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Enhancing Visits to Places of Detention: Promoting Collaboration

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OPENING REMARKS

Remarks of Dean Claudio Grossman*

Good morning everyone, and welcome to American University Washington College of Law for this conference on "Enhancing Visits to Places of Detention: Promoting Collaboration." I would like to welcome all of you, particularly those who came from afar, to participate in this important occasion for reflection designed to promote collaboration concerning visits to places of detention. I would like to add that we are very pleased to cosponsor this conference with the Association for the Prevention of Torture (APT). This is not the first time we have teamed up with APT to convene academics, practitioners, and experts to analyze key issues related to the prevention of torture. It is very important for law schools to partner with crucial actors, not only to pool material resources, but also for the valuable contributions of knowledge and expertise from civil society that help advance the fundamental values at the heart of this conference. With that in mind, I want to thank Mark Thomson for his leadership of APT, as well as his staff for their contributions to organizing today's event.

Treaty bodies and special procedures at the UN and regional levels are facing a situation which we may describe as a proliferation of mechanisms. There are valid reasons for this proliferation. For example, the establishment of the UN Committee against Torture, which I chair, is owed to a collective human desire to stress the value of the struggle against torture by adopting a special convention and treaty monitoring body. Similar developments have taken place with regard to disabilities, the promotion of women's rights, and so forth.

At the same time, a proliferation of mechanisms and treaty bodies can ultimately raise issues of legitimacy, as important conditions of legitimacy include coherence and consistency in decision making. Proliferation of treaty bodies and special procedures within universal and regional systems creates the danger of conflicting jurisprudence.

For example, torture is defined as an aggravated form of inhuman treatment. If different treaty bodies offer conflicting interpretations of this requirement, the legitimacy of the prohibition will be consequently weakened. The potential for conflict alone would be enough to make the case for harmonization.

In addition to preventing possible conflicting jurisprudence, the case for harmonization is strengthened by the need to share techniques and expertise that have an impact beyond jurisprudential analysis. Numerous mechanisms and procedures deal with the conditions of places of detention, and they have developed unique knowledge in matters such us negotiating access, balancing the need of access with publicity, and influencing the situation on the ground. Greater coordination and harmonization will only strengthen their impact.

There was a time when people thought that places of detention would contribute to the rehabilitation of human beings, but I think that we now know that, unfortunately, the dire conditions in most places of detention around the world contribute to a different reality. In fact, many places of detention have become universities of crime. Still, there is tremendous public support for the proposition that locking someone behind bars is the best way to achieve the security which we all legitimately seek. However, the treaty bodies and experts in this field agree that actually achieving security is not just a matter of locking people away.

** Since his appointment in 1995, Claudio Grossman has served as Dean of American University Washington College of Law, where he is also Professor of Law and the Raymond Geraldson Scholar for International and Humanitarian Law. Dean Grossman has served as Chair of the United Nations Committee against Torture since 2008, and was first elected as a member of the Committee in 2003. He was a member of the Inter-American Commission on Human Rights from 1993-2001, where he served in numerous capacities including President (1996-97; 2001), the Special Rapporteur on the Rights of Women (1996-2000), and the Special Rapporteur on the Rights of Indigenous Populations (2000-2001).*

Alternatives to detention are not only a response to the failure of our aspirations to rehabilitate individuals whenever possible. Conditions of detention also show the values of a society. From this perspective, coordination among experts answering questions such as: "What are the best practices?", "What are the best ways to act?", and "What can we learn from each other?," responds not only to narrow, technical issues but reveals our general vision of the world in which we want to live. Considering the broader impact of the topic, the contributions and knowledge of governments and civil society enrich the field and are at the same time expressions of the right of legitimate stakeholders to shape society.

To help facilitate exchanges and interaction among all those interested, the law school and APT organized this conference. In addition, yesterday we hosted a meeting of experts of universal and regional treaty bodies and special procedures whose deliberations will undoubtedly enrich today's conference.

I look forward to an exchange that will contribute to the common goal of full compliance with the obligations established under human rights law, including the prohibition against torture and other forms of cruel, inhuman and degrading treatment and punishment. I will now give the floor to Mark Thomson to share with you how this conference has been structured and our objectives for today. Mr. Thomson, you have the floor.

Remarks of Mark Thomson*

Thank you very much Claudio, and thank you to the rest of your team for organizing and preparing this meeting. Thanks also to all of you, especially people who have come from afar, for participating in today's meeting. As Claudio said, there are now a number of bodies that visit places of detention, often with different objectives. It is also true that an increasing number of these bodies exist at the international, regional, and national levels. We are very pleased to have the participating in today's meeting the International Committee of the Red Cross (ICRC), which has the most experience in this area at the international level, as well as the UN Committee Against Torture (UNCAT), which Claudio chairs. The most interesting development over the last ten years has been the emergence of the new Subcommittee on the Prevention of Torture (SPT), which now has 25 members, several of whom are here with us today. This is a very important new development in the prevention of torture and cruel, inhuman, and degrading treatment worldwide.

There are many other international bodies — so I will not go through all of them now — but let me just quickly make reference to some of the regional bodies. The two bodies that have the most experience regionally are the European Committee for the Prevention of Torture (CPT) and the Inter American Commission on Human Rights (IACHR). We have with us today the vice president of CPT and staff persons from the IACHR. For those who are unfamiliar, the IACHR is a regional human rights body here in the Americas that has experience visiting places of detention. At the national level, national preventive mechanisms are being developed under the

Optional Protocol to the Convention Against Torture (OPCAT). These national preventive mechanisms must have a specific mandate to visit places of detention in order to find solutions to prevent further abuses taking place or possible abuses taking place in all places where people are deprived of their liberty. We will also be hearing from some nongovernmental organizations, members of the judiciary, and parliamentarians today on their experiences in visiting places of detention.

Now, as Claudio rightfully said, that is a lot of people going to places of detention. Therefore, we need to be looking at how these bodies can best collaborate, which is the purpose of today's meeting. How can we enhance collaboration between the variety of bodies at the international, regional, and national levels to ensure that people deprived of liberty are getting the best protection we can provide? The enormity of the problem

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requires even more people to be involved in this issue of opening up places of detention to inspection and also opening up dialogue with the authorities who are detaining those persons to dialogue on how the risks of torture and ill treatment can be reduced and hopefully eliminated. And that requires a rather different approach — it requires some creative thinking on our part regarding how to ensure that not only the prison governors and police guards, but also policy makers and government, are made aware of the risks and take action accordingly in order to reduce those risks.

Therefore, let me just quickly run through how we have tried to structure today's agenda. The first panel will look at promoting safeguards through detention visits, with the first presentation from Ariela Peralta on the legal perspective of such visits. The second presentation, from Suzanne Jabbour, will look at these safeguards more from the health perspective. Brenda Smith will then discuss visits from the perspective of sexual violence, in prisons and places of detention. Finally, Alison Hillman will give a presentation from the perspective of persons with disabilities. Linked to that last point, the second panel develops the discussion on how to protect vulnerable groups. In every country in the world, there are certainly more vulnerable groups than others in places of detention, and they require particular attention in terms of affording them better protection than they currently receive.

In order to take us through this approach of looking at how to better protect vulnerable groups, we will have, first of all, a presentation from a vice president of the CPT, Haritini Dipla, who will discuss the European perspective. Then, from the African perspective, we will hear from Catherine Dupe Atoki who will focus on her experiences with the African Commission on Human and People's Rights. We will then hear from Pamela Goldberg on protecting detained refugees — a very important vulnerable group that often does not have access to normal safeguards such as lawyers and family, and therefore, is often in a particularly vulnerable situation. Alison Parker will conclude the second panel with an overview of the incarcerated population in the United States and the difficulties of meeting with detained individuals in a productive manner.

Over lunch, we are very pleased to have with us Mary Werntz, who is the head of the regional delegation for the ICRC here in Washington. As I said early on, the ICRC has a very rich experience going back to the First World War when they visited prisoners of war. It is very important that we hear about the ICRC's experiences generally, but also their views on the impact of visiting mechanisms on the prevention of torture and other ill treatment. It is a special privilege to get to hear from Mary today.

After lunch, we will move on to a panel on collaboration among visiting mechanisms in order to increase impact and increase effectiveness of preventing torture and other abuses. Yesterday we had a very interesting meeting with the international and regional bodies on the possibility of improving their collaboration and looking at ways of sharing information for the preparation of visits and methodology, as well as improving follow-up and coordination. I should note that one of the major points that came out of that meeting was a recognition of the need for the international regional bodies to link up better with national partners in order to see how their reports, information, and general support can better assist those national actors who are working in this area.

So, we are pleased to have with us today various experts who will give us different perspectives on how this collaboration can occur. First of all we have the former president of SPT, Víctor Rodríguez. As many of you know, the SPT is a new UN body that has emerged over the last few years and is able to visit all countries where states have ratified OPCAT. From the IACHR, we have a lawyer in the office of the Special Rapporteur on Persons Deprived of Liberty, Andrés Pizarro, who will talk about applying the variety of international, regional, and national standards to better protect persons deprived of liberty. Then we have Roselyn Karugonjo-Segawa, Director of Monitoring and Inspections for the Uganda Human Rights Commission (UHRC), to share her experiences working on a national body visiting places of detention. Finally, Alessio Bruni, a member of UNCAT, will share his views on this issue of collaboration. As Claudio rightly mentioned, regarding international obligations to prohibit torture and ill treatment, I think it is very important that we hear from a member of that important UN committee on how the convention against torture can be better respected and implemented. It is our hope that the broad perspective and experience represented on this panel will provide key insight into how to improve collaboration, not just at the national level, but also at the regional and international levels.

So we have a rather busy day ahead of us. From my point of view, I am very much looking forward to hearing the different presentations, but I am also intrigued to hear your questions and perspectives. I see in the audience people who have their own experiences of visiting places of detention. I think it is very important just to bring us back to the title of the meeting — how do we enhance the impact of visits to better protect people deprived of liberty? Another issue that came out yesterday was that the regularity of contact with people that are deprived of liberty is an essential element in prevention of abuses taking place. This speaks to the importance of the type of collaboration that we are here to talk about today. Because you will never be able to get international and regional bodies to be able to visit regularly places where people are deprived of liberty there has to be collaboration with national partners. Therefore, what we are talking about today is an essential way forward to ensuring better protection.

I look forward to hearing how you all view the possibilities of increased collaboration and increased regularity of contact with people deprived of liberty and the persons responsible for detaining them. So please let us know what you think works well, what hasn't worked well, and why. It is very important that we hear from you. Thank you very much, Claudio.

PANEL 1: PROMOTING SAFEGUARDS THROUGH DETENTION VISITS

Opening Remarks from Dean Claudio Grossman, Moderator

Let us begin our panel on "Promoting Safeguards Through Detention Visits." Mark Thomson already explained the structure of the conference, with fifteen minute presentations and thirty minutes for questions and comments. In the interest of time, I will skip over lengthy introductions. However, I do want to say that I am very pleased with the level of expertise and experience represented by our distinguished panelists. The individual who will be leading off this panel is an alumna of our law school, Ariela Peralta, the Deputy Director of the Center for Justice and International Law.

Remarks of Ariela Peralta*

Thank you very much. I want to thank the Washington College of Law, Dean Claudio Grossman and the Association for the Prevention of Torture, Secretary Mark Thomson for giving the Center for Justice and International Law (CEJIL) the opportunity to participate in this important event with you all. Also, it is a great honor for me to be here because I received my master's degree from the American University and had a great experience here as a Hubert Humphrey Fellow. I want to highlight what an extraordinary experience, personally and professionally, presenting at this conference is for me because I consider the Washington College of Law a fountain of knowledge, and, in a way, a home away from home.

Today, at the beginning of the 21st century, it is embarrassing that the practice of torture and enforced disappearance persists despite all of the steps taken by the international community to eradicate these practices. In the last 30 years, the universal and regional organizations have approved several legal instruments and put in place several complementary mechanisms in order to ensure, at the legal and monitoring levels, that torture and enforced disappearances are absolutely prohibited and non-derogable obligations. Nevertheless, torture and enforced disappearances are still widely practiced worldwide. The Inter-American Commission on Human Rights pointed out yesterday that the problems we are facing in the Americas include: large

numbers of pre-trial detention, overcrowding and poor conditions in detention facilities, a lack of basic services, the use of torture for criminal purposes, structures of impunity, corruption, and a lack of transparency.

The prevention measures of these crimes could be unlimited, so I will go through some of the most important ones. My presentation will focus on the legal safeguards provided by the Inter-American System, through its legal framework and jurisprudence, to prevent disappearances and torture in detention centers. CEJIL, the Washington College of Law, and APT[2] have

**Ariela Peralta is the Deputy Executive Director & Program Director for the Andean, North America and Caribbean Region of the Center for Justice and International Law (CEJIL).[1] She received her law degree from the University of Uruguay and a master's degree in International Legal Studies at American University Washington College of Law. Peralta has also served as an independent expert for the United Nations Development Programme, worked at the Association for the Prevention of Torture in Geneva, Switzerland, and has served as the executive secretary for Servicio de Paz y Justicia para América Latina.*

been working together to improve the situation in the Americas. However, before going through the safeguards offered by the Inter-American system, I would like to mention that when the International Convention for the Protection of all Persons from Enforced Disappearances (Convention)[3] entered into force, it introduced many additional specific and important safeguards. It was a great contribution that this Convention established the right to know the truth about what happened with the disappeared person. This provision is fundamental for preventing future abuses, given that the lack of punishment and investigation of disappearances contributes significantly to the perpetuation of those horrendous crimes. Based on the history of the Americas and the various cases that CEJIL has litigated seeking truth, justice, and redress for the victims of those crimes, it came to be extremely important that the Convention recognized the right to know the truth about what happened to disappeared individuals.

Prevention Measures

As you may know, two Inter-American conventions specifically address the issue of torture and forced disappearances. Because time is short, I will only try to go through some of the limited prevention measures created by these instruments. First of all I would like to emphasize that the duty to prevent includes all those means of a legal, political, administrative, and cultural nature that promote the protection of human rights. Second, in preventing those crimes for the occurrences in the future a fundamental duty is to investigate any allegations of torture or disappearance by an independent and due-diligent body or authority in order to guarantee the right to life and personal integrity.

Duty to Enact Enforcing Legislation

The first prevention measure I want to discuss is the duty to enact enforcing domestic legislation. Both the Inter-American Convention to Prevent and Punish Torture[4] (IACPPT) and the Inter-American Convention on Forced Disappearances of Persons[5] (IACFDP) place an obligation on states parties to ensure that an act of torture or enforced disappearance is criminalized under domestic legislation and that the penalties are appropriate given the extreme gravity of the crime.

The Inter-American Court on Human Rights (IACtHR) has issued judgments regarding legislative measures and how torture and forced disappearances are criminalized by Member States. In 2006, the court issued its decision in the case of *Goiburú v. Paraguay,* which addressed issues of arbitrary detentions, torture, and disappearances stemming from the disappearance of four men between 1974 and 1977 in Paraguay.[6] In *Goiburú*, the court ruled that any comprehensive formula at a national legal level that is less rigorous than the one established at the international level might lead to impunity for the perpetrator. This created an obligation for states to harmonize their criminal standards with the relevant international standards on arbitrary detentions, torture, and disappearances in order to be in compliance with the American Convention on Human Rights (ACHR).[7]

According to both the IACPPT and the IACFDP, the purpose of the duty to enact enforcing legislation is to place an obligation on states to establish a state jurisdiction over the crime of torture and enforced disappearances in a comprehensive way so as to avoid any possibility of impunity for the perpetrator. The state where the crime is committed should initiate an investigation to ensure that the perpetrators are going to be brought to justice, or if that is not possible, extradite them to a third state for prosecution. In a very well known case, *La Cantuta v. Peru*,[8] relating to the disappearance and execution of a university professor and nine students during the Fujimori regime, the IACtHR established the absolute States' obligation to eradicate impunity. As we understand it, because Fujimori was in Chile and Peru had asked for his extradition, the IACtHR wanted to emphasize that cooperation between states is fundamental to the fight against impunity. This was reiterated in *Goiburú v. Paraguay*.[9]

The Duty to Train Personnel

The duty to train personnel is extremely important, especially in the Americas, where some of the states' agents, who are currently part of the security forces, the police, and even the judiciary, were previously performing their duties under authoritarian regimes that disregarded the protection of human rights. Sometimes, these individuals have maintained the same ideology, or at least, the same practices. Therefore, training personnel is absolutely necessary and fundamental to changing the current situation.

In *Montero-Aranguren v. Venezuela*,[10] which addressed the summary execution of almost forty detainees at prison in Venezuela in 1992, the IACtHR stated that legislation would not fulfill its goal if states did not adequately train their armed forces and security agencies. It is important that this duty to train personnel should be extended to all persons involved in criminal investigations, including police investigators, medical personnel, and all officers of the judicial branch. The right not to be subject to torture was phrased as a right in the ACHR and, specifically, in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para).[11] Both instruments create an obligation for the state to help prevent torture and forced disappearances and punish those who do.

The Duty to Operate Detentions in Recognized Locations with Updated Registration Systems

Maintaining legal detention centers that can be subject to scrutiny is a fundamental safeguard against forced disappearances. In the 1970s, Latin America found itself under dictatorships and authoritarian regimes that came about through civil wars. These regimes were, unfortunately, well known for their practice of torture and forced disappearance of any potential political opponents. None of the people who were disappeared were brought to a legal place of detention. Instead, they were taken to illegal detention places that had no registration.

In *Anzualdo Castro v. Perú*,[12] which addressed the disappearance of a student in Peru during the Fujimori regime, the IACtHR reaffirmed its standard. According to the court, the duty to prevent torture implies the right to be detained in legally recognized detention facilities. The existence of detainee records constitutes a fundamental safeguard. Therefore, implementation and maintenance of clandestine detention centers constitutes, *per se*, a breach of the obligation to guarantee the right to personal liberty, human integrity, and life.

The Duty to Facilitate Access to Justice

In two cases decided late in 2010 relating to the sexual violation and torture of two indigenous women by military forces in the state of Guerrero in Mexico, the IACtHR ruled that the inability of the victims to present a claim and receive information in their own language creates an unjustified impediment to their right to access to justice.[13]

The right to information and to be informed of the charges against you is a safeguard to avoid illegal or arbitrary detention. Other safeguards include the right of a detainee to have access to a doctor for independent medical examination, to a lawyer, and to family members. Failure to charge detainees within a reasonable time violates their personal integrity and liberty. This is linked with the right to have legal assistance, because a lawyer has the capacity to challenge the detention and the ability to provide an alternative record of what is going on from the first moment of the detention.

There are also certain judicial guarantees that allow a detainee to challenge their detention. The most appropriate or effective ones are the *amparo* and *habeas corpus*. The judicial guarantees necessary for protection of non-derogable rights are, in themselves, non-derogable. There are two advisory opinions by the IACtHR that explain that *amparo* and *habeas corpus* are essential for the protection of detainees' rights.[14] Derogation from these rights is prohibited by any circumstances by Article 27.2 of the ACHR.[15]

The Duty to Investigate

As I pointed out in the beginning of my presentation, the ACHR requires States Parties to carry out *ex officio* investigations when there is suspicion of torture. In a recent case in late 2010, the IACtHR reiterated that the decision to initiate and carry out an investigation is not discretionary.[16] The duty to investigate constitutes an imperative obligation on states that is derived from international law. A confession obtained by torture cannot be used as evidence in any proceeding unless it has been used against the person who committed that alleged violation.

The Right to be Treated with Dignity

The right to be treated with dignity has a lot to do with keeping places of detention in conditions that comply with the minimum standards of human dignity. The violation of the right to be treated with dignity implies the violation of Article 5 of the ACHR on personal integrity.[17] Lack of natural light, inadequate bedding, inadequate sanitary conditions, inappropriate or inadequate food, inadequate physical activity, lack of access to psychological or medical attention, isolation, and *incommunicado* detention, all violate a detainees' right to be treated with dignity. Some aspects of the right to be treated with dignity pertain especially to groups under vulnerable conditions, including individuals that require regular medical access, and also limitations on solitary detention. *Incommunicado* detention should be exceptional and, in fact, prolonged *incommunicado* detention constitutes cruel and inhumane treatment, according to the IACtHR's jurisprudence.

Conclusion

I'm going to conclude on a positive, hopeful note. As Dean Grossman noted at the beginning of his speech today, there is still a lot of work to be done. Unfortunately we hear very often a political discourse that embraces repressive measures as an effective policy mechanism to address peace and security, ignoring states' obligations to prevent the violation of individuals' rights. But, recently mechanisms have been established to aid in the prevention of disappearances and torture in places of detention. Specific examples of these mechanisms are the Convention for the Protection of all Persons from Forced Disappearances[18] and also the National Prevention Mechanisms established by the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Therefore very strong treaties bodies exist at every level. There is coordination of monitoring at the regional level, and there are national prevention measures that can serve as a wonderful tool to enable unannounced visits to different places of detention. The most important goal that we can achieve is to convince policymakers and political leaders to fulfill their obligations to prevent torture, and to permit unannounced visits to all places of detention. Thank you very much.

Remarks of Suzanne Jabbour*

Access of Independent Health Professionals to Places of Detention and the Role of NGOs

Good morning everybody. I want to first thank the American University Washington College of Law and the Association for the Prevention of Torture for giving me this opportunity to share with you my experience as a health professional, and at the same time, that of NGOs' work inside places of detention in Lebanon. I want to briefly introduce places of detention in the Lebanese prison system. The Lebanese legislature has provided for the organization of detention centers, prisons, and juvenile institutes.[1] Prisons in Lebanon have been divided into central prisons and regional prisons. Prison management is under the responsibility of the Ministry of the Interior. Many of the needs of detainees, including their rehabilitation and preparation for reintegration into society, are totally neglected by the state. Some of these needs are met by NGOs, but conditions in the 24 existing prisons in Lebanon violate the prisoners' most basic rights.

Detention Conditions in Lebanese Prisons

On December 22, 2008, Lebanon became the first state in the Middle East to ratify the Optional Protocol to the Convention Against Torture (OPCAT).[2] This protocol calls for the creation, within one year of ratification, of a national preventive mechanism. The mechanisms would include visiting and monitoring places of detention. However, the national preventive mechanism for Lebanon is not yet established, and no amendments to Lebanese law have been implemented following the ratification of the OPCAT.

In the 24 existing prisons in Lebanon, prisoners' most basic rights are frequently violated. Prisoners are subjected to abusive treatment by prison officials and are often denied the minimum conditions necessary for survival. Many prisoners are also detained without trial. The needs of family members of prisoners are also important, especially the children of prisoners — who face anxiety and uncertainty.

Capacity of Prisons and Places of Detention

The official capacity of the Lebanese prisons is around 3,600 inmates. Currently, the total number of inmates is 5,324 — almost 1.5 times more than the official capacity. Most of the prisons have an official capacity that does not correspond with minimum requirement standards set forth by Rule 10 of the Standard Minimum Rules for the Treatment of Prisoners.[3]

Making matters worse, six of the twenty regional prisons are overcrowded by inmates who have finished their sentences and are waiting transfer by General Security. These inmates constitute about 64 percent of the prison population. Out of the twenty regional prisons, nine are clearly overcrowded. This is partly because, on average, 73 percent of individuals awaiting trial are held in those prisons. This overcrowding of the Lebanese prisons is an issue that should be addressed not by building new prisons, but through reform at the administrative, legal, and judicial levels.

Health Conditions and Hygiene

For the most part, health conditions in Lebanese prisons do not comply with international requirements. The gaps in healthcare are mainly related to the obsolescence of government institutions. The first problem related to the administration of the Lebanese prisons, according to a statement made by the prison administration, is that the cell doors close at 5pm. When an inmate has urgent medical needs, the guard must request the permission of the prosecutor's office to open the inmate's cell and rush him or her to the hospital. These rules put the inmate's life in excessive danger during the night. The handling of urgent cases currently depends on the good will of the prison staff, on its professionalism and its skills to evaluate the urgency of the situation, in addition to the prosecutor's answer.

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Additionally, certain Lebanese prisons do not offer any activities for the inmates. Therefore, inmates spend their entire days sitting in cells, in violation of Principle 6 of the Basic Principles for the Treatment of Prisoners.[4]

The Role of NGOs Inside Places of Detention

The rehabilitation of prisoners has not been incorporated in national health policy. There are no governmental programs aimed at providing comprehensive and interdisciplinary services to prisoners in Lebanon. Effective rehabilitation programs should be integrated in detention centers. Many projects have been implemented in the past decade by NGOs, but they should be reoriented and structured. Throughout Lebanon's history, NGOs have played an important role in correctional reform and the evolution of the penal system. NGOs have continued to exercise a large influence on public policy decisions involving the corrections system.

Indeed, the role of NGOs has increased in the last quarter century. The government has made some achievements, including the establishment of a human rights sector inside the Interior Security Forces. Still, there have been no reports on the results of this work. However, Lebanon has established a torture follow-up committee inside prisons, police stations, and places of detention named the Committee for Monitoring against the Use of Torture and Other Inhuman Practices in Prisons and Detention Centers. This committee is affiliated with the General Directory of the Interior Security Forces.

A screening study, which includes all Lebanese prisons, is currently being conducted upon the president's request. This study consists of three main components: screening the infrastructure of all prisons, evaluating prison conditions with the international standards and law, and studying the psychological well-being of the prisoners in all prisons. The objective of this study is to set forth a plan for prison reform at all levels in order to integrate the prison system into the mandate of the Ministry of Justice.

The achievements mentioned above were the result of the work of Lebanese NGOs. However, these institutions are not considered totally effective because the system is self-monitoring, which leaves people deprived of their liberty without any guarantees. This monitoring system does not release reports, and therefore is minimally transparent and suffers from a low level of efficiency. Furthermore, the improvement of prisons is not actually a priority of the Lebanese government, especially because any improvements would require a huge budget.

Access to independent health professionals inside prisons and the type of services provided by NGOs, especially the Restart Center, is critical in places of detention. Prisoners need to engage in fruitful pursuits during the term of their sentence in jail. This can be achieved through vocational training, legal and educational services, as well as psychological rehabilitation. The Restart Center has initiated a wide range of programs inside and outside prisons that prepare inmates for release, provide services to former prisoners when they return to the community, and assist former prisoners with finding employment. This coordinated approach helps reduce the probability of recidivism. The Restart Center has been involved in this kind of work in Lebanon for the last ten years.[5]

Additionally, the Restart Center manages and provides rehabilitation services, including psychological rehabilitation, inside prisons for prisoners who are victims of torture. The Restart Center implemented the health and restart education program in 2006 over a period of one year in collaboration with the First Step Together Association (FISTA).[6] The program was funded by Oxfam Quebec, and targeted 100 family members of prisoners with the goal of empowering and rehabilitating families, as well as building up community capacity and awareness.

The Restart Center also conducts psychosocial interventions for prisoners and family members. This project was funded by the European Commission and managed by the Office of the Ministry of State of Administrative Reform during 2007–2009. The project includes the provision of psychosocial and legal services to 200 prisoners in the Tripoli North District Prison and 250 of their family members, with a focus on women and children. The Restart Center also implemented a rehabilitation program in the Tripoli North District Prison with the support of the European Commission.

As these examples demonstrate, NGOs serve multiple roles in places of detention. Their work includes: monitoring violations and ill-treatment inside prisons, ensuring that prisoners can communicate with the outside world, acting as the link between the prisoners and the authorities, providing the public and media with information on prison conditions, safeguarding prisoners by sharing important data on places of detention with national and international monitoring bodies, and intervening in emergency situations for reasons of health, hygiene, or other basic needs.

Relationship Between Governmental Bodies and NGOs

In Lebanon, the relationship between the governmental bodies and NGOs working in places of detention is generally an effective one. Still, the majority of prison officials lack knowledge of human rights, and prisoners' rights in particular, and the relationship is sometimes affected by political situations, security concerns, the mood of prison administrators, or general weakness and corruption within the system. This consequently affects the relationship between NGOs and governmental bodies, because security forces underestimate the value of NGO-led work.

The relationship between the prison staff and health professionals sometimes interferes with medical services inside the prison for more than one month or two months. More often than not, health professionals work under stress, due to prison regulations and threats from prison staff. This difficult relationship

increases the likelihood of burnout for mental health staff, which negatively affects the role of NGOs in prisons.

Challenges and Lessons Learned

The political situation in Lebanon usually has consequences on the effectiveness of rehabilitation services in places of detention. The results include: delays in trials; visits to certain prisons being prohibited; and torture and ill treatment of prisoners by prison officials, especially during periods of investigation.

There are numerous lessons learned from our experiences inside prisons. Building up the capacity of prisoners and prison officials is essential. In particular, prison officials need to participate in awareness sessions and trainings on human rights and prisoner's rights, as well as be informed of the applicable international and national instruments. To accomplish these objectives, collaboration and partnership among concerned stakeholders is critical. These stakeholders include government, non-government bodies, citizens, and other social and educational parties — like human rights activists, lawyers, and schools.

Remarks of Brenda V. Smith*

Safeguards for Preventing Sexual Violence in Prisons

This presentation is going to be about one particular aspect of torture. It is very important to call sexual abuse in custodial settings—prisons, jails, community corrections and juvenile detention — a form of torture, even though we do not in the United States. Instead, in the U.S. we call sexual abuse in custody a violation of the Eight Amendment, which is a euphemism that is used in an attempt to be congruent with international standards on torture.[1] But it really is not. Obviously it does not provide the protections of the international instruments that we are going to be talking about today.

History of Sexual Abuse in Prisons

In the United States, there's a very long history of sexual abuse in prisons. In fact, the first prisons in the U.S. included men, women, and children. The creation of women's prisons almost always is preceded by some incident of sexual abuse of a woman in custody. There is a famous incident that occurred in the Indiana penitentiary, where one of the female inmates was impregnated by the warden of the facility and beaten until she lost her child. Subsequently there was an exposè. As a result, the Indiana women's penitentiary was created.[2]

The response to sexual abuse in custody, at least domestically in the U.S., has been to: 1) create separate prisons for men and women, and 2) to implement, for example, same-sex supervision, under the theory that if men supervised men and women

supervised women, then there'd be a certain amount of safety. Experience has shown that that's not accurate.

In the early 1970s, when legislation created equal opportunities for women, even those rudimentary protections ended because it meant that men were now coming into institutions and supervising women.[3] A basic practice in U.S. prisons is to allow men to supervise women, which is a big vector for sexual abuse of detainees in custody.[4]

Prison Conditions in America

One of the things that is an overlay of this presentation is U.S. exceptionalism. We actually think that our laws and standards create a level of safety that doesn't exist in most

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other countries. For that reason, we have really resisted efforts at oversight and also efforts at transparency. In addition, our federal system creates particular problems. Even if you could get some sort of traction at the federal level, you will also have to deal with the sovereignty of each particular state.

The other overlay that is also important is our overreliance on imprisonment as a method of punishment. Today we have about two million people under custody in the U.S.[5] About 93 percent of those under custody in the U.S. are men, and 7 percent are women.[6] One in every 45 people in the U.S. is under some sort of custodial supervision.[7] Therefore, if we were to consider a room of 75 or 80 people, at least two of those people would be under some form of custodial supervision.

The Prison Rape Elimination Act

One useful piece of legislation that relates directly to this conversation about detention visits and transparency in prisons, was passed in 2003 and named the Prison Rape Elimination Act.[8] The remainder of this presentation will discuss the standards that arose as a result of this legislation. Incredibly, The Prison Rape Elimination Act (PREA) passed both the House of Representatives and Senate unanimously.[9] One of the reasons that it passed is because the issue of sexual abuse in prison is a bridge issue that many human rights organizations can all agree on. Everyone can agree that nobody should be raped in custody. Prison rape is also certainly something that would fit any definition of torture.

Another reason the legislation passed unanimously is because it did not provide for any private right of action.[10] Therefore, the legislation created certain obligations, but didn't create the ability to sue anyone if those obligations were violated. The sense was that the Eighth Amendment and other laws that were already had on the books would provide that venue. What it did create was obligations for certain government agencies.

Provisions of the Prison Rape Elimination Act

One of those obligations was for the Bureau of Justice Statistics (BJS) to collect data, a step that seems very innocuous, but which was very important. When you count things, you actually have to look at them, and therefore data collection is the first step. As a result, for the first time, the U.S. actually looked at the rates of victimization in custody. There was great resistance to that from correctional authorities. But the numbers that we have, reliable numbers, are that each year over 60,000 people in custody are victimized.[11] When we are talking about victimized, we are talking about prison rape. We also know that these numbers are vastly underreported because we know that people do not like to report sexual abuse. They also mistrust the processes used in the collection of that kind of information. However, these reports were made by correctional authorities.

Recently, the government collected data from adult inmates and juvenile detainees.[12] BJS actually went into prison, jails and detention facilities and talked to men, women, and youths who were in custody.[13] BJS found that jail inmates report sexual abuse at a rate of about 3.7 percent and about 4.5 percent of inmates in prisons report abuse.[14] BJS also found that 12 percent of youth (1-in-8) reported one or more incidents of sexual victimization in the past twelve months.[15] The rates of victimization for youth are about 7 times higher than that for adults.[16] That is what we have as the backdrop to the problem of sexual abuse in custody.

Results of the Prison Rape Elimination Act

One of the results of the legislation and data collection is that it created transparency. States that had the lowest rates of victimization and states that had the highest rates of victimization were required to come and explain to a federal panel about why their rates diverged from the national average. Even though no mechanism created a private right of action, the law created visibility at the state and federal level. Therefore there was oversight. Importantly the press also got involved and pressured action from many states based on the BJS data.

Perhaps the most important thing that the legislation did, and some people might argue about this, is it impaneled a commission — The National Prison Rape Elimination Commission — to issue a report about the causes and consequences of abuse in custody and to also develop a set of national standards. Those standards are standards that the commission proposed to the Attorney General. The Attorney General then had to issue his own regulations. Draft regulations were made public for commenting on February 4, 2011 and the deadline for commenting on those standards was April 4.

Commission about the Causes of Consequences of Abuse in Custody

The Commission, of which I was a member, completed its work in June 2009. I want to discuss briefly the Commission's findings on some of the standards. The Commission found that prison rape is still a problem. It also found that leadership matters. If individuals in positions of leadership, whether a warden or a governor, do not believe in the dignity of people who are in custody, then there is a greater likelihood that sexual abuse and other kinds of abuse will occur. The Commission also found that youth, especially youth that are in adult facilities, are at great risk for abuse. Additionally, the Commission found that the mechanisms for reporting abuse were seriously deficient. It also found that certain individuals are at greater risk for abuse than others. Those included people who were in immigration detention facilities, youths, people with developmental disabilities, those with little experience of the custodial system, and interestingly, people who were perceived as being lesbian, gay, bisexual, transgender or intersex.

The Commission proposed a number of national standards. I am not going to discuss all of them, but many will sound familiar: eliminate housing youth in adult facilities; eliminate cross-gender supervision, except in emergency situations; train staff volunteers and contractors about their obligations; complete background checks on people who are going to work with

people in institutional facilities; do regular audits of facilities and report the results of those audits publicly; and, lastly, have compliance with monitoring. Recommendations also stressed the importance of multiple ways of reporting abuse, including external ones, so that non-governmental organizations (NGOs) and the community could be involved. There was also significant evidence that correctional authorities needed to do a better job of classifying inmates, investigating complaints, sanctioning staff and inmates for abuse of other inmates, and improving the grievance process.

Challenges inherent in Correctional Institutions

The cost of oversight is one of the big challenges that correctional professionals talk about when discussing compliance, auditing, and monitoring. This has been put forward as a major barrier to protecting the safety of people in custody. Correctional institutions and states have also talked about their sovereignty. In fact, to visit most penal institutions in the U.S., you must have permission. Of course, that provides an opportunity for institutions to hide some of the things that they're doing.

Another really important factor that is a challenge, is the culture of understanding that sexual abuse is not part of the penalty of imprisonment. And finally, in the U.S., the correctional industry is an industry. It is very large and those who are speaking out about the abuses in custodial settings are few. So, their concerns are magnified. And it's also connected to other things we might agree about in other settings, such as the importance of unions, and many of these industries are unionized.

Department of Justice Standards

Last, looking at the Department of Justice standards[17] is one of the really important ways we can collaborate. There needs to be some critique or look at the standards that the Department of Justice (DOJ) is proposing to determine whether they meet either minimum standards or any of the standards we feel provide for the basic dignity of people in custody. At an initial glance, in some respects they do, and in some respects they do not. In particular, the proposed standards that the Department of Justice issued do not cover immigration detention facilities, so the protection of abuse would not cover those who are in immigration detention.[18]

The provision that the Commission had around cross-gender supervision has been abolished in the DOJ standards.[19] However, one of the most important factors, is the importance and also the strength of audits and what is going to happen around the issue of compliance.

Remarks of Alison A. Hillman de Velásquez*

Protecting Safeguards of Detained Persons with Disabilities

Thank you, very, very much for the invitation to present at this important conference on the particular safeguards that must be taken into consideration when monitoring places of detention where persons with disabilities are typically detained. It's a true honor to be here among these distinguished panelists and to be back at my alma mater.

In my talk today, I'll present an overview of detention-monitoring practice with regard to persons with disabilities, particularly in places where persons with disabilities are typically detained. I am not talking about persons with disabilities in prisons, necessarily, but persons with disabilities in institutions — psychiatric institutions. Then I'll provide evidence of why focused monitoring of abuses, perpetrated against persons

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with disabilities in detention is so vitally important. Finally, I'll highlight some of the key areas we should think about regarding detention-monitoring safeguards when persons with disabilities are concerned. This requires a critical look, specifically at two of the Committee for the Prevention of Torture (CPT) standards in light of the evolving international human rights norms with respect to persons with disabilities.[1]

Overview of the Detention-Monitoring Practice with Regard to Persons with Disabilities

Historically, the human rights of detained persons with disabilities have been overlooked, and detention facilities housing persons with disabilities have been deemed not worthy of focusing detention-monitoring efforts. Indeed, until quite recently, the human rights community has all but ignored the plight of persons with disabilities, particularly persons with psycho-social disabilities, those diagnosed with mental illness, and persons with intellectual disabilities. During the 1980s, worldwide attention was brought to the egregious abuses perpetrated against political dissidents detained in psychiatric institutions in Russia. These same abuses, including arbitrary detention, inhuman and degrading treatment and conditions, and torture, went undocumented and were not denounced when they were perpetrated against persons with mental disabilities — as if the world were saying that abuses against persons with disabilities in the name of treatment was somehow acceptable. In effect, this was tacit consent to widespread oppression and discrimination based on disability. The CPT began to bring attention to the rights of abused persons with disabilities when it included psychiatric institutions among the places of detention under its monitoring purview. This shift was also influenced by a one-man organization, which got its start at this very law school.

In 1993, Disability Rights International (DRI) — then Mental Disability Rights International — began methodically documenting abuses in psychiatric institutions, social care homes, asylums, nursing homes and orphanages.[2] In the past 17 years, DRI has documented conditions and treatment in psychiatric institutions in 25 countries around the world, in the regions of Latin America, Eastern Europe, the Middle East, and Asia. Time and time again, DRI has found that persons with disabilities are detained in dangerously overcrowded, unhygienic conditions. They are subject to forced medical treatment, physical restraints, over-medication, resulting in chemical restraint, and forced electro-convulsive treatment (ECT), often without the use of anesthesia or muscle relaxants. DRI has documented prolonged detention in isolation cells. Another abuse that's frequently uncovered is grossly inadequate medical care. The photo on the screen before you is a woman detained in one of the largest psychiatric institutions in the city of Buenos Aires, who didn't receive adequate medical care, got gangrene in some of her extremities, had to have some of her fingers amputated on her right hand, and perhaps will have to have her leg amputated as well. Another documented abuse is the lack of any type of rehabilitative or therapeutic activities. Frequently, persons with disabilities in detention face complete abandonment by society, often for a lifetime, without any form of due process, no access to an attorney, no hearing before an independent or impartial tribunal and no review of their detentions.

Now I'd like to highlight two of the key areas where I think that we should re-think detention-monitoring standards where persons with disabilities are concerned. This re-thinking, indeed, reformulating of standards, is necessary given the entry into force of the UN Convention on the Rights of Persons with Disabilities (CRPD) in May of 2008.[3] Today, the CRPD is on the verge of its 100th ratification, making it the human rights treaty that has gained the most widespread adherence — faster than any other treaty prior. The rights protections established in the CRPD provide the blueprint for interpreting other standards, such as the CPT standards, in the context of disability. I will preface my observations on the CPT standards by saying that the CRPD represents a paradigm shift in the way we think about disability — from a model where disability is seen primarily as a medical condition to be remedied to a social model of disability. Under the social model of disability, the person no longer bears the burden of adapting to society. Rather, society must change; removing structural, communicational, and attitudinal barriers to make full and meaningful participation by persons with disabilities possible.

The Deprivation of Liberty and Informed Consent

With this in mind, I turn to two of the key areas where I think we should re-think monitoring standards where persons with disabilities are concerned. These include standards relating to the deprivation of liberty and informed consent. Regarding the deprivation of liberty, the CPT standards on involuntary psychiatric commitment state that, "[o]n account of their vulnerability, the mentally ill and mentally handicapped warrant much attention in order to prevent any form of conduct — or avoid any omission — contrary to their well-being. It follows that involuntary placement in psychiatric establishments should always be surrounded by appropriate safeguards."[4]

While establishing appropriate safeguards for involuntary psychiatric commitment is a positive development, given the CRPD, we must re-think our approach to the safeguards established with regard to persons with disabilities. Article 14 of the CRPD forbids deprivation of liberty of persons with disabilities — on the basis of disability.[5] In particular, Article 14, paragraph 1(b), makes clear the existence of a disability shall in no case justify a deprivation of liberty. Indeed, the Office of the High Commissioner on Human Rights, in his thematic study on the CRPD, states that grounds for detention that include disability determination are discriminatory and must be abolished.[6] So with the protections that the CRPD affords, it's clear that a reformulation of the CPT standards is necessary to ensure compatibility with the evolving international human rights standards pertaining to persons with disabilities.

In terms of informed consent, at first blush the CPT standards appear to be a departure from the notion that involuntary

psychiatric commitment goes hand-in-hand with involuntary treatment.[7] Yet a careful read of the CPT standards in light of the CRPD signals that these standards must be revisited. The CPT standards on informed consent begin with a non-obligatory statement: "Patients *should*," — not *must* — "as a matter of principle, be placed in a position to give their free and informed consent to treatment."[8] It continues with a more encouraging statement: "The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorizing treatment without his or her consent."[9]

Yet the standards fall down with the following statement: "It follows that every *competent* patient, whether voluntary or involuntary, should be given the ability to refuse treatment or any other medical intervention that any derogation of this fundamental principle should be based upon law and only relate to clearly or strictly defined exceptional circumstances."[10] I think the key word here in this final phrase is "competent." Often times, by virtue of the fact that you are involuntarily admitted to a psychiatric institution, you are deemed incompetent. Article 12 of the CRPD states that persons with disabilities have the right to "enjoy legal capacity on an equal basis with others in all aspects of life."[11] It goes on to provide that "States Parties shall take appropriate measures to provide access to persons with disabilities to the support they may require in accessing their legal capacity." [12] This includes the establishment of:

> appropriate and effective safeguards to prevent abuse . . . [which] shall ensure that measures relating to the exercise of legal capacity respect the rights, will, and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest amount of time possible, and are subject to regular review by a competent, independent, and impartial authority or judicial body. Safeguards should also be proportional to the degree to which such measures affect the person's rights and interests.[13]

As such, there can no longer be a blanket determination of "incompetence" of persons with disabilities. Where necessary, persons with disabilities must be provided support to facilitate their decision-making.[14]

Looking Beyond Detentions

My comments today have focused on persons with disabilities in psychiatric detention. However, psychiatric institutions are just one of the many places of detention where persons with disabilities are typically locked away: social care homes, *colonias* — or countryside asylums — that are deposits for society's outcasts, orphanages, nursing homes, and residential rehabilitation centers are all places where persons with disabilities are detained. Ultimately, the goal of detention monitoring for persons with disabilities must be the enforcement of a state's obligations to develop alternatives to institutionalization — in essence, to depopulate these places of detention. This will, in part, entail the creation and strengthening of community-based services and supports that persons with disabilities themselves have determined that they need and desire. We could help ensure the effective and full implementation of the rights of persons with disabilities by reformulating the CPT standards to ensure that the objective of detention monitoring is the full and active participation and integration of persons with disabilities in the community. Thank you.

Concluding Remarks from Dean Claudio Grossman, Moderator

Thank you, Alison, and thanks as well to the other distinguished members of the panel. In this panel's presentations, we heard about the national experience in Lebanon, case studies of sexual harassment in prisons, and issues concerning the rights of disabled persons in places of detention and prison. The presenters gave us their candid assessment of the topics.

A common thread of the presentations was that the condition or status of an individual should not be used as an excuse to deprive her/him *a priori* of her/his rights. International law establishes as a point of departure that everyone enjoys all rights. Restrictions are allowed only if they are specifically authorized, and need to be justified in each case, satisfying legal tests of reasonableness. Accordingly, the sheer fact that someone belongs to a certain "category" of persons does not in itself authorize restrictions by others.

A second issue that emerged is the role of international law with regard to visits to places of detention. The purpose of international human rights law after World War II was to protect individuals basically when domestic law had failed. International law has also contributed in other valuable ways including strengthening prevention when, for example, a state has ratified a treaty and incorporated international norms into its domestic legal system or when through interpretation national judges decide cases referring to international law. Thanks to the Inter-American system for the protection of human rights, there are numerous examples in this hemisphere of the role that international law plays concerning, for instance, the rights of freedom of expression, access to justice, due process, prohibition of discrimination, and political rights. The next panel will address protecting vulnerable groups through detention visits.

ENDNOTES: Panel I: Building on the Committee against Torture's Successes and Addressing Its Shortcomings: Stakeholders' Perspective

Remarks of Ariela Peralta

[1] CEJIL, Home Page, http://cejil.org/en.
[2] Association for the Prevention of Torture, Home Page, http://www.apt.ch/
[3] International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, G.A. res. 61/177, U.N. Doc. A/RES/61/177 (2006).
[4] Inter-American Convention to Prevent and Punish Torture, Feb. 28, 1987, OAS Treaty Series, No. 67, *available at* http://www.oas.org/juridico/english/treaties/a-51.html.
[5] Inter-American Convention on Forced Disappearance of Persons, Jun. 9, 1994, 33 I.L.M.1429 (1994), *available at* http://www.oas.org/juridico/english/treaties/a-60.html.
[6] Goiburú *et al*. v. Paraguay. Case No. 12.124, Inter-Am. H.R. (ser. C) No. 153, (Sept. 22, 2006).
[7] American Convention on Human Rights, July 18, 1978, 1144 U.N.T.S. 123.
[8] La Cantuta v. Perú, Inter-Am. Ct. H.R (ser. C) No. 162, ¶¶ 81-98, 122-29, 254.5 (Nov. 29, 2006).
[9] Goiburú *et al*. v. Paraguay. Case No. 12.124, Inter-Am. H.R. (ser. C) No. 153, (Sept. 22, 2006).
[10] Montero-Aranguren *et al* v. Venezuela (Detention Center of Catia), Inter-Am. Ct. H.R. (ser. C) No. 150, ¶¶ 60(7), 60(15) (July 5, 2006).
[11] American Convention on Human Rights, July 18, 1978, 1144 U.N.T.S. 123, *available at* http://www.un.org/documents/ga/res/48/a48r104.htm.
[12] Anzualdo Castro v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 202 (September 22, 2009).
[13] *See Ines* Fernandes Ortega v. United Mexican States, Inter. Am. Ct. H.R. (ser. C) No. 12.580 (May 7, 2009).
[14] *See* Habeas Corpus in Emergency Situations (Arts. 27(2) and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987, Inter-Am. Ct. H.R. (Ser. A) No. 8 (1987).
[15] American Convention on Human Rights, July 18, 1978, 1144 U.N.T.S. 123.
[16] *See* Gomes-Lund *et al*. (Guerrilha do Araguaia) v. Brazil, Inter-Am. Ct. H.R. (ser. C) No. 219 (November 24, 2010).
[17] American Convention on Human Rights, July 18, 1978, 1144 U.N.T.S. 123.
[18] International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, G.A. res. 61/177, U.N. Doc. A/RES/61/177 (2006)

Remarks of Suzanne Jabbour

[1] Decree No. / 143 110/ (Leb).
[2] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, G.A. Res 57/199, U.N. Doc A/RES/57/19.
[3] First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Aug. 22 — Sep. 3, 1955, *Standard Minimum Rules for the Treatment of Prisoners*, U.N. Doc. A/CONF/611 (Aug. 30, 1955), *available at* http://www.unhcr.org/refworld/docid/3ae6b36e8.html.
[4] First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Aug. 22 — Sep. 3, 1955, *Standard Minimum Rules for the Treatment of Prisoners*, U.N. Doc. A/CONF/611 (Aug. 30, 1955), *available at* http://www.unhcr.org/refworld/docid/3ae6b36e8.html.
[5] Restart Center, Home Page, *available at* http://www.restartcenter.com/.
[6] First Step Together Association, Home Page, *available at* http://www.fista.org/about.shtml.

Endnotes: Remarks of Brenda V. Smith

[1] *See* U.S. Const. amend VIII.
[2] *See* Nicole Hahn Rafter, *Partial Justice: Women in State Prisons, 1800–1935*, (Northeastern 1985).
[3] *See generally* Brenda V. Smith, *Watching You, Watching Me,* Yale Journal of Law and Feminism 15: 2 (2003).
[4] *See generally* Labelle, Levi and Smith et. al., *Women in Detention in the United States: Preliminary Report for Rashida Manjoo*, U.N. Special Rapporteur on Violence Against Women. (January 12, 2011).
[5] *See* Sabol, West and Cooper, *Prisoners in the U.S, 2008* (December 2009)
[6] *Id.*
[7] *Id.*
[8] *See generally* The Prison Rape Elimination Act of 2003, 42 U.S.C. §§ 15601-15609.
[9] See Brenda V. Smith, *The Prison Rape Elimination Act: Implementation and Unresolved Issues*, Criminal Law Brief American University Washington College of Law, 10-18 (Spring 2008) [herinafter PREA].
[10] *Id.*
[11] *See generally* Allen Beck and Timothy Hughes, *Prison rape Elimination Act: Sexual Violence Reported by Correctional Authorities 2004,* Bureau of Justice Statistics, U.S. Dep't of Justice (2005) [hereinafter Beck and Hughes 2004]; Allen Beck and Paige Harrison, *Prison rape Elimination Act: Sexual Violence Reported by Correctional Authorities 2005*, Bureau of Justice Statistics, U.S. Dep't of Justice (2006) [hereinafter Beck and Harrison 2005]; Allen Beck , Devon Adams and Paige Harrison, *Prison rape Elimination Act: Sexual Violence Reported by Correctional Authorities 2006*, Bureau of Justice Statistics, U.S. Dep't of Justice (2007) [hereinafter Beck Harrison and Adams 2006]; Allen Beck and Devon Adams and Paul Guerino, *Prison rape Elimination Act: Sexual Violence Reported by Juvenile Correctional Authorities, 2005-6*, Bureau of Justice Statistics, U.S. Dep't of Justice (2008) [hereinafter Beck Adams and Guerino, 2005-6].
[12] *See generally* Allen Beck and Paige Harrison, *Prison rape Elimination Act: Sexual Violence in State and Federal Prisons Reported by Inmates, 2007*, Bureau of Justice Statistics, U.S. Dep't of Justice (2007) [hereinafter Sexual Violence in State and Federal Prisons]; Allen Beck and Paige Harrison, *Prison rape Elimination Act: Sexual Violence in Local Jails Reported by Inmates, 2007*, Bureau of Justice Statistics, U.S. Dep't of Justice (2008) [hereinafter Sexual Violence in Local Jails]; Allen Beck Paige Harrison And Paul Guerino, *Special Report: Sexual Victimization in Juvenile Facilities Reported by Youth 2008-9*, Bureau of Justice Statistics, U.S. Dep't of Justice (2010) [hereinafter Sexual Victimization of Youth].

[13] *Id.*
[14] *See* Sexual Violence in State and Federal Prisons *supra* note 12; Sexual Violence in Local Jails *supra* note 12.
[15] *See generally* Allen Beck and Marcus Berzofsky, *Prison rape Elimination Act: Sexual Violence in Prisons and Jails Reported by Inmates, 2008-9*, Bureau of Justice Statistics, U.S. Dep't of Justice (2010) *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf.
[16] *See* Sexual Victimization of Youth *supra* note 12.
[17] *See* United States Department of Justice, *National Standards to Prevent, Detect, and Respond to Prison Rape*, 76 Fed. Reg. 23 (Feb. 3, 2011).
[18] *Id.*
[19] *Id.*

Endnotes: Remarks of Alison A. Hillman de Velásquez

[1] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS 126. (Nov. 26, 1987) [herinafter CRPD].
[2] Disability Rights International, Home Page, http://www.disabilityrightsintl.org/.
[3] CRPD *supra* note 1, annex 1.
[4] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS 126. (Nov. 26, 1987) CPT/Inf/E (2002) 1 - Rev. 2010, para. 51.
[5] CRPD *supra* note 1, annex 1.
[6] OHCHR, "Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities," A/HRC/10/48, 26 Jan. 2009, para. 48.
[7] CRPD *supra* note 1.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] CRPD *supra* note 1, annex 1.
[12] *Id.*
[13] *Id.* art. 12 (4).
[14] *Id. a*rt. 12 (3).

PANEL 2: PROTECTING VULNERABLE GROUPS THROUGH DETENTION VISITS

Opening Remarks from Hernan Vales, Moderator*

Good Morning, and welcome to the second panel for today's conference. This panel is called "Protecting Vulnerable Groups Through Detention Visits" and we have an excellent lineup of speakers.

To my left we have Haritini Dipla, professor of international law at the University of Athens in Greece. Professor Dipla's main field of interest is human rights, both in the UN and European contexts. Also, since 2006 she has been a member of the European Committee for the Prevention of Torture, of which she is currently the Second Vice-President. Before acquiring this position she was a member of the Greek National Commission for Human Rights.

Also to my left, we have Mrs. Catherine Dupe Atoki. Mrs. Atoki is a private practice lawyer in Nigeria. She previously participated as a member of the Presidential Committee's review of laws that, for example, were considered to be discriminatory against women. She has a wealth of expertise in that field. Mrs. Atoki was also a member of the National Human Rights Council of Nigeria, and is currently a member of the African Union Commission on Human and People's Rights, where she is a Chairperson on the Committee for the Prevention of Torture as well as the Special Rapporteur on Prisons and Places of Detention in Africa.

To my right we have Pamela Goldberg, acting Senior Protection Officer at the UN High Commission on Refugees (UNHCR) since 2007. Her areas of expertise include gender and human rights issues, as well as issues concerning children in the context of refugee and asylum law. Before joining UNHCR, she served on the faculty of City University of New York School of Law for a number of years.

Finally we have Ms. Allison Parker. Ms. Parker is an attorney and director of the U.S. Program of Human Rights Watch. She specializes in immigrant's rights and on youth offenders serving life without parole sentences in U.S. prisons. She has also been part of UNHCR.

As you see, we have a wealth of expertise, particularly with respect to the vulnerable groups of women, juveniles, migrants, and asylum-seekers. I am sure it will be a very interesting panel. Without further ado, I'd like to give the floor to Professor Dipla to begin her presentation. Thank you.

**Hernan Vales is part of the Secretariat of the UN Subcommittee on Prevention of Torture, United Nations Office of the High Commissioner for Human Rights. Before his current posting, Mr. Vales worked at UN Headquarters in New York, notably in the Department of Peacekeeping Operations and in the Office of Legal Affairs. Hernan Vales holds a law degree and a masters' degree in human rights.*

Remarks of Haritini Dipla*

First, I would like to thank the American University Washington College of Law and the Association for the Prevention of Torture for organizing this important event and for inviting the European Committee for the Prevention of Torture to participate.

Persons deprived of liberty are dependent upon the agents of state authorities and often have limited or no possibilities to claim the full enjoyment of their rights. Visits by external independent bodies of closed places are extremely important to protect detainees from torture or other ill treatment. The necessity for such visits is reflected in several international instruments relating to the treatment and detention conditions of persons deprived of liberty.

The European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment[1] (CPT) is an international treaty based monitoring body acting on the European level. It operates through periodic and *ad hoc* or follow-up visits to places of detention where persons are deprived of their liberty by decision of a public authority. The CPT can speak in private with detainees and has free and full access to all places of detention and documents. Following its visits, it makes recommendations to states with a view toward strengthening their protection from torture or inhuman or degrading treatment. The CPT carries out its visits in all the Members States of the Council of Europe, which currently includes 47 states. It has twenty years of operating experience, 300 visits, 180 periodic, 120 *ad hoc,* and 250 published reports.

The CPT is both a monitoring and a standard setting body. Our visits are our main task, but our findings allow us to elaborate and develop standards aimed at diminishing ill treatment, improving detention conditions, and enhancing the protection of vulnerable persons.

Until recently, the CPT was the only monitoring body in Europe. Now, as a result of the entry into force of the UN Optional Protocol for the Prevention of Torture[2] (OPCAT), the United Nations Sub-Committee for the Prevention of Torture[3] (SPT) can also operate in European States that have become parties to this instrument. The two bodies should collaborate in order to avoid duplications and achieve better synergies for the benefit of the persons deprived of their liberties.

**Haritini Dipla is Second Vice President of the European Committee for the Prevention of Torture and Professor of International Law at the University of Athens. She has taken part in many visits to detention facilities in Members States of the Council of Europe and States Parties to the European Convention for the Prevention of Torture. From 2000 to 2006, she was a Member and then First Vice-President of the Greek National Commission for Human Rights.*

Visiting Vulnerable Groups

We are speaking here today about vulnerable groups. In a sense, all prisoners and other persons deprived of their liberty may be considered a vulnerable group. They are deprived of their liberty and live within a confined space for a period of their lives or sometimes for their entire lives. Within this general group, other vulnerable groups exist with specific special needs, such as women, aged persons, juveniles, persons belonging to ethnic minorities, persons with disabilities, and so on.

In our visits we encounter all of these vulnerable groups. Sometimes we find them where we expect them — in special facilities or in separate wings in larger facilities — and sometimes where we do not expect them. Vulnerable persons have specific rights that they rarely fully enjoy. During the CPT's visits, we always dedicate a part of our time to such vulnerable categories of persons. When deciding on the composition of our delegations, we take particular care to assure not only a gender equilibrium but also participation of medical members and members with experience with the special group we are going to visit.

We never omit to visit women held in special facilities or in special wings in men's prisons. Women constitute a special and vulnerable group within prisons and other detention facilities because of their sex. They have specific needs, and although one could perceive differences between states, common trends

such as mental disorders, drug or alcohol addiction, gender related health care needs, and problems relating to motherhood have emerged in our visits. In its "10th General Report on the CPT's Activities," the CPT recommended a number of standards that should apply to women deprived of their liberty, including separate accommodation from men, mixed gender staffing, equal access to activities, ante natal and post natal care for mothers and children, and proper provision for hygiene and health issues.[4]

Visiting Detained Juveniles

Let me now discuss the core of my work — visits to detained juveniles. We all agree that the vulnerability of juvenile offenders in detention is increased by their youth. Most of them are deprived of their liberty for petty crimes and are first- time offenders. In its "9th General Report on the CPT's Activities," the CPT underlined the importance it attaches to the prevention of ill treatment of juveniles and presented a series of standards and safeguards in this respect.[5] We believe that the cardinal principle in juvenile detention is that they should only be deprived of their liberty as a last resort and for the shortest possible period of time. In support of this position, we look to Article 37 of the UN Convention of the Rights of the Child[6], and Rules 13 and 19 of the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").[7] Also, according to Rule 52.1 of the Council of Europe Rules for Juvenile Offenders (RJO), "as juveniles deprived of their liberty are highly vulnerable, the authorities shall protect their physical and mental integrity and foster their well being."[8]

Juveniles should not be held in institutions for adults. Instead, they should be held in institutions especially designed for them in accordance with Rule 59.1 of the RJO, with specialized staff of both sexes as provided under Rule 128.3 of the RJO.[9] They should also be offered regimes tailored to their needs. In the exceptional cases where juveniles must be placed in adult establishments, they should be accommodated separately, unless it would be in their best interest not to do so. Examples of such a scenario could be when parents are incarcerated with their children or when only one juvenile is present and he is totally isolated from the adult population. In cases where juveniles are detained with adult populations, efforts should be made to prevent total isolation of the juvenile, but they should be under strict supervision of the staff whenever interacting with the general population. In such cases they should be entitled to special treatment concerning activities and education.

During our visits to juvenile detention facilities we undertake a number of measures beyond interviewing the juveniles in order to find out whether they are treated with respect and humanity. We address the staff, including detention officers, educators, teachers, and psychologists, in order to assess whether they carry out their responsibilities in a manner that satisfies the obligation of the state to assure the security, physical and mental health, and development of the juveniles. We visit the juveniles' living spaces and the communal rooms to see whether the material conditions are positive, personalized, well lit, and spacious. In addition, we are very interested in ensuring that young girls have access to sanitary and washing facilities and provision of hygiene items, so we check this during our visits as well.

A CPT delegation to a juvenile establishment also has a priority to review the daily regime and the activities offered to the juveniles. Detention is detrimental for every prisoner, and even more so for juveniles. Purposeful activities are extremely important for them. Regime activities should be aimed at education, personal and social development, vocational training, rehabilitation, and preparation for release.[10] We inquire if there is a full program of education, sports, vocational training, recreation and of course physical exercise of at least two hours each day. In this regard, if there are also girls in the institution, they should enjoy the same regime without discrimination based on their sex. Sometimes we find that their training and vocational program is limited to sewing, cooking or to handicrafts, but this is a violation of Article 26.4 of Beijing Rules prohibiting discriminatory treatment of detained juvenile girls.

We also seek to ensure that the juveniles have access to health care. Health care for persons of young age should be conceived with a preventive character, including a requirement for examination upon admission, adequate medical facilities, and appropriate equipment. Our medical doctors assess if the above standards are satisfied and, if necessary, forward appropriate recommendations to the state's authorities.

During our visits, we also investigate the juveniles' contact with the outside world and any disciplinary measures that are used in the facility. Special higher standards apply to juveniles regarding their rights to have contacts with the outside world. They should generally be allowed to receive longer and open visits from their families, friends, and other persons and representatives of reputable outside organizations. They should also have the opportunity to visit their homes and family. As for disciplinary measures, juveniles must not be subjected to any corporal punishment, solitary or closed confinement, or any other measure that could be detrimental to the physical and mental health or well-being. Furthermore, the use of restraints or force should be used only in exceptional situations where a juvenile poses an imminent threat of injury to him or herself or others and then, only as a last resort. Staff should be properly trained to handle these kinds of situations, and those acting in violation of the applicable standards should be punished appropriately.

Another critical area that we review is the complaints and inspection procedures in the establishment, as those are a basic safeguard against ill treatment. We inquire if avenues of complaints are open to the juveniles, both within and outside of the institution. We also ask if the juveniles can have confidential access to an appropriate independent authority. Another safeguard for these procedures is the existence of regular visits to all juvenile establishments by an independent body, such as a

visiting committee or a judge with the mandate to receive and take action on complaints and inspect the material conditions in which the juveniles live.

We also visit juveniles in remand prisons. In its General Comment No. 10, the Committee on the Rights of the Child (CRC) has noted that in many countries, juveniles languish in pretrial detention facilities for months or even years. The CRC recommends the use of alternatives to detention in remand prisons in order to reduce the use of pretrial detention, especially for children and juveniles.[11] In such situations, we assess whether the juveniles enjoy the rights of remand prisoners plus the additional rights to which they are entitled as juveniles, as I have discussed.

Last, we also meet juveniles detained in police stations. In such situations we ask for enhanced safeguards against ill treatment. The risk of ill treatment is at its maximum during the very first moments of the deprivation of liberty by the police, so during our visits we examine the length of they stay with the police and whether the legal safeguards against ill treatment have been applied from the first moment of the deprivation of liberty. This includes ensuring proper notification of the deprivation of liberty to a third person — such as a parent, legal guardian, or social service — the right to a lawyer, and access to a doctor. Juveniles are also not to be interviewed or asked to sign any statement without the presence of a lawyer or other legal counsel. All of these rights must be protected from the first moment of detention.

Visiting Pre-Trial Detainees

An increasingly large part of the prison population in Europe consists of persons remanded by a judicial authority in custody in special establishments or prisons prior to trial, conviction, or sentencing. Pre-trial detention should be imposed in order to serve the proper administration of justice and security. It should only be imposed when other measures are considered insufficient and then, it should be accompanied by sufficient safeguards against abuse, such as periodical reviews and reasonable maximum detention periods. The rule should be that a person who is not convicted should not be deprived of his liberty and that pretrial detention should remain the exception.

Nevertheless, in many countries, pre trial detention is used as a form of punishment, in the name of a populist conception of how justice should be done. Such detentions are in violation of the principle of the presumption of innocence and personal liberty and often lack necessary safeguards against the risk of detention in inhuman or degrading conditions.

It is worth considering whether remand prisoners can be regarded as a vulnerable group. They are certainly in a vulnerable position because, although their guilt is not established and no sentence is imposed to them, they are deprived not only of their liberty, but also of fundamental rights enjoyed by sentenced prisoners. In many contexts, they are submitted to restricted regimes amounting to total isolation. In principle, they are a minority in relation to the sentenced prisoners. In some countries, however, they are gradually becoming a majority. One of the most common consequences of the excessive use of pretrial detention is overcrowding. In such a situation conditions of detention might easily be qualified as inhuman and degrading.[12]

When we visit pre-trial detainees, our interviews and assessment focus on a number of critical questions. First, we determine the length of the pre-trial detainee's detention. We often meet persons in pretrial detention who complain that their hearings are being continuously postponed and that they have no opportunity to contest judicial decisions or the duration of their detention. We also try to make sure that the pre-trial detainees are being afforded all of the rights of regular prisoners. The international standards provide that pretrial prisoners should enjoy all the protection provided for the general prison population in addition to some rights compatible with their legal status. The presumption of innocence, for example, requires that they should be held separately from the sentenced prisoners and enjoy some privacy. Rule 96 of the European Prison Rules provides that pre-trial detainees should be accommodated in single cells, unless they may benefit from sharing accommodation with other untried prisoners or a court has made a specific order to accommodate them in another manner — possibly to avoid collusion with other prisoners involved in the same case.[13] The reality is much uglier. We often find them in overcrowded prisons, and sometimes mixed with sentenced persons.

Normally, pre-trial detainees' regimes should not be affected by the possibility that they may be convicted of a criminal offence in the future.[14] Prison authorities should be guided by the rules that apply to all prisoners and should allow pre-trial detainees to participate in various activities accessible to the sentenced population, including work. In reality, when we visit either remand establishments or remand wings of prisons, we sometimes face situations where the vast majority of remand detainees spend at least 23 hours a day locked inside their cells with just one hour outdoor exercise every day. In its Second General Report, the CPT expressed the view that remand prisoners must spend a reasonable part of their day — eight hours or more — outside their cells engaged in meaningful activities.[15] In several visit reports, the CPT has stated that it is unacceptable for any prisoner, remanded or sentenced, to remain locked in a cell for 23 hours.

We also look for cases where remand prisoners are submitted to special restriction regimes, particularly with respect to their rights to have contacts with the outside world, socialize with other inmates, receive newspapers, and watch television. According to Rule 96 of the European Prison Rules, unless there is a specific prohibition for a specified period of time by a judicial authority in an individual case, pretrial detainees should receive visits, be allowed to communicate with family and other persons, just like convicted prisoners. They should also have access to books, newspapers and other news media.

In its reports, the CPT has also stressed that isolation regimes bring greater risks of inhuman and degrading treatment. These regimes should be applied for as short a period of time as possible and reviewed at regular intervals upon an individualized risk assessment.

When visiting pre-trial detainees, we always inquire whether they have had prompt access to information about their right to legal advice and whether the necessary facilities have been provided in order to meet with their lawyer without unreasonable hindrances. We also assess whether there is an independent monitoring of the establishment and if the remand prisoners have access to complaint procedures.[16]

Conclusion

As I end my presentation, I would like to add that the CPT welcomes comments on its views expressed in the substantive sections of its General Reports. The CPT is open to a constructive dialogue with other institutions and civil society on all matters of common interest, including the protection of the rights of vulnerable persons, such as juveniles, women and persons with mental disabilities who are deprived of their liberty. During its long experience of monitoring places where persons with mental disabilities are held, the CPT has developed, through its empirical findings, a set of standards with a view toward enhancing the rights and treatment of such persons.

In its reports, the CPT has always put particular emphasis on safeguards surrounding the initial placement of persons in psychiatric and other establishments on grounds related to their mental health or mental disability. It has also expressed the view that during their hospitalization, patients must enjoy a range of safeguards in relation to such matters as consent to treatment, complaints procedures, and the external, independent supervision of psychiatric establishments. According to the CPT's standards, the admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorizing treatment without his consent.

In order to ensure that the necessary safeguards are in place to prevent treatment that might be considered as inhuman and degrading, the CPT has also addressed in a number of its reports the specific position of patients who are deprived of their legal capacity. The interpretation of the Convention on the Rights of Persons with Disabilities[17] with regard to involuntary placement and treatment and the question of legal capacity is currently the subject of much discussion within the international human rights community. The CPT is following this debate closely, with a view to further developing and enhancing its standards for the protection of the persons concerned in accordance with emerging human rights law. Thank you very much.

Remarks of Catherine Dupe Atoki*

Good afternoon everyone. I will be presenting on detention visits and vulnerable groups in Africa. I think it wise, that I quickly give an introduction to the African human rights system, so that we are properly in tune with observations that I will make on detention visits in Africa.

Most countries in Africa are signatories to the various international human rights documents, but Africa also has its own instrument on human rights, the African Charter on Human and Peoples' Rights[1] (African Charter), which was adopted in 1981 and is dedicated and particular to situations in Africa. At the moment, arrangements are being made for the celebration of the thirtieth anniversary of the African Charter. The African Charter was established to deal with the rising human rights situations in the region, which began to receive attention shortly after many African nations gained independence. The African Charter establishes various rights that are similar to the rights protected in other human rights instruments. It has also established a

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body to monitor the provisions of the Charter, known as the African Commission on Human and Peoples' Rights (African Commission). The African Commission is composed of eleven commissioners, drawn from all over Africa who are mainly lawyers. These lawyers act part-time as commissioners with the mandate to promote and protect human rights in Africa.

For details on the working mechanisms of the African Commission, I will refer you to the website of the African Commission[2] which will explain how they function. Similar to other regional human rights bodies, the African Commission has devised several working groups and several rapporteurships to deal with various thematic issues. The mandate of the Special Rapporteur on Prisons and Places of Detention in Africa (SRPPDA) was established in 1996 and includes a mandate to visit and monitor prisons all over Africa, recommend legal reforms, and follow up with results of those reforms.[3] Primarily, the mandate was developed to enhance Articles 5 and 6 of the African Charter, which establish a prohibition of torture and guarantee dignity to persons who are detained. The two articles have recently been highlighted and expanded, bolstered by the work of the SRPPDA. I have the dual responsibility of acting as the SRPPDA, as well as acting as a Commissioner and then as the Chairperson of the Committee for the Prevention of Torture of the African Commission. I am engaging in this discussion based on my experience with these two mechanisms, which we know are interrelated. There may not even be much difference between the two roles when it comes to prison visits.

Vulnerable Persons Detained in Africa

The main topic of our discussion today is detention visits and vulnerable groups. The first question is, what is the situation of prisons in Africa? Understanding this will help us know what to look for when we visit vulnerable groups in detention centers. The problems in African prisons are universal. In other words, the main issues in African prisons are similar to what you find in other prisons around the world, but there may be some variation in terms of the gravity of the rights violations. The main challenge that African prisons face is overcrowding — not because of a large numbers of convictions, but mainly because of pre-trial detentions. In my native Nigeria, we have about 47,000 inmates and eighty percent of those are pre-trial detainees. The causes of such pre-trial detention practices are varied, but it inevitably impinge on the administration of justice in the country and on legal aid.

In order for us to properly appreciate the challenges faced by vulnerable groups, we need to understand that prison situations are generally inhumane. This is the case in most parts of the world. No prisons are five-star hotels. However, there is the aspiration that prisons can meet certain minimum standards, like not depriving inmates of their dignity. As Professor Haritini Dipla just stated, everybody who is in prison is vulnerable in his or her different contexts.

There are many vulnerable groups in Africa that need specific protections. There are women, and within the category of women there are pregnant women, women with babies, and nursing women. Babies themselves are a vulnerable group; juveniles and children; the mentally ill; persons affected with HIV/AIDS and communicable diseases; the elderly; and the handicapped. By the time you take all these categories into account, there are only a few categories of inmates who are not vulnerable, but if you look further, you will find that they are also vulnerable in some way. Despite the very broad applicability of the term, "vulnerable group," for the purpose of this presentation, I will limit myself to the few that I've highlighted.

Women

The African Charter generally prohibits discrimination against women.[4] However, the Commission realized that there is a huge lacuna in the rights of women in the African Charter, and therefore the Protocol to the African Charter on Human and People's Rights on the Rights of Women (Maputo Protocol) was created in 2005.[5] The Maputo Protocol further elaborates the needs and the rights of women, including the rights of pregnant and nursing women, women's rights to security, the rights of women who are in detention, and the prohibition of sexual violence in both public and private areas. These protections were not included in the African Charter, and thus, the Maputo Protocol is the primary instrument implicated when monitoring the situation of women in prisons in Africa.

In Africa, women constitute between one and six percent of the general prison population. Most of these women are poor and have been incarcerated for very minor offenses. My visit to the prisons in Sudan in 2009 was a heartbreaking experience. Many of the women in prison there had been found guilty of very minor offenses, such as brewing alcohol. Sudanese law prohibits brewing alcohol because the northern part of Sudan is mainly Muslim and prohibits brewing alcohol. Southern Sudanese are mostly Christians, and often do not share the view that alcohol should be illegal. During our visit, we found that women's prisons in Northern Sudan are inhabited mainly by South Sudanese women who brewed alcohol for a living. One of the recommendations that came out of this visit was for the state to review the law on brewing of alcohol and engage women in more productive livelihoods. We find that women, more often than not, are in prison because they are economically handicapped, are not empowered, and have been charged with petty crimes.

We have also noticed that most prisons in Africa are barely able to meet the internationally recognized requirement to keep women separated from men in detention facilities. States are often not able to afford separate facilities, and thus are limited to offering separate cells in the same facility.

Juveniles

I will not spend much time on juveniles and children, but I would like to say that Africa is the only continent with a region specific children's rights instrument. The African Charter on the Rights and Welfare of the Child (ACRWC) is designed specifically to address children's needs.[6] The ACRWC is a Protocol to the African Charter, and has elaborate provisions focusing on children, including their welfare during incarceration. The ACRWA specifically addresses infants of incarcerated women. Most women in prisons are mothers, and their babies, through no fault of their own, became inmates because they had to go to jail with their mothers. We have the difficult challenge of deciding to separate the mother and the child in order to prevent the child from being imprisoned, or the alternative of keeping the child with the mother while in prison. I have visited prisons in Tunisia and I would say that it has exhibited some best practices by providing *crèche*, or day care centers, for babies — thus establishing a conducive environment for children and for babies within the prisons.

Individuals with HIV/AIDS and the Mentally Ill

We do not have statistics as of yet on prisoners with HIV and AIDS, but the African Commission is well aware of the need to give particular attention to this group. In 2010, it established a working group on the protection of the rights of people living with HIV and AIDS. We heard details on approaches to mentally ill detainees earlier this morning, so I will not go into that group.

Conclusion

The work of the Special Rapporteur on Prisons is challenging. There is only one Special Rapporteur on Prisons to cover 53 African states. The Special Rapporteur has duties as a part-time member of the Commission. Funds are not readily available for the Special Rapporteur's work and state parties do not readily give authorizations, thus I might not be able to visit the prison for six months. Still, there is progress in African prisons, and, I daresay the essence of visits to prisons is to ensure that the rights that are guaranteed are respected. If we are able to overcome the various challenges that we have across the board and to engage the prisons regularly, we will be on our way to preventing torture, and other cruel, inhuman, and degrading treatment and punishment in prisons worldwide. I thank you.

Remarks of Pamela Goldberg*

Good afternoon. I want to start by expressing the sincere regret of our regional representative, Vincent Cochetel, for his absence. He had hoped to be here today, but he was called away on an emergency. On his behalf, as well as my own, I want to thank the Washington College of Law and the Association for the Prevention of Torture (APT) for inviting UNHCR to participate on this panel. This is an especially propitious time because this is a year of commemorations for UNHCR. In December 2010, UNHCR celebrated its sixtieth anniversary, and 2011 marks the sixtieth anniversary of the 1951 Convention Relating to the Status of Refugees and also the fiftieth anniversary of the Convention for the Reduction of Statelessness. Both of these instruments are relevant to populations of concern to UNHCR, and, in connection with that concern, we are hosting,

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co-hosting, and participating in events to commemorate these anniversaries. This process will culminate in a ministerial meeting in Geneva in December of 2011. That meeting will focus on pledges that we are encouraging states around the world to make regarding their commitment to upholding their obligations under the Convention and Protocol Relating to the Status of Refugees (Convention and Protocol).[1] We hope some of those pledges will address concerns regarding the detention of asylum-seekers. Thus, at the end of my remarks, I am going to share with you some of the pledges that we are asking the U.S. to consider making as part of the commemorative year.

Before I launch into my comments, I want to mention — with a mix of optimism and dismay — that the Inter-American Commission on Human Rights (Inter-American Commission) just issued a 155-page report entitled, "Report on Immigration in the United States: Detention, and Due Process."[2] In glancing through the table of contents, I see that the Inter-American Commission touched on many issues also of concern to UNHCR in the US context. I haven't had a chance to carefully read the report prior to this morning, so I won't be able to comment very much on it, but I hope to draw on a few of their remarks regarding release from detention as I go through my comments.

Today, I have three discussion points that I am going to share with you, but I hope you take from my presentation a two-fold message. First, it is essential to monitor both the circumstances and conditions of detention of asylum-seekers. UNHCR plays a pivotal role in doing this kind of monitoring. Second, the importance of this monitoring is to ensure that the rights of detained asylum-seekers are respected and that they are not impeded from having access to all the protection that they need as refugees and asylum-seekers.

In order to convey why I think these two points are so important, I am going to talk with you about three things. First, I am going to give you a quick overview of the role and responsibility of UNHCR generally, but with a focus on the U.S. because this is where my expertise lies. Then, I am going to briefly discuss some of the guiding principles and standards on which UNHCR relies in monitoring the detention conditions and circumstances of asylum-seekers. Finally, I am going to give you a few examples in the U.S. context — both where we feel we are making progress and where we see ongoing needs.

In that context I will try to draw on this important Inter-American Commission report, as well as our own experience at UNHCR in doing this monitoring. I will conclude by bringing us back to the issue of pledges in the context of the U.S. and the commemorative year.

Overview of the Role and Responsibility of the UNHCR

UNHCR is mandated by the United Nations General Assembly to ensure and monitor the protection and rights of refugees and asylum seekers around the world. Our mandate is broad and includes other persons of concern, such as internally displaced persons — whom I won't be addressing today — and stateless individuals. It may come as a surprise to some of you, but there are stateless individuals in the U.S. Virtually all of my comments apply to stateless individuals as well, but my focus will be on asylum-seekers.

A key aspect of UNHCR's role is to supervise the manner in which states comply with their obligations under the Refugee Convention and the 1967 Protocol relating to the Status of Refugees. Signatories to the Convention or Protocol have the obligation to cooperate with UNHCR in that effort. Many states have ratified both the Convention and the Protocol; some have ratified only one of the two. The United States is bound by the Convention because it ratified the Protocol, which incorporates by reference all the substantive provisions of the Convention. So if I talk loosely and refer to the U.S. responsibilities "under its Convention obligations," I mean most literally through the Protocol.

UNHCR has a number of methods for overseeing a state's compliance and consistency with its Convention or Protocol obligations. One such method is monitoring the circumstances under which a state determines that detention of asylum-seekers is warranted and the bases for such confinement, and second, monitoring the detention conditions of asylum-seekers. In the U.S. context, we undertake missions to detention facilities around the country to assess both the reasons for confinement, when and how decisions are made to release asylum seekers from detention, and the conditions of detention. We have ongoing relations with our governmental partners in a variety of departments and agencies to facilitate this work. We also rely significantly on information and concerns shared with us by our NGO partners.

When addressing the issue of detained asylum-seekers, the U.S. Government agency with which we deal the most is the Department of Homeland Security (DHS) and the sub-agency, Immigration and Customs Enforcement (ICE). We also deal with the Department of Health and Human Services, through its Office of Refugee Resettlement. This agency has the responsibility for the detention of minors — that is children under the age of eighteen who are seeking asylum and for related issues.

The UNHCR's Guiding Principles

First and foremost, UNHCR adheres to the principle that the detention of asylum seekers is inherently undesirable. In the latter part of the 1980s and the early 1990s, UNHCR noticed an increasing trend around the world in the detention of asylum-seekers. This motivated us to develop a more comprehensive position regarding the detention of asylum-seekers, including when such detention would be appropriate, and what kinds of minimum conditions should be met. UNHCR issued its Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers in early 1999, and subsequently released a paper that elaborates on these issues. [3] These

two documents lay out our principles on detention of asylum-seekers, which incorporate international standards and norms. I believe both of these documents have been shared with all of the conference participants, but if for any reason you do not have them, you can go to our website[4] and find them all there.

Why is monitoring detention so important for asylum-seekers in particular? You may recall that the Special Rapporteur on Prisons and Conditions of Detention in Africa (Special Rapporteur), Catherine Dupe Atoki said in her remarks that all people in detention are vulnerable, but some people are more vulnerable than others. I would like to add that asylum-seekers fall within this "more vulnerable than others" category. This is because most asylum-seekers have fled their country as a result of direct harm, threat of harm, or harm to family members. These harms may include threats to life and freedom, as well as witnessing the death of family members. Asylum-seekers generally are already highly traumatized from the experiences that motivated them to seek asylum in another state. While some people cope with trauma better than others, in general, we are starting with a vulnerable population.

Asylum seekers are often unable to flee with any kind of documentation and sometimes arrive with nothing more than the clothing on their backs. Not only are they traumatized before they leave, but also they often are traumatized while they are in flight seeking safety elsewhere. They are easy targets on the road for opposing factions, nefarious smugglers, traffickers, or even common criminals. This range of difficulties, including the stress and trauma of not knowing where your next meal may come from, is of primary concern to UNHCR. In addition, as both Professor Haritini Dipla and Special Rapporteur Atoki mentioned, within that population there are certainly those who are more vulnerable than others including children, pregnant women, women who experienced sexual violence, victims of torture, and other highly traumatized individuals.

Based on all of these issues, our first-and-foremost principle is that detention of asylum-seekers is inherently undesirable. There a few very clearly delineated exceptions to this principle. First, asylum-seekers may be detained to *verify identity*, but they should not automatically be detained just because they do not have documentation. There must be an actual concern regarding the asylum-seeker's identity. Second, detention may be used *as a screening mechanism to determine whether the person has a viable claim for asylum.* This screening is not meant to be an in-depth assessment of the claim, but a *prima facie* screening for eligibility. Third, *in cases where an individual has deliberately destroyed documents, presented false documents, or come with no documents in order to mislead the state* where they are seeking protection, the asylum-seeker may be detained. Finally, detention may be allowed *when it is necessary to protect national security or public order*. If any of these conditions exist and the asylum-seeker is detained, there must be procedural safeguards for him or her. Key among the safeguards is that each determination that detention is necessary must be an individualized assessment.

I want to highlight a few of the other safeguards. First, the asylum-seekers must be informed of the reasons for their detention. They must be allowed access to legal counsel and other groups that might assist them. They should have the right to challenge their detention, both in terms of a prompt mandatory review as well as periodic review. Periodic reviews should not occur only at their request — they should be automatic. Finally, their detention should not impede their ability to present their claim for protection. Sadly, in many cases, it does.

On the topic of conditions of detention for asylum-seekers, I will just say that many of the concerns raised by Professor Dipla and Special Rapporteur Atoki apply equally to asylum-seekers. In particular, asylum-seekers should not be mixed with criminal populations and children should never be detained unless there is absolutely no other recourse. If after an individualized assessment a determination is made that detention of an asylum seeker is warranted, such detention should be the least restrictive manner possible and for the shortest period of time possible — and this is especially important for detention of children.

There are a variety of alternatives to detention that states can and should employ. Key among these is developing community-based networks that provide access to legal, social, and medical services for asylum-seekers while they pursue their claims for protection. UNHCR is working very actively on this model of detention alternative with non-governmental organization partners and governments, both globally and in the United States. I want to encourage you to look at the conclusions of the UNHCR Detention of Asylum-Seekers and Refugees paper[5], which nicely bullets the key aspects of conditions and circumstances for detaining asylum-seekers.

The US Context

Finally, I'd like to share with you two last points. First, the issue of releasing or, as it's referred to in the U.S. context, paroling arriving asylum-seekers from detention — a concern also addressed in the Inter-American Commission report.[6] UNHCR, along with our non-government partners, played a critical role in helping to shape, frame, and draft the recently promulgated guidelines regarding the circumstances under which parole should be granted to arriving asylum-seekers. These guidelines went into effect in January of 2010, and we have just completed monitoring their implementation. During this monitoring phase, we visited a number of facilities around the country, looking specifically at when and whether arriving asylum-seekers were released from detention. The Inter-American Commission report makes some very good points about problems with the new parole guidelines. One of the key pledge requests we raised in the proposed pledges UNHCR has submitted to the U.S. government to consider making during this Commemorative Year of the Refugee Convention, is that the U.S. Government ensure these new parole guidelines are implemented with the presumption that all asylum-seekers should be released rather than detained. We hope that one day this presumption of release — or non-detention — of all asylum seekers will be the norm.

As I have mentioned, UNHCR has shared with our U.S. Government counterparts a number of proposed pledges for the U.S. Government to consider advancing during this commemorative year process. The document containing those pledges will be posted on our website along with information on the events that we are hosting or co-hosting throughout the year.[7] We are hopeful the U.S. Government will adopt at least some of these pledges over the course of this Commemorative year. With that hopeful note, I thank you all for your time.

Remarks of Alison Parker*

Introduction

Thank you very much. I want to thank the Washington College of Law for the honor of speaking to you today. It's a particular honor to be at this conference with so many experts on detention from the U.S. and around the world.

There are three things that I would like to do in my remarks today. The first is to discuss why, from the perspective of Human Rights Watch (HRW) and my work on human rights issues in the U.S., prison visits are so essential to protecting human rights. Second, I would like to give you a quick snapshot of the U.S. incarcerated population. Finally, I will spend the bulk of my time talking specifically about the methodology that HRW and others use in our efforts to visit detainees and document the situations they face. I want to focus on this third issue because I think the purpose of this conference is to enhance such visits. While the laws and standards are, of course, important, the nuts and bolts of how we conduct our visits are what make those laws a reality.

Why Prison Visits are Essential

On my first point, why are prison visits so important to protecting human rights in the U.S.? We have a very large incarcerated population in this country, so it is essential that these people be visited. Secondly, the incarcerated population is a hidden population, as many people have called it, but it bears repeating. It is important that we understand who these people are and what their circumstances are. Lastly, many of these people are vulnerable. Of course, this is the topic of our panel and many of my fellow panelists have talked about this, but vulnerability is another reason why it is very important that

we visit people in the custody of the state and we understand the circumstances under which they are being detained.

The Incarcerated Population in the U.S.

In some ways, we have a snapshot of the incarcerated population in the U.S. precisely because of prison visits. These visits allow us to better understand the situation of people who are being deprived of their liberty in the U.S. One piece of the picture we're able to paint comes from research done by HRW, governmental institutions, other organizations around the world, and incarcerated people themselves.

So what is the snapshot? I'll just offer a few facts and figures coming from our research at HRW and the research of a few other organizations. The U.S. has the highest per capita incarcerated population in the world. We have 748 inmates for every 100,000 residents. One in 10 black males aged 25-29 were in prison or jail in 2009. We also tend to incarcerate people in the U.S. for a very long time. This does — I'm not going to say distinguish — separate us from the rest of the world.

**Alison Parker is the Director of the US Program for Human Rights Watch (HRW). She has conducted visits to detainees in state and federal prisons and in immigration detention centers in the United States, and in Rwanda, Kenya, Uganda, Guinea, and Pakistan. Previously, she served as HRW's acting director of refugee policy. Ms. Parker is a graduate of Columbia Law School and Columbia's School of International and Public Affairs. She has authored several reports and written articles for The American Prospect and Columbia Law Review. Ms. Parker previously worked with the United Nations High Commissioner for Refugees and the law firm of Cleary Gottlieb Steen and Hamilton.*

As you may have heard when I was introduced, one population I have focused on is juveniles who are sentenced to life without the possibility of parole. Life without parole for juveniles is a very long sentence. To be clear, it is a sentence to die in prison. There is never a chance of release. When I say juveniles, I mean people who are below the age of eighteen when they committed their crimes. In the U.S. there are 2,500 such prisoners. There are no such prisoners anywhere else in the world.

On any given evening in 2009, there were 10,000 juveniles incarcerated in adult facilities in the U.S. It has been my experience in talking with colleagues familiar with criminal justice practices in the rest of the world that they are surprised by how many juveniles are treated as if they were adults in the United States. I'm not just talking about people who are 17.9 years old. I'm also talking about thirteen-year-olds. I want to emphasize that these are children who are brought to adult court, tried as adults, convicted as adults, and incarcerated in adult facilities. Again, on any given night in 2009, there were 10,000 such juveniles in adult prisons and jails in the U.S.

Last, highlighting what my colleague Pamela Goldberg has talked about with respect to asylum-seekers, but broadening that to the incarceration of non-citizens, there were approximately 400,000 people detained in immigration facilities throughout the U.S. in 2009 (the most recent year for which we have statistics). Recent HRW research has indicated that fifteen percent of these people are persons with mental disabilities. These are very large numbers.

Methodology

The incarcerated population in the U.S. is a very large, hidden population, which makes our methodology when conducting prison visits very important. Also, it is probably evident from the statistics I shared that there are many ways in which this population is vulnerable. To further illustrate the importance of methods, I want to share with you two accounts taken from prisoners by researchers and let you reflect a little bit on them. The first account was taken by a researcher who wrote the following notes during a visit:

> Prisoner X is 22 years old. He is a Caucasian man convicted of armed robbery and interviewed in a maximum-security prison. He is being held in solitary confinement and has been rotated in and out of solitary for the past several years due to threats he allegedly made against guards and physical altercations between him and guards.
>
> In solitary confinement, he spends a great deal of time exercising in his cell. He was subdued in demeanor when I interviewed him and described his cell as being very small, about ten feet by ten feet, with little natural light, the food being "just tolerable." When asked about the conditions in this individual's cell, a prison guard told me, "the cells measure about eight feet by 12 feet, in fact, not ten by ten. There is a small slit window near the ceiling, and the prisoners are afforded one hour of exercise per day in the courtyard."

Another account, taken by a different researcher read as follows:

> I interviewed a male prisoner. His age is 22 years old. He was convicted at the age of fourteen in adult court and entered adult prison when he was fifteen years old. I interviewed him in a maximum-security prison. When he entered prison, he weighed 115 pounds and was five feet tall. His first placement in solitary confinement came just weeks after he entered prison. He explained that he had been repeatedly called "fresh meat" by other adult prisoners, implying that he would soon fall victim to rape.
>
> He explained to me that he felt his only recourse was to pick a fight with a guard in order to obtain protection inside prison. When asked if he knew that this prisoner entered prison while still a child, a prison guard said, "It doesn't matter to me how old he is, if the state says he is convicted in adult court and needs to go to adult prison, then he's just like everyone else when he comes here."

What's my point in reading you these two accounts? Well, if you haven't figured out already, they are actually the same prisoner. These are two researchers who went and interviewed the same prisoner and came out with very different findings. This is not to say that either one is inaccurate, but simply to point out the obvious fact that the methodology we use very much defines what we find in detention visits.

I want to close by giving you a list of some of the things that I think are important to make detention visits effective, and ultimately achieve our goal of protecting the rights of people in prisons and detention centers throughout the country and the world. First, it is very useful to ask open-ended questions when interviewing a prisoner. It is also essential to speak in a private place away from correctional officers who may overhear the conversation. Asking prisoners why they respond in certain ways to your questions is also critical. The second researcher I mentioned previously likely asked the prisoner why he was in solitary confinement and got a completely different understanding of why the prisoner was there than the first researcher, who perhaps didn't ask that question. As is probably obvious from my comments about juveniles in adult facilities in the U.S., I believe it's essential to ask the age of the person at the time of the offense.

It is also very important for our work in the U.S., and this applies across the world, to crosscheck what we gather from

prisoners. This is because it is very important that our findings are accurate, for obvious reasons. One of the ways to crosscheck is to speak to correctional officers themselves, and with prison experts. We have talked with experts in mental health, physical health, prison architecture, child development, correctional security classifications, as well as psychiatrists, psychologists, counselors, substance abuse experts, and bio-statisticians. All of this information helps corroborate what we may be learning from prisoners themselves, making our findings that much more credible.

It is also essential to try to speak with detainees about the totality of their experience in prison. The totality is more than what happened most recently, but includes what the facility was like when the prisoner first entered and what it is it like now. As I hope was illustrated in the two accounts that I mentioned previously, it is also important to ask the detainees what they were like when they first entered the facility, both physically and mentally. This requires getting the prisoners to talk about who they were then and to understand who they are now, but it gives us a much fuller picture of individual detainees.

A few other important points that might be of interest include asking people to draw maps of the facility that they're in, or simply asking them to draw anything. This has been a way for people — not just children, but anyone — to talk about things or to share things that are very difficult to disclose in a verbal one-on-one conversation. Then again, it is always challenging to protect the individual who is sharing such information from possible reprisals, so it is critical to think about what may happen to that prisoner once the visit ends.

Lastly, I think there are important things to be gained from talking to former inmates from a particular facility, who may be able to speak more freely. Unfortunately, I think we forget about family members and other people who regularly visit prisoners, who can give us a real insight into what is happening with detainees. That said, it has been my experience that — given the very long sentences that people serve in the United States — for some prisoners those family relationships have dissolved or are quite strained. That's another reason why our work at HRW is important. So often, I find that I'm the first person the particular detainee has talked to in years. This only underscores how important detainee visits are.

Conclusion

I want to wrap up by saying that prison visits are fundamental to protecting the human rights of prisoners. We must remember that the way we conduct our visits and the issues that we look for during those visits are essential in improving conditions of confinement. The knowledge we gain from visits is also critical for changing sentencing policies, which is a major issue in the U.S. because of harsh sentences like life without parole for juveniles. We have to meet these prisoners directly, because in order to address vulnerability, we must talk about something more than food and the size of cells. We need to understand who the prisoner or detainee is in order to improve conditions that are specific to his particular "vulnerabilities." Thank you very much.

ENDNOTES: Panel 2: Protecting Vulnerable Groups Through Detention Visits

Remarks of Haritini Dipla

[1] The CPT's website is available here: http://www.cpt.coe.int/en/about.htm

[2] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, G.A. Res 57/199, U.N. Doc A/RES/57/19

[3] More information on the SPT can be found at the website of the UN High Commissioner for Human Rights: http://www2.ohchr.org/english/bodies/cat/opcat/.

[4] *10th General Report on the CPT's Activities*, European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (August 18, 2000) available at http://www.cpt.coe.int/en/annual/rep-10.htm.

[5] *9th General Report on the CPT's Activities*, European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (August 30,1999) available at http://www.cpt.coe.int/en/annual/rep-09.htm.

[6] Convention on the Rights of the Child, Nov. 20, 1989, U.N. Doc. A/RES/44/25, available at http://www2.ohchr.org/english/law/crc.htm.

[7] United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Nov. 29, 1985, U.N. Doc. A/RES/40/33, available at http://www2.ohchr.org/english/law/crc.htm.

[8] European Rules for Juvenile Offenders, Recommendation CM/Rec (2008) 11, Council of Europe, available at https://wcd.coe.int/wcd/ViewDoc.jsp?id=1367113&Site=CM.

[9] *Id*.

[10] Rule 77 of European Rules for Juvenile Offenders subject to sanctions or measures

[11] CRC General Comment 10 on the Convention on the Rights of the Child, available at http://www2.ohchr.org/english/bodies/crc/comments.htm.

[12] *See* the CPT's 2nd General report (1992).

[13] Rule 96 of the European Prison Rules

[14] Rule 95.1 of the European Prison Rules

[15] *See* CPT's 2nd General report (1992).

[16] *See* Rules 93.1of the European Prison Rules; *see also* rule 44 of the Recommendation of 26 September 2006 of the Committee of Ministers of the Council of Europe on the Use of Remand.

[17] Convention on the Rights of Persons with Disabilities, available at http://www.un.org/disabilities/default.asp?id=259

Remarks of Catherine Dupe Atoki

[1] African Charter on Human and People's Rights 1520 U.N.T.S. (1981) available at http://www.achpr.org/english/_info/charter_en.html.

[2] The African Commission on Human and People's Rights is available at http://www.achpr.org/english/_info/news_en.html.

[3] The mandate for the Special Rapporteur on Prisons and Places of Detention in Africa can be found on the website of the African Commission on Human and People's Rights at http://www.achpr.org/english/_info/prison_mand..html.

[4] African Charter on Human and People's Rights, art. 18, 1520 U.N.T.S. (1981) available at http://www.achpr.org/english/_info/charter_en.html.

[5] Protocol to the African Charter on Human and People's Rights on the Rights of Women (Maputo Protocol), July 11, 2003, available at http://www.achpr.org/english/_info/women_en.html.

[6] African Charter on the Rights and Welfare of the Child, July 11, 1990, CAB/LEG/24.9/49 (1990), available at http://www.achpr.org/english/state_reports/_info/child_en.html.

Remarks by Pamela Goldberg

[1] Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, *available at* http://www.unhcr.org/3b66c2aa10.html; Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967, *available at* http://www2.ohchr.org/english/law/protocolrefugees.htm.

[2] *See* Inter-American Commission on Human Rights, Report on Immigration in the United States: Detention and Due Process. OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, *available at* http://cidh.org/countryrep/USImmigration/TOC.htm.

[3] *See* UNHCR Guidlines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (February 1999), *available at* http://www.unhcr.org.au/pdfs/detentionguidelines.pdf; see also UNHCR, Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice, EC/49/SC/CRP.13 (4 June 1999), *available at* http://www.unhcr.org/refworld/docid/47fdfaf33b5.html.

[4] *See* http://www.unhcr.org; *see also* http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain.

[5] Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice, UN High Commissioner on Refugees, UN Doc. EC/49/SC/CRP.13, June 4, 1999, *available at* http://www.unhcr.org/refworld/pdfid/47fdfaf33b5.pdf.

[6] *See* Inter-American Commission on Human Rights, Report on Immigration in the United States: Detention and Due Process. OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010.

[7] http://www.unhcrwashington.org/files/row_pledges.pdf.

KEYNOTE ADDRESS: THE IMPACT OF VISITING MECHANISMS IN TORTURE PREVENTION

Introduction by Dean Claudio Grossman

Dear friends, I am very pleased to welcome Mary Werntz, head of the International Committee of the Red Cross's (ICRC) Regional Delegation for the United States and Canada. Ms. Werntz's responsibilities include the working relationships with the U.S. and Canadian governments, interfacing with the National Red Cross Society, and serving as the ICRC's representative to the public in both countries. She brings tremendous expertise and knowledge to this critical job.

Mary has been with the ICRC since 1995. During her tenure, she has served in India, Croatia, Georgia, Azerbaijan, and Nepal. She was also posted with the ICRC in Geneva as the Deputy Head of Operations for Eastern Europe, where she was responsible for ICRC operations in Russia, Ukraine, Moldova, and Georgia.

Ms. Wertnz has an undergraduate degree in South Asian Studies from the University of Wisconsin, Madison, and a masters degree in City and Regional Planning from Cornell University. Her research has focused on the Muslim populations of South Asia.

We are very pleased to have an individual with such knowledge and expertise here to share her views on the important topic that brings us together. So, without further delay, please join me in welcoming Ms. Mary Werntz.

Remarks of Mary Werntz*

As the Head of Delegation of the International Committee of the Red Cross (ICRC) in North America, I would like to thank American University, Washington College of Law and the Association for the Prevention of Torture (APT) for organizing this event which brings all of us — international, regional, and domestic visiting mechanisms — together.

I would also like to thank all of the representatives of the different visiting mechanisms present here today. It is an honor for me to deliver this keynote speech for the President of the ICRC, Dr. Kellenberger, who could not come to Washington today. In his name, and in the name of the ICRC[1], I would like to thank you for your contributions to torture prevention. The ICRC, as a long-standing visiting mechanism with, currently, detention activities in more than seventy countries, recognizes and appreciates that the multiplication of visiting mechanisms over the past twenty years has had a strong deterrent and preventative effect on torture. The multiplication of actors, together with the multiplication of approaches, has positively stimulated the ICRC to develop and refine its approach towards torture prevention.

** Mary Werntz is Head of Regional Delegation for the International Committee of the Red Cross. Ms. Werntz has been with the International Committee of the Red Cross since 1995 and has served in India (Kashmir), Croatia (Eastern Slavonia), Georgia, Azerbaijan, and, most recently, in Nepal. She was previously posted at the ICRC Headquarters in Geneva as the Deputy Head of Operations for Eastern Europe where she was responsible for ICRC operations in Russia (North Caucasus), Ukraine, Moldova and Georgia.*

Rather than reflect upon the evolution of the ICRC's action, which many of you would have followed over the years, I want to focus on the impact of visiting mechanisms in torture prevention. Visiting mechanisms contribute to preventing torture through two distinct but interconnected activities or pillars: 1) the physical presence of visiting teams, and 2) visits as a means to strengthen torture prevention systems — this includes working to change those systems through influencing, monitoring, training, and assistance.

I will now attempt to explore these two pillars. Working simultaneously on these two pillars — that is, through direct visits to detainees and through efforts to change the context in which torture occurs — is an effective means to address the fact that torture is still today widespread.

Protection Through the Physical Presence of Visiting Teams

Allow me to speak first about the impact of visiting teams on torture prevention. Before beginning his or her first mission, ICRC delegates receive an intensive training course that entails, among other things, a detention visit role-play. In the course of this role-play, the delegates must locate a hidden detainee, who has been held incommunicado for several weeks and has allegedly been subjected to various forms of ill treatment. Providing our trainees apply properly the theoretical knowledge they have just learned and intervene adequately, the detainee is transferred to a normal cell and the detaining authorities can no longer hide the individual.

This training allows the ICRC to explain to its new delegates the ultimate goal of visiting mechanisms, be it the ICRC or any other mechanism. The ultimate goal for all of us it to protect *all* persons deprived of liberty from *all* forms of abuse. In real situations, the delegates will learn that there is no guarantee of success, that authorities learn quickly and find new ways to hide detainees from visiting teams. They will also learn that, sometimes, protection of the detainees may require temporary postponement of an intervention to the authorities so as to avoid extra-judicial killing or continued ill-treatment. Any visiting team must learn to think on their feet, to adapt and adjust, and to always come back with imaginative ways to limit and to end abuses.

The ICRC considers that visits and visiting mechanisms have a threefold 'protective' effect. First, visits promote transparency. Detainees and authorities do not exist in isolation from one another. The authorities are accountable for what is happening to each person under their control. The mere presence of a visiting mechanism, or indeed any other third party, be it an independent medical doctor, a defense lawyer, or a representative of a functioning judiciary, constitutes a necessary safeguard and a useful reminder to the detaining authority of their obligations and the limitations on their behaviors.

The second protective effect of visiting teams would be that visits emphasize the humanity and dignity of detained persons. Persons deprived of their liberty are inherently vulnerable. Abuse of detainees is fundamentally a denial of the humanity and dignity of the individual. By their presence in a facility, by the time they take to speak privately and with respect to detainees, and by the empathy they present to the detained person, visiting mechanisms contribute to enhancing the dignity and the humanity of the detainees. The simple fact of treating detainees as humans, regardless of the reasons for which they have been accused, helps them to maintain a sense of self and self-respect which is crucial to their mental health and may help them at a later stage to regain a normal life upon release. I personally believe that in humanizing the environment, visiting mechanisms also profoundly impact behaviors of abusive authorities. Generally, the visiting team includes medical personnel whose role it is to understand what has happened to a detainee and to provide him with medical counseling and empathy they can trust and to answer to detainees questions and fears. We hear: "Is it broken? Will I become normal again? Will I be able to have children after what they did to me?"

Third, visits are a framework for the provision of services, which protect and assist the detainee. As per its standard working modalities, the ICRC, when visiting persons deprived of liberty, has the opportunity to register detainees so as to be able to relocate and track detainees individually during its regular and repeated follow-up visits until the detainee is released or transferred to an authority where risk of disappearance and abuse is no longer a concern. It is common knowledge that detainees withheld from monitoring mechanisms or who do not have access to such mechanisms are those most at risk. Furthermore, registration often reassures a detainee that a third party is looking out for him or her.

In addition, the ICRC provides detainees and their families with the opportunity to establish and maintain contact with one another through Red Cross Messages, delivered by the ICRC delegates or through the network of Red Cross and Red Crescent societies. These messages are of utmost importance for detainees' psychological well-being and are often the only means of communicating with the outside world during the initial stages of detention. Re-establishing family contact is an essential tool in preventing abuses: families able to communicate with their detained relatives (through messages or family visits) are often the first control mechanism and contribute enormously to achieving protection of the detained persons. We should never forget the role played by families in protecting detained persons against abuses.

In sum, the ICRC believes these tools — which make up the standard modalities of its visits worldwide — are fundamental elements to the protection of persons deprived of their liberty. Through visits and their physical presence in a place of detention, mechanisms such as the ICRC, intend, as directly and effectively as possible, to achieve the objective of ending abuses.

Visits as a Means to Strengthen Torture Prevention Systems

Five or ten years ago, it is likely that this speech would have ended here. In the past, the visiting community was convinced that visits by themselves had a deterrent and preventative effect on torture. The debates then were very much focused on how to ensure that visits were as effective as possible, principally, through the careful articulation and adherence to detention-visit modalities.

Influenced by the multiplication of mechanisms and approaches, the contemporary understanding of the role of visiting mechanisms in torture prevention is much broader. I call this "visits as a means to strengthen torture prevention systems." This includes influencing, monitoring, training, and assistance that can be part of bringing about change in the systems in which torture, ill treatment, and discrimination takes place. I will speak about three elements necessary for contributing to systemic change: 1) understanding the detention system, 2) improving the detention system through assistance and support, and 3) working on the context in which the detention system exists, including legal systems, services, and behaviors.

Understanding the Detention System

Allow me to speak a moment about the first point, ways of understanding the detention system through visiting mechanisms. In order to engage in a meaningful dialogue with the authorities on detention matters, visiting mechanisms have to develop a deep understanding of the detention system and its links with the broader criminal justice system. To do so, there are many sources of information: reports from other organizations, academic studies, analysis of the legal frameworks, actors from the civil society and local government, and the authorities themselves. I would like to highlight here four separate sources of information: 1) the tour of the premises, 2) dialogue with the authorities, 3) dialogue with detainees, and 4) dialogue or exchange with other visiting mechanisms.

By doing a tour of the premises, the visiting team enhances its capacity to comprehend the facility, in terms of its physical organization and its internal dynamic and atmosphere, as well as issues such as access to services, for example health care. Understanding the internal structures that govern relations between detainees and detainee groups (for example, internal hierarchies and gang interactions) or even a specific situation in a particular quarter or wing of a facility is fundamental to working effectively to bring about systemic change.

Dialogue between visiting mechanisms and the detaining authorities constitutes a second crucial source of information. Generally the authorities understand internal structures between detainees and can be encouraged to better protect the weakest among the detainees from becoming the prey of the strongest. In this regard, we should never forget that it is primarily the role of the detaining authorities to ensure fairness in the prison and to protect the weakest.

In this respect, I would like to share with you a lesson I learned from a very experienced Prison Governor of an Eastern European country working on prison reform in another country. We were touring a place of detention together at lunchtime. It took him just a few minutes to notice an injustice in the food distribution that allowed the more powerful detainees to decide who got what. The internal system actually ensured that the strongest maintained control of the resources while the weakest amongst them had little access to food. Only by accepting the "protection" of the powerful leaders could a weaker detainee improve his situation. My Council of Europe colleague helped me to see and better understand the dynamics in prison and the role played by detainees themselves in maintaining and ensuring power structures and access to resources. This understanding is fundamental to drafting any relevant recommendations.

Finally, direct access to detainees remains a privileged source of information for understanding the system. Visiting mechanisms can acquire a lot of information beyond the situation of each individual during private interviews with detainees. Issues such as the organization of a place of detention and the way a place functions day by day are well understood by the detainees. Often, it is the detainees themselves who indicate specific parts of a place of detention that need to be visited or signal specific issues which need to be examined more closely.

Furthermore, understanding the details of the detention path, from arrest to release, helps the visiting mechanism to uncover and identify unacknowledged places of detention and to ascertain which authorities have been involved in order to seek access to persons held within them. (In some circumstances, the ICRC also follows detainees after their release through "release checks" carried out with relatives of detained persons or ex-detainees themselves.) Understanding the system is thus the first step to strengthening it.

Improving Detention Systems Through Assistance and Support

The second aspect of strengthening torture prevention is improving the detention systems through provision of assistance and support in order to be effective overtime. Visits should contribute to improving the situation of persons detained and should not be viewed as simply a reporting mechanism.

The ICRC has, for example, moved from a mainly monitoring function on the basis of the Geneva Conventions, to a more humanitarian role in detention, meaning that it is increasingly responding directly to humanitarian needs in places of detention. Today, in almost all of the seventy-plus countries where it operates, the ICRC works together with the authorities to find solutions to address the needs of the detainees and plays an active role in implementing those solutions. This could include for example, training medical staff to set up mechanisms for

reporting abuses, improving water and sanitation systems, ensuring family visits, and enabling provision of food.

Obviously not all of the visiting mechanisms have the mandate and/or the capacity to play a role similar to the one played by the ICRC. All visiting mechanisms should consider, however, going beyond monitoring to take a more active role in answering, directly or indirectly, the needs of persons deprived of their liberty.

Working on the Context in Which the Detention System Exists, Including Legal Systems, Services and Behaviors

The third component of strengthening torture prevention is working on the context in which the detention system exists, including legal systems, services and behaviors. Those of you who have been involved in the process of ratification and implementation of the Optional Protocol to the UN Convention against Torture (OPCAT)[2] at the national level can, no doubt, attest to how this process has led to creating a positive domestic dynamic around torture prevention. Thanks to this process, many stakeholders — ranging from detention authorities to NGOs and from Parliamentarians to representatives of international organizations — have debated issues related to torture prevention. They have contributed, in the best-case scenario, to the establishment of an effective National Preventive Mechanism (NPM)[3] and to productive discussions around the legal, institutional or ethical environment related to the prohibition of torture.

Additionally, visiting mechanisms, either on their own, or with the strategic cooperation of other actors or peers have had, especially at the national level, an impact on the legal, institutional, and ethical contexts.

On the legal context, visiting mechanisms, more than anyone else, are in the best position to assess the impact of the legal framework for the protection of persons deprived of their liberty and its gaps. Visits enable them to analyze how the legal prohibition of torture is implemented in places of detention. Furthermore, detention monitoring experts are often consulted by the authorities in a number of legislative processes related to the protection of persons deprived of liberty and prosecution of those responsible for acts of torture.

Visiting mechanisms have also played a crucial role in relation to the institutional context. It is clear that visiting mechanisms are in an ideal position to identify potential institutional gaps. For instance, the ICRC always considers that access to an independent medical doctor is an important means to prevent torture and other forms of ill treatment. Thanks to its visits and to the discussions with the medical doctors working in places of detention, the ICRC is able to assess if detainees have access to a medical examination once they arrive at a new place of detention. More precisely, the ICRC can document how this medical examination is processed, if the medical doctor is independent and well trained, or if he or she is put under pressure by the authorities. Due to this assessment *in situ*, the ICRC is in a good position to recommend to the authorities that they guarantee the independence of the medical staff, that they be provided with training, and be enabled to work free of pressure.

Recommendations by visiting mechanisms progressively contribute to the reinforcement of the institutional framework and control mechanisms related to the prevention of torture.

Finally, the impact of visiting mechanisms on the ethical context should not be overlooked. The prohibition of torture is above all an ethical issue. Recent history has reminded us that despite a comprehensive legal framework it was still possible to question and challenge the absolute nature of the prohibition of torture and other forms of ill treatment. In this regard, visiting mechanisms have a role to play, as they are the primary witnesses to the impact of torture on the victims and on the society.

As James Ross says in his article, "A History of Torture":

> The human rights treaties can be viewed as the culmination of a historical process recognising the inviolability of the person. Today no justice system formally permits torture and no government openly considers it acceptable. Yet day in and day out, far too many people throughout the world suffer under a torturer's hands.[4]

As a way to contribute to the reinforcement of the ethical basis of the absolute nature of the prohibition of torture, we, as visiting mechanisms, have to continue to explain to both the authorities and the general public the effects of torture on the victims, their families, their communities, institutions, the authorities and the overall society. The ICRC is very much willing to go in this direction.

Conclusion

A few concluding remarks are in order. I have focused on the impact of visiting mechanisms in torture prevention. Visiting mechanisms contribute to preventing torture through two interconnected pillars: physical presence of visiting teams and visits as a means to strengthen torture prevention systems. Both pillars are necessary in order to provide immediate protection to detainees and to change the system to incorporate checks and balances that prevent torture in the future.

As I have noted, the ICRC cannot but welcome the multiplication of visiting mechanisms. This multiplication has led to a reflection and, ultimately, refinement of our approach in terms of torture prevention.

The ICRC modalities are based on prolonged presence and regular and repeated visits. It is this repetition that reminds authorities of their obligation and brings incremental improvement. I am encouraged by the increased interaction between the various international and national visiting mechanisms which

coordinate and sequence follow up and make the whole more effective than the sum of its parts.

The multiplication of actors and approaches has been positive and has led to a broader understanding of torture prevention. We should never forget why we are here today. We are here for the detainees and we are working to better protect them from torture. Every effort, every facet of what we do, should always remain true to this fundamental humanitarian objective of preventing torture wherever and whenever it occurs. Thank you.

Keynote: Question & Answer

Mark Thomson: I open the floor to those of you who would like to ask questions to Mary on the clearly very comprehensive approach of the International Committee of the Red Cross (ICRC) to monitoring and to the very interesting ideas on possibilities of collaboration. Looking around the room, would anybody like to ask a particular question to Mary?

Dean Claudio Grossman: Maybe you can comment about the role of confidentiality, and whether she has witnessed a change in this, out of experience?

Mary Werntz: It is a fundamental question — the question about confidentiality — for the ICRC. The bilateral confidentiality agreement that we have with detainee authorities, but also with militaries and military action is a fundamental tool. That is why we are granted access to so many places, and why others, who use public communication, would not be granted access.

I always try to make this point. I think sometimes we are misunderstood because of this confidential dialogue, because we can't speak about it. We do believe that directly discussing with the authorities is very often an effective way to bring about change, I mentioned incremental change. That doesn't mean that we never speak, if we feel we have exhausted our possibilities within the framework of confidentiality then we do publicly denounce the governmental authority. It's very rare that we do it, but when we do we use very careful terms. In that case we would step out of our relationship with the detaining authority and announce that publicly.

The hard part for us in doing that — is of course — that we are leaving people. There are not any detainees, or I don't know of any, that say you "oh, please leave. You are not effective." They say you are not effective. Detainees' say you are not changing things. But they say, "please don't leave, because nobody can come here, nobody else but you." So it's a very difficult decision for us to take, but we have our doctrine, which outlines when we have to make those decisions.

We depend very heavily on what we call complimentarity. We read human rights reports, the public reports, that say many of the things we are unable to say. We view that as a piece of the puzzle. We don't have the same methodology as others have; we have our own methodology, which is also necessary. And I know the human rights actors do depend equally on what we are doing, inside. So, that's my comment on confidentiality. I think that when people understand it properly and in the whole context, ICRC is just one actor, with one methodology. If we were the only actor it would be problematic, but the fact is that there are many actors that use many different methods, that's why we can all achieve something.

In terms of the evolution, certainly ICRC has gone through its moments when it's hunkered down and didn't want to talk to anyone and then it opened way up and wanted to share its methodology with everyone. I think you're talking about that in the sessions that you have here. I think that we — as I tried to lay out in this — we understand the benefits of broadening an approach. Where we draw the line is not talking about the details of what we see, or what we said, or what we wrote in reports, because that's within the confidential dialogue. What we will talk about is the bigger context. There [are] a lot of conversations that go on and again, which depends on different organizations that know each other well, and understands the relationship of the European Committee on the Prevention of Torture (CPT), which I have been very involved with. Those relationships are very strong and there is a clear understanding of how its going to work. We will be cautious working with an organization that we don't know particularly well until we are assured that our way of functioning is properly understood.

The problem with it, with confidentiality is, that if you or someone else breaks your confidentiality, it has an impact on all the other contexts. States watch us and what we are doing. So, that's why we are careful with this notion of confidentiality. Have I answered your question?

Dean Claudio Grossman: Yes.

Mark Thomson: Ok, well, I found it interesting in your presentation when you talked about your discussions with authorities on giving them advice, changing systems, and sharing your understanding of where the problems are. I thought that was something that would be interesting to explore further. I was wondering how far those requests for support, advice, training, etc have gone? Have they gone as far as, for example, to the address the important and key issue of interrogation? Have you been asked to give advice in those situations where just because of poor training and poor resources, police forces are conducting interrogations in such a way that they are committing abuses

regularly? Has that started to happen, or is that something that you ask other people to get involved with.

Mary Werntz: I think we regularly do what you are asking. In regards to the model aspect, if there is a situation where there is ill treatment, we will start with very gentle approaches. We will suggest a health and prison seminar. When you take doctors out of the situation that they are in, and you start talking about the professions, and you start talking about the ethical rules that govern their profession, and then something happens and then you start listening to the difficulties they are facing or what they are finding. That is an approach we've been doing that for twenty years. In terms of police, police abuses, again it depends on the situation on the ground. We would very, very regularly be doing IHL and IHR training. We always prefer it if there are solid human rights actors on the ground to do the human rights training. Very often the human rights actors do the IHL piece of it.

We do trainings of sanitations engineers to help them develop sustainable systems in prisons that will work in the long term, so people don't live in such miserable conditions. Again, if we look at the Tuberculosis programs that we've run in the south caucuses, they have developed into extremely sophisticated systems, complete with whole laboratories. It really empowers the local structures to do it right. And I've been, in many of these cases, in the short term you fail, if you try to do capacity building in three years or five years it doesn't work. If you do capacity building over ten to fifteen years, you can achieve something as long as you understand the system properly and you think about sustainability from the beginning. If you try to put in place a medical system that looks like the one we have over here, it won't be sustainable. As soon as you go it will fall apart. We try to make sure that the systems and prisons are comparable to the systems in the societies in which they live.

Mark Thomson: Thank you very much. One last question from Alessio.

Alessio Bruni: A short question. I am going back again to the question of confidentiality. Now, you explained why you need confidentiality because you can continue the dialogue with the state concerned. But on the other hand, from the point of view of the state, is requiring confidentiality sort of a presumption, of guilt? Why does the state accept your recommendation provided it is confidential, why can they not do it in public? That is my question.

Mary Werntz: I think we are the ones asking for the confidential dialogue, in the places that we are trying to get in, and not the states. It seems that states also like it and feel comfortable with it. I believe we have a few examples of states that said, "we don't want your confidential dialogue," and permit us to go public. I think in the Northern European context we have a few cases like that, where states have come forward. I expect that it will happen more and more often. But again, the discussion on confidentiality happens when you are going to a new situation where we already have concern. So there is already a reason for why we are trying to get there. And it's not a relationship that is established. It's something new. There is a need for us to get used to each other. A whole lot of this depends on trust. It's about the ICRC being predictable in what we do, and not suddenly doing something different than what we said. So framing it as confidential makes it rather controlled. I think states don't want a whole lot of information out, because they have things they don't want out. We use confidentiality as a way to have access to the piece of the puzzle that needs to be addressed. States want confidentiality because they have something that they don't want to be in the public realm.

Martin de Boer: Can I add?

Mary Werntz: Please.

Martin de Boer: Maybe, part of the benefit of confidential dialogue is to keep it out of a political realm. You can have a technical dialogue — and I think for us, for incremental change, that does have an impact. That's step by step. Influence from the political realm outside it, might hamper some of the changes that we would be able to achieve with, lets say, a more pragmatic and confidential dialogue.

Mark Thomson: Ok, for those of you who haven't met him, that is Martin de Boer, also from ICRC. I would now like to thank Mary for the presentation. Time has run out, so if you have any other questions you are going to have to ask the panelists this afternoon on ICRC related matters. Whether they will be able to give as good of a response as Mary, I doubt it, but we'll give it a try. Thank you very much Mary.

ENDNOTES: Keynote Address: The Impact of Visiting Mechanisms in Torture Prevention

[1] ICRC, Home Page, http://www.icrc.org/.

[2] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, G.A. Res 57/199, U.N. Doc A/RES/57/199.

[3] National Preventative Mechanism, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, **CAT/OP/12/5.**

[4] James Ross, "A History of Torture" in Kenneth Roth, Minky Worden, and Amy D. Bernstein, eds., Torture: Does it Make Us Safer? Is It Ever OK?: A Human Rights Perspective (New York: Human Rights Watch, 2005).

PANEL 3: COLLABORATION TO INCREASE THE IMPACT OF DETENTION VISITS

Opening Remarks from Cynthia Totten, Moderator*

I am really honored to be here for such an exciting conference and, of course, on behalf of Just Detention International, it is wonderful to be asked to sit on this panel with such esteemed colleagues who are doing amazing work. The conversation that we are going to have right now will focus on collaboration to increase the impact of detention visits. Instead of introducing all of the speakers at once, I will just introduce Víctor Rodríguez for now. At the end of all four speeches we will hopefully have some time for questions and discussion.

Mr. Rodriguez is a member of the UN Subcommittee on the Prevention of Torture where he served as president from 2008 to 2010. He will discuss collaboration between the UN, regional, and national visiting bodies both in the planning of visits and in the follow up recommendations. Thank you.

**Cynthia Totten is Program Director at Just Detention International (JDI), a human rights organization that seeks to end sexual abuse in all forms of detention. She directs JDI's initiatives in South Africa and other countries, along with its Human Rights in the USA program, which advocates for U.S. compliance with its international human rights obligations. Ms. Totten is a graduate of Wellesley College and Harvard Law School, and was formerly a fellow with the Women's Law and Public Policy Fellowship Program.*

Remarks of Víctor Rodríguez*

Good afternoon. Thank you to the Association for the Prevention of Torture (APT) and American University Washington College of Law for inviting me to this interesting meeting with different international organs on the prevention of torture. The worst thing that can happen to a speaker is to speak after lunch. The second worst thing that can happen is to hear a person speak in broken English. It is a kind of torture.

I would like to talk about how to improve the impact of torture monitoring and prevention procedures. I would also like to discuss the ways we can create good alliances and synergies between the different international United Nations organs, regional protection organs, and national mechanisms that work on the prevention of torture.

I will start with two points of discussion: how to improve the preparation and planning of visits in different places of detention worldwide, and how to improve visiting mechanisms and follow up recommendations. Before I talk about methodology, protocols, and roadmaps to deal with problems encountered

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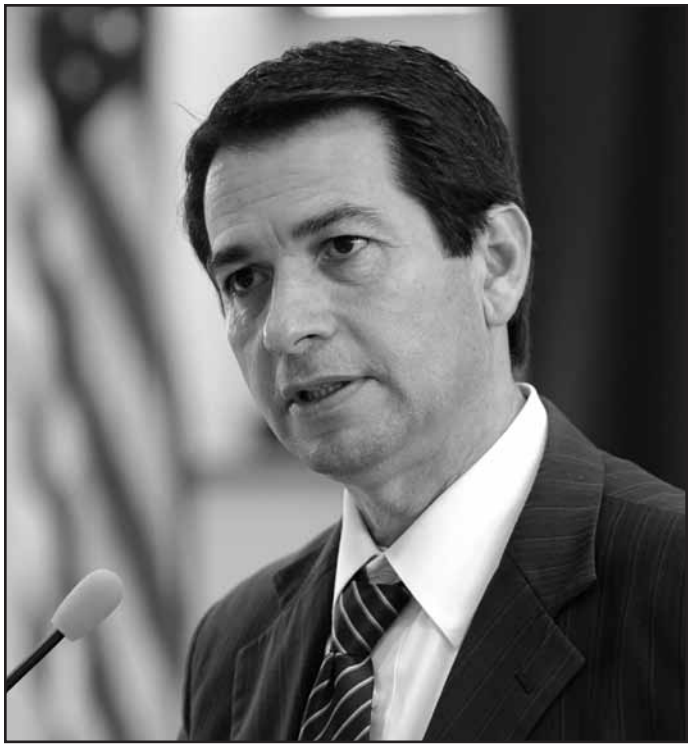
during visits, I would like to talk about encouraging delegations to rethink their mandate. I would like to start with my subcommittee, the Subcommittee for the Prevention of Torture (SPT). Our goal is to reread our mandate so that the person is at the center of the mandate. The human being is the most important consideration in the prevention of torture. We are talking about how we can interpret the law and the treaties in favor of the person. This is important to do because we are dealing with inmates who are deprived of liberty (people that have no voice).

The interpretation of international human rights law is very important for us. The principle challenge for the SPT, as a UN organ charged with the prevention of torture, is figuring out how to interpret several words and statements of the Optional Protocol to the Convention against Torture (OPCAT) treaty.[1] With regard to this task, we initially made a mistake because we thought that confidentiality was the most important objective. Confidentiality requires non-disclosure of certain issues and information regarding the OPCAT, but not "secrecy." We probably prioritized confidentiality over all other topics. I think the SPT should focus on the substantive issue of prevention of torture, instead of other formalities. After three years of maintaining confidentiality of our working methods, including our rules of procedure, we have become more transparent by working together with the UN Committee against Torture and exchanging information with other regional instruments. We focused on capacity building and improved collaboration.

I would also like to talk about the mechanisms that we used when we conducted state visits. In essence, our idea was to map the different work relating to the visits conducted by different United Nations organs, including the UN Committee against Torture, the Special Rapporteur on Prevention of Torture, and different regional mechanisms of protection of human rights of persons deprived of liberty. To do this, we would take the following factors into account: geographic distribution of countries to visit, division of the state, and the availability and agenda of other mechanisms for the prevention of torture, including CPT in Europe. Regarding the possibility of establishing contact with other kinds of mechanisms, we must talk about and share our experiences, or lack of experience, with national prevention mechanisms of torture.

As you may know, the OPCAT is a new generation treaty, and in this regard, it is assumed that the SPT has a different level authority when it comes to state visits.[2] One government we visited said that the SPT is the most "intrusive" international organ working on the protection of human rights because our mandate involves advising states in the creation of national prevention mechanisms or advising the best way to prevent torture, and requires having access to any place of detention. This means that we do not focus on the facts of any one specific case of torture (we have no mandate to file cases), but we identify structural problems of risk of torture and ill-treatment. In other words, if we identify torture we must denounce torture, but it is not our mandate to file and resolve cases of torture. As a result, we submit these specific petitions



or cases of torture to the general prosecutor of the country or to another international organ with competence to file these cases as the UN Committee against Torture, the Special Rapporteur on Torture, or any other organ with competence. We focus on the risk of torture and how to identify the risk of torture. We try to identify structural problems concerning the risk of torture. For instance, a country may have a normative problem, an institutional problem, or worse, a practice of permitting inhumane treatment or other forms of torture.

The objective is to build a constructive dialogue with states and with the national prevention mechanisms, trying to identify by working together, the best public policies on the prevention of torture, while taking into account the different tools, skills, and instruments available. At the same time, we must deal with the reality that we have to be competent to visit any of the 57 countries that are States Parties to the OPCAT. Our goal is to establish a mechanism of dialogue before, during, and after the visit.

We also engage with states through a follow-up visit process in which we assist states by advising them on training and national prevention mechanisms. Follow-up recommendations involve accounting for other reports relating to the UN Committee against Torture, OPCAT, or other international organs concerning torture. We use the reports and recommendations provided by the OPCAT.

We also try to build a system of follow-up mechanisms, and try to utilize the strength of the Committee for the Prevention of Torture (CPT) in Europe, the Inter-American Commission on Human Rights, and any other national or international prevention mechanism to grow the special voluntary fund of the OPCAT. Article 11(c) of the OPCAT established the obligation for cooperation between the UN, regional organizations, and

national organizations.[3] Therefore, non-cooperation is not an option for States Parties to the OPCAT.

Recommendations Pertaining to the Political Agenda of Torture Mechanisms

I would like to talk about recommendations with regard to the political agenda of the international mechanisms for the prevention of torture. I recommend, for example, that in this meeting we talk about how to create political pressure to encourage states to ratify the OPCAT treaty. Similarly, it could be important to ask to the states to make the SPT report a public document. Several countries, such as Sweden, have specific laws declaring all types of reports from various human rights organs to be public. I think it would be beneficial for all international organizations to include in their reports, as a general recommendation, the creation of a specific law declaring their reports to be public. To encourage states to create national prevention mechanisms is another general recommendation.

Different Definitions of 'Prevention of Torture'

What does the prevention of torture mean for the SPT? Does the SPT share the same definition of prevention as the Inter-American Commission on Human Rights or any other international human rights organ? It is not easy to talk about the prevention of torture. I would like to try to identify the most operative definition of the prevention of torture, a definition that deals with methods rather than theoretical understandings and concepts. We can use the same tools — a checklist, a questionnaire — to address differing issues and scenarios, such as a prison or a police station. The problem has to do with the object of the visit and the principles underlying our understanding of our different mandates.

The SPT, the CPT, and other organs may understand the necessary methods to avoid violations of the rights of inmates differently. We know how to work towards prevention of torture by taking into account different cultures, in the context of different states. We can change the way we prevent torture by changing peoples' attitudes, because torture has to do with bad attitudes towards people, education, and institutions. Understanding torture is a big part of preventing it. For example, we interviewed an individual in a country who said, "I was a victim of several different harms, but it was not torture, its normal, it is part of the punishment." Accordingly, victims of torture have a different understanding of what torture and ill treatment mean. These people have no idea they were victims of torture, therefore torture is both a cultural and institutional problem.

Building Coalitions to Support Torture Prevention Mechanisms

On the other hand, there are very interesting NGOs working and supporting the OPCAT contact group and its work. I think it would be useful if American and regional NGOs, would be part of the OPCAT Contact Group. On the other hand, several states have built a very informal organization of "friends of the SPT." States like Argentina, the Maldives, Mexico, the United Kingdom, and Denmark are trying to work within political forums to improve the ratification of the OPCAT. Similarly, states are creating national pressure mechanisms.

The UN General Assembly has adopted an effective procedure of inviting the chairperson of the SPT, Committee against Torture, and the Special Rapporteur on Torture to submit annual reports before the General Assembly in New York. This is a good practice because sharing information allows each mechanism to be more strategic in the way they work, and additionally allows the mechanisms to support one another on other matters, such as budgetary issues or regular declarations in regards to torture. Last year the UN General Assembly adopted a very specific project to support and improve the budget of the Committee against Torture. In previous years, the UN General Assembly included in its regular annual declaration on torture a very specific paragraph to improve conditions of the SPT. Sharing information also avoids competition and overlap between the mechanisms.

There is also an operative common agenda regarding the ways that we can create more consistency across torture prevention mechanisms. I think that one of our problems is our different conceptions of torture. For example, what is the difference between torture and ill treatment? If you read the judgment of the Inter-American Court of Human Rights (Inter-American Court) in the 1997 case of *Loayza-Tamayo v. Peru* regarding the meaning of isolation, you will likely realize that if isolation were defined as torture or ill-treatment, the Inter-American Commission would probably have a different notion of the meaning of torture in relation to isolation.[4] The other area remains unclear is the burden of proof. In the case of *Loayza-Tamayo*, the burden of proof used was incorrect. The Inter-American Court declared that the victim had the obligation to demonstrate that she was raped while in isolation. It was impossible for the victim to satisfy this burden of proof because she never had the possibility to access normal mechanisms of justice.[5]

Conclusion

Therefore, we need to talk about definitions, practices, and concepts in regards to torture and the prevention of torture. We also need to talk about what are the best methods of sharing most of our information and agenda reports. I would propose to build a common website that focuses on the different doctrines of the Committee against Torture, SPT, and the CPT, so that there is a forum that provides not just recommendations, but also doctrines on the prevention of torture. I am talking about ways in which we can build systemizations, such as automatic software, to try to create a platform to give everyone access to these doctrines on the prevention against torture. I would also suggest holding bi-annual meetings between the bureaus of the different international and national prevention mechanisms. We

need to talk about languages, about operative skill visits, and principles and methodologies adapted to the specific mandates. Another important point to consider is how we can best follow the mechanisms recommended by other treaties or other organs.

Importantly, we must determine how to strengthen the role of our secretariats. At the end of the day the secretariats are the permanent organs of the protection of human rights and prevention of torture. We are just experts who have meetings two to three times per year discussing this important issue. My experience tells me that we need to support our secretariats through more human resources and more training. We can even establish a net of secretariats working together.

It is very important to never put at risk the integrity of inmates. If this happens, they turn into victims of betrayal. It is equally as important to respect cultural differences in a country and in that country's prisons. Knowing the differences between the locations that are visited is key because the methodology used for working in a prison will be different from the methodology used for working in a government operated prison or a police station or in a self-governing prison.

How do we apply the same principles during site visits? How do we build the confidence of authorities and inmates? How do we avoid reprisals? How do we respect the privacy of inmates? How do we avoid creating false expectations with regard to the petitions of inmates, private interviews, and most importantly, the role of national prevention mechanisms? There are a lot of questions for which I do not have the answers. Thank you very much.

Remarks of Andrés Pizarro*

The Application of International, Regional and National Standards on Persons Deprived of Liberty: Some Remarks on the Working Visits of the Rapporteurship of Persons Deprived of Liberty of the Inter-American Commission on Human Rights

Good Afternoon. I want to thank the American University Washington College of Law and the Association for the Prevention of Torture for this opportunity. When talking about international standards on persons deprived of liberty and the concept of the deprivation of liberty, I will refer to the work of the Rapporteurship on Persons Deprived of Liberty and the way it conducts its working visits in practice.

What is the IACHR's understanding of the deprivation of liberty, and what is the scope of this concept? According to the principles and best practices of the IACHR, deprivation of liberty means any form of detention, imprisonment, institutionalization or custody of a person in a public or private institution in which that person is not permitted to leave at will. In this regard, for the IACHR, deprivation of liberty means: 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

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and undocumented persons; and any other similar institution, the purpose of which is to deprive persons of their liberty.[1]

Taking into account this conception of the term of deprivation of liberty, we can better understand the mandate of the IACHR and its Rapporteurship of Persons Deprived of Liberty to visit any of these places.

With regard to the standards the IACHR applies when assessing the situation of persons deprived of liberty, we have to point out that before March 2008 the IACHR principally relied on the standards of the universal system. These standards are enshrined in the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.[2] In accordance with the principle of integration of systems, the IACHR has systematically used these standards, in different reports, visits, and general activities related to the protection of persons deprived of liberty.

The first Advisory Opinion of the Inter-American Court of Human Rights, from 1981, is one of the key documents that refers to the integration of systems, noting:

> The nature of the subject matter itself, however, militates against a strict distinction between universalism and regionalism. Mankind's universality and the universality of the rights and freedoms which are entitled to protection form the core of all international protective systems. In this context, it would be improper to make distinctions based on the regional or non-regional character of the international obligations assumed by States, and thus deny the existence of the common core of basic human rights standards. . . . A certain tendency to integrate the regional and universal systems for the protection of human rights can be perceived in the Convention. The Preamble recognizes that the principles on which the treaty is based are also proclaimed in the Universal Declaration of Human Rights and that "they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope." Several provisions of the Convention likewise refer to other international treaties or to international law, without speaking of any regional restrictions. (*See, e.g.,* Convention, Arts. 22, 26, 27 and 29.)[3]

However, in March 2008, during its 131st regular period of sessions the IACHR adopted the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, which is the main instrument the IACHR and its Rapporteurship are currently using as a reference for their assessments of the human rights situation of persons deprived of liberty in the Americas.[4] The Principles and Best Practices constitute a reassessment of the all the existing standards set by the Inter-American, the Universal, and the European System of Human Rights, particularly taking into account the jurisprudential developments of the Inter-American Commission and Court. We also hope that this document will be used as the first stepping-stone in the process of the creation of a future Inter-American declaration on the rights of persons deprived of liberty.

I will now talk about the visits that the IACHR conducts to places of detention. In this regard, it is important to distinguish between the *in loco* visits of the IACHR, and the working visits of its Rapporteurs. The *in loco* or *in situ* visits are completed by the Inter-American Commission as an institution, and therefore require the participation of at least three Commissioners. By contrast, working visits are most often conducted by one Rapporteur. The visit may be conducted either by a thematic or a country Rapporteur. In the Inter-American Commission, each Commissioner is in charge of one thematic Rapporteurship, as well as more than one country. Thus, a working visit could be conducted, for example, in Argentina by the Commissioner Rapporteur for Argentina; or by the Rapporteur on the Rights of Persons Deprived of Liberty (or any other thematic Rapporteur), in Argentina. In practice this distinction is very relevant; it is not the same for a Member State of the OAS to receive a request for an *in loco* or *in situ* visit from the IACHR, as to receive a request for a working visit of any of its Rapporteurships. There is also a big difference in the preparation for the visit by the staff of the General Secretariat of the IACHR, and in the characteristics of the final report issued after the visit.

The Rapporteurship on the Rights of Persons Deprived of Liberty was established in 2004, and its first Rapporteur was former Commissioner Mr. Florentin Meléndez. The current the Rapporteur is the Commissioner Rodrigo Escobar Gil, who was appointed in January 2010 and started working in March 2010. Since the establishment of this Rapporteurship its Rapporteurs have undertaken eighteen working visits in fourteen countries in the Americas.[5] In practice, the first step of a Rapporteur's visit is the selection of the country to visit, based on certain criteria. In order to make the selection, the Rapporteur will take into consideration the human rights situation of the specific country, whether civil society organizations have made a special call for the Commission to visit the country, and the potential impact the visit will have on the target groups and on the general human rights situation of the country. Another element considered is the attitude of the government of the host state. Some governments do not want too many visits of international mechanisms, or visits that take place one after another within a short period of time. Moreover, some countries have extended permanent open invitations to the IACHR; however, even in these cases, Rapporteurships have to formally request the visit and get the approval of the government.

Once the Rapporteur selects a country to visit, the Executive Secretariat starts a process of preliminary exchanges with the country government, which begins with an initial letter requesting the visit. Then, after the positive response of the government, the Executive Secretariat starts coordinating with the government on the agenda of the visit, a process that will finish the day before the visit, and informs the government about other important information, like the list of officials that will be interviewed by the Rapporteur. It is also important to mention that it is not the practice of the Rapporteurship to announce in advance which specific places of detention it is going to visit, which is usually conveyed to the government once the working visit begins. We don't want to give notice in advance to the government because sometimes governments try to make up or correct certain situations before we arrive. If we tell the government a long time in advance, the State will try to fix what we are going to see at the last minute, which is something we want to avoid.

All the communications are sent to the government via its permanent mission before the Organization of American States, as all the official communications the IACHR exchange with the Member States.

During its working visits the Rapporteurship of Persons Deprived of Liberty performs four different activities: (a) meetings with high level authorities, including officials in charge of the judiciary, prosecutors, and other law enforcement authorities in charge of correctional facilities; (b) meetings with NGOs and local organizations to gather relevant information; (c) actual visits to places of detention of all kind; and (d) whenever possible, conferences or workshops directed to law enforcement agents and other authorities related with persons deprived of liberty. Authorities may receive the delegation in a wide variety of ways. They may tell you: "You can go wherever you want. We don't care. You can see any part of any detention facility you want," or they can be more defensive about the visits placing many restrictions and obstacles for visiting places, taking pictures, interviewing prisoners, etc. Regarding the *in situ* visits and the working visits, the legal basis for our activity on the ground is the same: Articles 56 and 57 (especially subsections a, b, e, g) of the Rules of Procedure of the Inter-American Commission.[6] The rules allow the delegation to take pictures, interview any detainee, visit any place of detention, move freely in the country, and even take pictures. Additionally, the rules establish that the State has to cooperate with the IACHR and provide security, and in some cases transportation. In some cases we do prefer to hire an independent transportation company in order to retain our independence during the visit.

In our experience the state authorities usually want to show you what they have done properly. When you visit a detention facility they want to take you to the best places, and show you their projects, their workshops, their schools, and the places they have fixed. It is good to see these positive efforts. You cannot conduct a fact-finding mission and only look at negative aspects. As an international organization, the IACHR looks at both sides of the reality. In our reports we present the progress of the government, if any (like recent ratification of treaties or other improvement and projects), as well as the big challenges the state is facing guaranteeing the human rights of the persons deprived of liberty. It is a challenge, because it is important to be impartial and objective. Everything is directed to make accurate recommendations to the government. As Victor Rodríguez said before, detention visits are not about kicking open doors, they are about people and about finding the best way to improve the conditions of detention of specific human beings.

The recent practice of the Rapporteurship of Persons Deprived of Liberty is to publish its reports of working visits trough press releases. These reports are longer than a regular press release and shorter than a Special Report of the Commission (e.g. the reports published after an *in loco* visits). Publishing findings in the form of a press release is also simpler and faster. The reports of the three last working visits of the Rapporteurship of Persons Deprived of Liberty are contained within the following press releases: 116/10 - Office of the Rapporteur on the Rights of Women Concludes Working Visit to El Salvador (San Salvador, November 19, 2010); 64/10 - IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province (Washington, D.C., June 21, 2010); and 56/10-IACHR Rapporteurship on Persons Deprived of Liberty Concludes Visit to Ecuador (Washington, D.C., May 28, 2010).

The IACHR can interact with the regional organizations and the universal mechanisms in many ways. To give you an example, every time the Rapporteur on the Rights of Persons Deprived of Liberty visits a country, we remember to state the importance of ratifying other human rights treaties, e.g. the Optional Protocol to the Convention against Torture.[7] If they have ratified these instruments, we ask the state to implement the national preventive mechanism. That is something that we always do and I think it's a way to cooperate and to improve compliance with other human rights obligations. Thank you very much.

Remarks of Roselyn Karugonjo-Segawa*

Effective Collaboration Among National Actors and their Relationship with International and Regional Mechanisms

Good afternoon everyone. Ladies and gentlemen, it's a great pleasure for me to speak at this event organized by the Washington College of Law and the Association for the Prevention of Torture, who I would like to heartily thank for inviting me. I acknowledge and appreciate the Uganda Human Rights Commission's cooperation with the Association for the Prevention of Torture, and I hope that this will be the beginning of the Human Rights Commission's cooperation with the Washington College of Law.

I will talk about who the national actors are, why collaboration is important, and how national actors relate to international and regional mechanisms. By national actors, I'm referring to inspectorates of jails and prisons, ombudsmen, judges and magistrates, government organizations, civil society organizations, and national human rights institutions. Since I'm the only one present from a national human rights institution, I'll really speak a lot on their behalf.

A national human rights institution is simply a body established by a government to promote and protect human rights. Their main function is usually investigating complaints and monitoring government compliance with ratified international instruments. They also carry out human rights education. According to the Paris Principles, they have to operate independently and efficiently, they have defined jurisdiction, and they must be accessible, accountable, and cooperate with other stakeholders.[1] National human rights institutions are regularly assessed by the International Coordinating Committee of National Human Rights Institutions. I'd like to brag a bit. The Uganda Human Rights Commission has "A" status, meaning that we comply with most of the Paris principles.

What is the role of national actors during these visits? Places of detention are closed environments, and most of the people in those places of detention have to rely on the authorities for their

most basic needs. They are out of sight and out of mind, so our visits, the visits of national actors, keep them in check.

The importance of visits is to prevent human rights violations from occurring, to provide immediate protection for those being detained, for documentation, and also to enhance dialogue with the authorities that are detaining these people.

Visits are intended to promote and protect the rights of detainees. Basically, detainees have rights that must be respected, protected, and fulfilled. Detainees need protection from violations — both from the prisoners and the authorities. Fundamentally, detention must be lawful. No one, as everyone has been saying, should be subjected to torture and other cruel, inhuman or degrading treatment or punishment.

Why is collaboration important? This is the crux of why I'm speaking today. It is important to share information and to prevent the duplication of events and activities. This is especially important due to the limited resources. Collaboration enhances synergy for better results because fragmented efforts do not yield much. Collaboration also builds the capacity of the collaborating actors. National actors have different strengths and as we share information — as we share checklists — our capacities are built for the better.

What are the challenges of collaboration? It's difficult to work with a diverse group of organizations nationally, especially civil society organizations. Duplication of work and

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competition between members cause friction. Of course, we come together to prevent torture and other cruel, inhuman and degrading treatment or punishment. The Uganda Human Rights Commission and civil society organizations have collaborated to push the Government of Uganda to pass a law prohibiting torture. However, we have not yet achieved our goal, which is discouraging. Other challenges include the change of personnel over time, and the changing priorities of organizations. It is important to note, however, that all of these challenges can be overcome.

How do we interact with the international and regional mechanisms? With regional mechanisms, I will restrict my discussion to Africa where I operate. As national actors, we advocate for the implementation of international and regional standards. This work includes, for example, advocating for the ratification of and domestication of the UN Convention against Torture and the Optional Protocol to the UN Convention against Torture.[2] We disseminate reports, concluding observations and recommendations of the international and regional mechanisms to the public, and follow up on their implementation with the government.[3] We also provide international and regional actors with information which may guide their actions. If we know that an individual from an international or regional mechanism is visiting Uganda, we often meet and provide them with information. We also assist, where possible, international and regional mechanisms with the planning and organization of their visits. In such cases, we provide them with information and facilitate contacts, and we make recommendations on their proposed agendas.

How do we relate to the international and regional mechanisms? They provide guidance to us by setting standards through their reports, making recommendations, and reaching decisions on cases brought before them. For example, during the recent visit of the former UN Special Rapporteur on Torture, Manfred Nowak, he joined us in advocating for the passage of a bill prohibiting torture. When he came, the various domestic actors were in disagreement on the definition of torture and he provided good guidance.

Effective collaboration among national actors is necessary and their relationship with international and regional mechanisms is vital for the promotion and protection of the rights of those in detention. Thank you.

Remarks of Alessio Bruni*

United Nations Committee against Torture

First of all, I would like to warmly thank the Washington College of Law and the Association for the Prevention of Torture for having organized this conference. I would like to thank, in particular, Mr. Claudio Grossman, Dean of the College and Chairman of the United Nations Committee against Torture (Committee) as well as Mark Thomson, Secretary General of the Association for the Prevention of Torture (APT) for their kind invitation to participate in the conference.

The Committee has limited experience in visiting places of detention since its main tools to monitor compliance with the United Nations Convention against Torture are: a) the periodic examination of reports submitted by States Parties, and b) the individual complaint procedure for violations of the Convention.

However, the Committee is also empowered, under Article 20 of the Convention, to make inquiries when it receives reliable

information which appears to contain well-founded indications that torture is being systematically practiced in the territory of a State Party to the Convention.[1] The inquiry may include a visit to the territory of the State Party concerned. It is in this context

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that visits to places of detention are undertaken normally by two members of the Committee, a medical expert, two or three members of the Secretariat, and two interpreters, when required. The duration of each field mission varies from two to three weeks.

The Convention entered into force in 1987. It should be noted that when states sign, accede to, or ratify the Convention, they can make a reservation whereby the inquiry procedure is not applicable to them.[2] Today, out of 147 States Parties, the following 9 states have made that reservation: Afghanistan, China, Equatorial Guinea, Israel, Kuwait, Mauritania, Pakistan, Saudi Arabia and Syrian Arab Republic.

During the period 1991-2005, seven inquiries were concluded and their results were published either in the Annual Report of the Committee or in a separate document. They concerned, in chronological order, the following States Parties: Turkey, Egypt, Peru, Sri Lanka, Bosnia and Herzegovina, Mexico and Brazil. All of them included an inquiry mission and visits to places of detention with the exception of Egypt. At present, the Committee has before it information relevant to the inquiry procedure concerning three States Parties. The procedure is confidential until the Committee, after consultation with the state concerned, decides to publish its results.

The following remarks regarding the collaboration necessary for an effective visit to places of detention are based on my experience as the person responsible for the first four inquiries of Committee in the Secretariat of the United Nations.

Collaboration at the International Level

At the beginning of its activities on the inquiry procedure under Article 20 of the Convention, the Committee organized an informal meeting with the European Committee for the Prevention of Torture (CPT) in order to learn from it methods for visiting places of detention. This was done in the early 1990s. Subsequently, the collaboration on methods of work to visit places of detention continued for some years through their respective secretariats. It is my view that this practice should be resumed and strengthened, not only between the Committee and the CPT, but also among all international, regional, and national bodies the mandate of which includes visits to places of detention.

Today we have new mechanisms — in particular the Sub-Committee on the Prevention of Torture established by the Optional Protocol to the United Nations Convention against Torture — that visit places of detention regularly.[3] We have manuals and other publications to guide those who visit places of detention, such as the Istanbul Protocol or the books and guidelines published by the APT.[4] However, nothing replaces the exchange of views, experiences, lessons learned, and new approaches among mandate holders. For instance, before beginning a visit to a State Party under inquiry, the Secretariat of the Committee used to hold one or two meetings with the relevant staff of the International Committee of the Red Cross in order to identify places of detention or issues relating to them which deserved priority attention.

It has to be kept in mind that a key step to an effective visit to a place of detention is collecting the maximum amount of information possible about the place of detention prior to the visit. Relevant information includes: the layout of the premises, the services available, whether there are cells for solitary confinement and their location, what other punishment for breaking prison's rules is in force, the number of inmates, their category (pre-trial or convicted detainees), whether women or minors are present, etc. It is essential that visiting experts and their secretariat ask for this kind of information from relevant offices or agencies of the UN as well as the major international NGOs which have their own presence in the field. Without this preliminary information, the visit is almost a guided tour prepared by the detention authorities. In addition, there is little time to gather that kind of information and decide strategies and priorities during the visit. In conclusion, on this point, those who knock at the door of a place of detention to visit it should have already memorized the map of that place and the check-list of things to do once inside.

A program of visits to several places of detention should be based on a clear agreement of cooperation by the national authorities and their acceptance of freedom of activities and movement of the visiting experts. If security measures are necessary, they should be clearly agreed (to the extent possible) before the visit. Access to places where persons are deprived of their liberty should be guaranteed. Restrictions concerning sensitive areas (e.g. military zones) should be indicated in advance.

Selection of Places of Detention to be Visited

How do you select places of detention to be visited? As I mentioned before, The Committee visits such places in the framework of an inquiry on allegations of systematic practice of torture. Therefore, the selection is based on the degree of risk of torture or ill-treatment that appear to exist for detainees in certain places. Other technical criteria are also considered, such as the size of the place of detention, its accessibility, the time and the number of persons available for the visit. Normally, top priority is given to places of detention managed by security forces specialized in anti-terrorism. We have learned through experience that terrorism and torture are inseparable phenomena. Then, priority is given to places where interrogations take place, i.e. police stations followed by maximum security prisons and other places of detention for vulnerable groups of inmates such as women, minors, and asylum seekers.

Follow-up Procedures

Follow-up procedures for visits to places of detention are envisaged by international actors.[5] Generally, they consist of written reports on measures taken by the authorities of the country concerned to implement the recommendations made by a given international body. Follow-up visits to the

country concerned are also necessary. The Convention against Torture does not say anything about follow-up activities of the Committee with regard to its inquiries. However, at the same time the Convention also does not prevent the Committee to undertake follow-up activities. In some cases, written follow-up has taken place, however no structured rules exist. Perhaps, this matter should be discussed in the near future by the Committee, and follow-up visits could be envisaged. In my experience, there is only one effective way to follow-up recommendations made with regard to a place of detention: by going back to the same place again and again until the recommendations (or the majority of them) are implemented. Additionally, national human rights institutions, national mechanisms of prevention, and other organizations, as agreed upon by the country and the international body concerned, should be involved in follow-up activities.

Collaboration at the National Level

In order to obtain the maximum of collaboration from the national authorities when an inquiry mission takes place, there are certain "diplomatic" rules that have to be respected. The first is that the visiting experts should meet with the highest authorities of the country concerned at the very beginning and at the end of their visiting mission to explain, respectively: a) what they intend to do in general and what kind of assistance they expect from those authorities, and b) to brief the same authorities about the experts' findings and preliminary recommendations.

The second rule is that, at the beginning of a visit by experts to a place of detention, detention authorities should be allowed to explain how their places of detention function and answer preliminary general questions. Normally, the meeting lasts from thirty to sixty minutes maximum. Sometimes a "guided tour" of the place of detention is unavoidable because refusal could be perceived as offensive and compromise the degree of collaboration. At the end of the visit, always say thank you and good bye to the same authorities.

A key component of the effectiveness of a visit to a place of detention is the collection of names of persons detained, i.e. "live cases." The majority of this information is usually gathered on the spot from NGOs, bar associations, ombudsmen, associations of families of detainees, social workers active in places of detention, and even from persons arrested who may wish to signal the detention of relatives and friends in another police station or prison. Key tasks to establishing good collaboration with those who are supposed to provide names and cases and with those who are interviewed are: a) build confidence; b) assure confidentiality; and c) follow-up (whenever possible) on those cases which can be easily solved with the appropriate authorities.

Another key element of effective visits to places of detention is the preparation of a questionnaire for the interviews with detainees. The interviews should ideally be conducted by two persons, a visiting expert accompanied by a member of the Secretariat or a medical expert and, of course, an interpreter when required. These interviews must be conducted with a lot of tact and objectivity. A detainee belongs to a different planet and their vision of life and the external world are completely altered. Detainees in police stations, in particular, are frightened, traumatized, and unwilling to talk. If possible, it is better to interview all the detainees in a police station to avoid any perceptions of different treatment that may provoke violent reactions among them. One important thing to remember is that the time allocated for each interview should be respected; otherwise the results of the visit may be partial and not effective.

The organizational strategy for the visit is also important. Generally, visits to prisons should be announced at least 24 hours in advance while visits to police stations which are open 24 hours a day can be unannounced. Individual interviews rather than collective interviews are preferable, but sometimes they are not possible or they are opposed by the detainees themselves (e.g. PKK prisoners in Turkey). Interviews should always be private. If interpretation is needed, the interpreter should be one accredited by the UN Interpretation Service or by the local UN team. Interpreters furnished by the national authorities should not be accepted for interviews or medical examinations of detainees. If security measures are imposed (risk of violence against the interviewer or attempt to escape, etc.), the presence of a detention officer can be accepted only if he or she can see the persons participating in the interview, but from a distance where he or she cannot hear what they are saying. A room or another place suitable for interviews under these conditions should be required. If this is not possible, the interview should be canceled and detention authorities should be informed that their refusal of acceptable conditions for interviews or the lack of an acceptable place for that purpose will be reported.

The registry of entry, transfer, exit and other annotations concerning the movement of each detainee should be quickly analyzed. The visiting experts may use it to decide, on the spot, which detainees should be interviewed, sometimes at random, and sometimes on the basis of suspicious elements. For instance, after interviews with detainees in a police station, their declarations about the time of arrest may be compared with the registered time of their detention. If there is considerable difference between the alleged time of arrest and the time of registration, and if the distance between the place of arrest and the police station does not justify that difference, this may be an indicator of illegal practices, or an element corroborating allegations of torture. The same applies to the registration of a person transferred from one place of detention to another. In this or similar situations, supplementary questions to the detainee and the detention officers are necessary.

A medical examination of a detainee by the visiting medical expert should take place after his or her full consent is given, possibly in a place suitable for such examination, in the absence of other persons (except for an accredited expert) and in accordance with the principles established by the Manual on Effective Investigation and Documentation of Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment published by the UN in 2004, known as the Istanbul Protocol.[6]

A major challenge experienced by the Committee is guaranteeing the protection of persons who are in contact with the visiting experts for the purpose of the inquiry, including interviewed detainees and their families. In practice, it is impossible to provide effective protection. The only effective measure taken that I remember was during a visit to Turkey. The highest national authorities were informed that we were holding a list of names of those who had been in contact with us during the inquiry mission. If we received information about threats, arrests, ill-treatment or other harm inflicted to them after our departure, the Government of Turkey would have been considered accountable for those acts, and measures would be taken, such as a letter of protest and the inclusion of relevant information in the report on the inquiry. If a follow-up visit to the country concerned is possible for the Committee and some of the persons contacted during the first visit could be contacted again, of course, the level of protection could be much higher.

ENDNOTES: Panel 3: Collaboration to Increase the Impact of Detention Visits

Remarks of Víctor Rodríguez

[1] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, G.A. Res 57/199, U.N. Doc A/RES/57/199.
[2] *Id.*
[3] *Id.* art. 11(c).
[4] *Loayza-Tamayo v. Peru,* Judgment of Sept. 17, 1997, Inter-Am. Ct. H.R. (Ser. C) No. 42 (1988).
[5] *Id.*

Remarks of Andrés Pizarro

[1] IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, OAS Doc. OEA/Ser/L/V/II.131 doc. 26 (2008), *available at* http://www.cidh.oas.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm.
[2] All these United Nations documents are available at http://www2.ohchr.org/english/law/index.htm.
[3] "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82, September 24, 1982, Inter-Am. Ct. H.R. (Ser. A) No. 1 (1982), paras. 40-41.
[4] See *supra* note 1.
[5] El Salvador (October 2010); Argentina (June 2010); Ecuador (May 2010); Uruguay (May 2009); Argentina (April 2009); Paraguay (September 2008); Chile (August 2008); México (August 2007); Haití (June 2007); Argentina (December 2006); Bolivia (November 2006); Brasil (September 2006); Rep. Dominicana (August 2006); Colombia (November 2005); Honduras (December 2004); Brasil (June 2005); Argentina (December 2004); y Guatemala (November 2004).
[6] Rules of Procedure of the Inter-American Commission on Human Rights, (Approved by the Commission at its 109º special session held from December 4 to 8, 2000 and amended at its 116th regular period of sessions, held from October 7 to 25, 2002), arts. 56-57.
[7] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, G.A. Res 57/199, U.N. Doc A/RES/57/199.

Remarks of Roselyn Karugonjo-Segawa

[1] National Institutions for the Promotion and Protection of Human Rights (The Paris Principles), Mar. 4, 1994, G.A. Res 48/134, U.N. Doc A/RES/48/134.
[2] Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment preamble, Dec. 10, 1984, 1465 U.N.T.S. 85; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, G.A. Res 57/199, U.N. Doc A/RES/57/199.
[3] *See generally* Uganda Human Rights Commission's Annual Reports, *available at* www.uhrc.ug.

Remarks of Alessio Bruni

[1] Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Torture Convention].
[2] *Id.* art. 28.
[3] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, G.A. Res 57/199, U.N. Doc A/RES/57/199.
[4] UN Office of the High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol")*, 2004, HR/P/PT/8/Rev.1 [hereinafter Istanbul Protocol].
[5] Relevant international actors include Special Rapporteurs of the Human Rights Council, some Treaty Bodies such as CPT and SPT, and also NGOs.
[6] Istanbul Protocol.

CONCLUDING REMARKS

Remarks of Mark Thomson

Thank you Claudio, and thanks to the last panelists as well. As we conclude, I would like to make four main comments about issues that I found particularly interesting from today's presentations and discussions.

First, we have seen that the specific needs of vulnerable groups require monitors to have special skills to provide effective recommendations that will reduce the risk of torture to these groups. For example, the presentation on persons with disabilities clearly showed the need to employ a specific approach to these issues surrounding certain persons deprived of liberty.

Second, there must be regular contact with persons deprived of liberty. This is essential because the reports alone do not effectuate change. Organizations must regularly go to detention centers to meet with authorities and detainees. This regularity provides better protection, ensures there will be no repercussions against people that have been interviewed, and better identifies solutions to improve the situations.

Third, there is clearly a genuine appreciation, understanding, and willingness among the variety of bodies that monitor places of detention to further collaborate, both in information sharing and preparing visits. Governmental bodies are exchanging information with non-governmental institutions because good preparation requires drawing on a variety of information sources and collaboration increases the effectiveness of those particular bodies. This is a very positive development, and collaboration should continue to prevent any future abuses.

Finally, meaningfully changing relevant national legislation, penal policies, practices of arrest and interrogation, and detention center procedures would require a sophisticated multi-year campaign effort at the national, regional, and international levels. For example, the presentation by Roselyn Karugonjo-Segawa from UHRC illustrated the different ways in which the UHRC is trying to approach torture through legal reform and

lobbying. It inspires optimism when organizations collaborate with different national actors supported by international and regional bodies.

In conclusion, let me add that I very much appreciate all of the different panelists, the moderators, and all those people that helped this conference come together today. We look forward to seeing how we can work with WCL to take these ideas further by sharing this meeting, the conclusions, and other information gained today with other bodies. There is great potential and willingness to move forward and a high level of interest in persons deprived of their liberty who need as much protection as they can get.

Remarks of Dean Claudio Grossman

Let me begin by saying that we gladly accept Mark Thomson's invitation to continue this discussion in the future. Our organizations share core values and the law school holds this relationship with APT in high regard. Moreover, we all have a sense from this conference that we need to work harder to promote human dignity for everyone, and that is a very powerful motivation.

Additionally, I believe the points raised by Mr. Thomson are essential. Social considerations play a key role in addressing the situation of vulnerable groups, especially the poor. Democracy and the rule of law are values in and of themselves, but they are also tools to effect the change needed to achieve societies where everyone counts. Going forward, we need to strengthen them even further.

We should not accept discrimination based on any ground, including social status. We should consider expanding the notion of vulnerable groups to include the poor. The protection of vulnerable groups is an important aspect of a democracy, and groups such as indigenous populations, women, and the poor should not be precluded from participating as everyone else, fully in the fabric of society. In this hemisphere, with the contributions of the Inter-American system of human rights, the strength of democracy relies on the basic principle that everyone counts.

Another important topic from today's conference is the relationship between international and domestic law. We must consider how the interplay between international and domestic law can promote the full realization of protections afforded to individuals in detention. The regional systems have contributed greatly to promoting this interplay, as has the universal system. As an example, we are now seeing reactions to the reports by countries that have ratified the UN CAT and the OPCAT in which they are adopting measures to decrease the risk of torture in detention. Thus, the domestic and international mechanisms can play a crucial role in reinforcing compliance with human rights obligations.

In the achievement of our common goals, the role of the secretariat of the supervisory mechanisms cannot be ignored. Often they are permanent organs while the commissions or committees of elected members are not. We need to think about ways in which there can be cross-pollination between the secretariats of the regional and universal institutions, so that they can share and learn from each other's extensive experience. For example, members of the Secretariat of the Inter-American Commission on Human Rights (IACHR) could work for a few months with the UN and *vice versa*, as a step toward further institutionalizing the objective of strengthening collaboration on the prevention of torture. It could also be interesting for these individuals to

participate in missions together. For instance, when the IACHR prepares to conduct a mission and needs an expert, the universal system could help identify such an expert for the Commission and *vice versa.* We will need to flesh out these ideas more thoroughly after we conclude this conference.

We convened today a group of individuals with tremendous technical expertise and knowledge. There are very few places where crucial actors from different national, regional and universal institutions can come together to engage in this level of exchange. Moreover, we need to translate these exchanges into concrete proposals for action. It is cause for optimism that such knowledgeable individuals are here united by the commitment to ensuring protections for all, including the weakest members of society.

In closing, I would like to thank all of the individuals who participated in today's conference. The speakers, panelists, moderators, and keynote speaker all did a terrific job. I would also like to thank APT's Claudia Gerez, who unfortunately could not join us in person but for a happy reason as she is expecting a baby. I would also like to thank APT's Tanya Norton, Jean-Sébastien Blanc, and Mark Thomson.

Thank you to the students of this law school, especially those on the *Human Rights Brief*, which is a superb student-run publication that will produce a special issue setting forth the proceedings of this conference. Being a law student is difficult

enough with the academic demands and often the need to incur substantial debt to study law. Hence, the fact that students make the time to dedicate to these important values is even more remarkable. I am proud of what they do and of the quality of their publication. As a member and current chair of the UN Committee against Torture and former member and president of the Inter-American Commission on Human Rights, I know first-hand how valuable the *Brief* is for us all. It bodes well for the future of the legal profession that our institution attracts women and men with such values and deep commitment.

Our thanks also go to our Office of Development and Alumni Relations, Office of Special Events and Continuing Legal Education, to the staff in my office, and to the dining staff. The law school offers approximately seventy conferences each spring so everyone is under a lot of pressure this time of year. Nevertheless, they still treat each conference as if it were the only one. Additionally, I would like to thank the Offices of Finance and Administration, Public Relations, and Technology. Last but not least, I must thank Jennifer de Laurentiis, coordinator of the law school's UN Committee against Torture Project, who has been organizing this conference for the past several months. Today's conference was possible in great part due to her efforts.

I would like to invite everyone to a reception just outside of this room where we can continue our discussions informally.

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