

## **Foreign Prisoners in the Republic of Panama**

Technical Consultative Opinion No. 008/2013, addressed to the General Directorate of the Penitentiary System of the Republic of Panama and the General Directorate for Legal Affairs and International Treaties, Ministry of Foreign Affairs of the Republic of Panama

**Regional Office for the United Nations against Drugs and Crime for Central America and the Caribbean - UNODC ROPAN**

**Criminal Justice and Penitentiary Reform team**

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### **EXECUTIVE SUMMARY**

#### **1. The jurisprudence of the Inter-American Court for Human Rights: Velez Lloor Case vs. Panama and its implications for the Penitentiary System**

**UNODC ROPAN HAS THE OPINION** that the Penitentiary Training Academy incorporates in its curriculum, more specifically in its module on human rights and international protection systems, an explanation regarding the Velez Lloor case vs. Panama, analyzing the main consequences of this ruling by the General Directorate of the Penitentiary System.

#### **2. The right to consular assistance for foreigners prisoners**

**UNODC ROPAN HAS THE OPINION** to inform the prisoner at the time of entering the prison regarding the right to request assistance from the Consulate of their country or Consulate assigned or the International Red Cross Committee. Therefore, the General Directorate of the Penitentiary System could publish a leaflet with the support of the Ministry of Foreign Affairs and Consulates from most represented countries, destined for this particularly vulnerable population. This leaflet should be made in the greatest possible number of languages.

#### **3. Isolation and special needs of contact with the outside world**

**UNODC ROPAN HAS THE OPINION** that the General Directorate of the Penitentiary System regulates the measures for contact with the outside world, especially for foreigner prisoners. This may include the use of technologies such as Skype or similar means, in a consistent manner with the time differences between Panama and the country of origin. Also, it is important to consider the possibility of regulating a regime for the "accumulation of visits"<sup>[1]</sup>, taking advantage to a

maximum the time in which families or couples of these people are visiting the country. This special regime may have an especially relevant effect in the case of foreign women deprived of their liberty, as this will guarantee the right for their children to have effective contact with their mothers.

UNODC ROPAN highlights on the importance for this special regime to be properly regulated so that prisoners have contact with relatives, in order to avoid corrupt practices. Also, it is important that foreign foreigners are informed of these facilities after entering the prison, in a language they can understand.

#### 4. Language barriers, Culture and Religion

**UNODC ROPAN HAS THE OPINION** that the General Directorate of the Penitentiary System promotes inclusion policies for foreign persons who do not speak the Spanish language. Such measures may include the translation of the main benefit application forms in English, French and other languages, as well as the translation of any brochures and informative material for prisoners. Also, it is important that the prison staff are trained to attend these people <sup>[2]</sup>.

**UNODC ROPAN HAS THE OPINION** that prisoners are allowed as much as possible to comply with their religious and cultural practices allowing them, access to Religious Ministers who profess to foreigners in the Prisons. Also, considering the availability of resources, the dietary needs of these people should be respected, including respect for the month of Ramadan, for prisoners who profess the Muslim religion. [...] In addition, it is important that the General Directorate of the Penitentiary System, with the support of the Ministry of Foreign Affairs coordinates with other diplomatic representations present in Panama to support with this work.

#### 5. Discrimination

Analyzing the Panamanian legislation and penitentiary practices, some legal uncertainty can be identified as regards to the process of deportation/expulsion of newly released foreigners. This situation may be an indication that the national penitentiary legislation should be updated and made compatible with the new migration legislation of the country. Therefore, **UNODC ROPAN HAS THE OPINION** that the Panamanian State, within the framework of the legislative penitentiary review, should harmonize the penitentiary legislation with the new immigration regulations to define with precision which foreigners are considered as “deportable”, to be able to establish specific procedures to assist them in this process.

#### 6. Participation in educational programs

According to information provided by the General Directorate of the Penitentiary System, even though foreign prisoners can participate in educational programs (even for the purpose of the commutation of the sentence), the INADEH (National Institute of Vocational Training and Human Development training) it only certifies nationals. As a result, although the foreigners take courses taught by this institution in the penitentiary context, they do not have right to the certification for

the completion of the course. UNODC ROPAN alert that this situation may represent a possible breach of the right established in article 13 of the International Agreement for Economic, Social and Cultural Rights (the right to education), and the provisions of article 2.1 of the International Agreement on Civil and Political Rights (the right to equality and non-discrimination before the law).

#### **7. Access to the complaints system and prison system request**

UNODC ROPAN reminds that the Panamanian State ratified on 2 June 2011, the Optional Protocol for the Convention against Torture (OPCAT). Therefore, it is rigor that the National Mechanism for the Prevention of Torture contemplates the right of the petition for foreign prisoners in the country, assisting the Penitentiary System in the Republic of Panama for the receipt of any possible complaints in the relevant languages and recommending possible solutions for each case.

#### **8. Basic need items**

Considering the limited resources of the Penitentiary System, it is common that the prisoner's families give them basic items to meet with the prisoners needs, from food to clothing and hygiene products (such as sanitary pads for women, hygiene and beauty products, etc.). **UNODC ROPAN HAS THE OPINION** that in the case of foreign prisoners, the General Directorate of the Penitentiary System, as the Ministry of Foreign Affairs of the Republic of Panama is already doing should formulate a policy to complement the articles of prime necessity for this especially vulnerable population. This subject is especially relevant for women prisoners, since they need articles that, in the majority of cases, are not provided by the General Directorate of the Penitentiary System.

#### **9. Agreement for foreigner prisoners transfers**

**UNODC ROPAN HAS THE OPINION** that the bilateral agreements for the transfer of sentenced persons signed by the Republic of Panama should not restrict the rights guaranteed to prisoners by multilateral treaties. The excessive requirements for the transfer application can generate an infringement on this prison population, in a particular vulnerable situation. UNODC ROPAN reiterates that the transfer request procedures should be explained to all foreign prisoners in the country, in writing and in the correct language of preference.

UNODC ROPAN considers it important that the General Directorate of the Penitentiary System strengthens the area of International Affairs, with the eventual creation of a specific Directorate for this subject. This Directorate may serve as a liaison with the Ministry of Foreign Affairs and the National Migration service, ensuring the rights for foreign prisoners in the country.

**UNODC ROPAN HAS THE OPINION** that the Penitentiary Training Academy incorporates in its curriculum, more specifically in its module on human rights and international protection systems, an explanation regarding the Velez Llor Case vs. Panama, analyzing the main consequences of this ruling to the General Directorate of the Penitentiary System.

Written in Spanish at the Regional Office Headquarters of the United Nations against Drugs and Crime for Central America and the Caribbean in Panama (UNODC ROPAN), on 7 October 2013.

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