations in Prisons in Panama*, 131<sup>st</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>169</sup> IACHR, Press Release 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province. Washington, D.C., June 21, 2010.

195. In this regard, the IACHR has addressed the situation in countries like Bolivia<sup>170</sup>, Paraguay<sup>171</sup>, Honduras<sup>172</sup>, Haiti<sup>173</sup> and Uruguay<sup>174</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>175</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 labor demand of the different penitentiaries.<sup>176</sup> A shortage of penitentiary personnel creates, *inter alia*, internal security problems in the prisons.

### *Training*

197. [...]

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>177</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>178</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

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<sup>170</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>171</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>172</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>173</sup> IACHR, *Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the international community*, Ch. III, para. 206.

<sup>174</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>175</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.

<sup>176</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>177</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, Ch. IV, para. 36.

<sup>178</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.



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.

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>179</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>180</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>181</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 job, in terms of their character, administrative ability, suitable training, and experience in the field.<sup>182</sup>

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<sup>179</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>180</sup> IACHR, Report No. 35/08, Case 12.019, Merits, Antonio Ferreira Braga, Brazil, July 18. 2008, paras.121-122.

<sup>181</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.

<sup>182</sup> See, the Standard Minimum Rules for the Treatment of Prisoners (Rules 50-51).

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>183</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>184</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. [...]

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>185</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,

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<sup>183</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>184</sup> See, the Standard Minimum Rules for the Treatment of Prisoners (Rule 46.2).

<sup>185</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.

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>186</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>187</sup>

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>188</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>189</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

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<sup>186</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>187</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 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>188</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>189</sup> In a similar sense, see also, IACHR, *Report on Citizen Security and Human Rights*, para. 92.

diseases...”<sup>190</sup> The IACHR therefore recommends paying the necessary heed to the physical and mental health of personnel working in detention centers.<sup>191</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, 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>192</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>193</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>194</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>195</sup>

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<sup>190</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>191</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.

<sup>192</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>193</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, Ch. III, para 199; IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VIII, para. 14.

<sup>194</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>195</sup> IACHR, *Democracy and Human Rights in Venezuela*, Ch. VI, para. 683; IACHR, *Report on Citizen Security and Human Rights*, para. 104.

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>196</sup>

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.

263. Recommendations:

1. Adopt all necessary measures to ensure that personnel responsible for direct custody of persons deprived of their liberty are civilian.
2. Make provisions for replacing the police or military personnel performing those direct custody functions in places of deprivation of liberty.
3. Pay particular heed to specialized programs for recruiting and training personnel assigned to work in direct contact with inmates.
4. 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.
5. 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.
6. 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.

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<sup>196</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.