



## INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### ANNEX TO PRESS RELEASE 104/10

#### PRELIMINARY OBSERVATIONS ON THE VISIT TO EL SALVADOR BY THE OFFICE OF THE RAPPORTEUR ON THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY

Washington, D.C., October 20, 2010 — The Office of the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights (IACHR) carried out a visit to the Republic of El Salvador on October 5-9, 2010. The delegation was composed of the Rapporteur, Commissioner Rodrigo Escobar Gil, and staff members of the IACHR Executive Secretariat. The Inter-American Commission would like to express its appreciation to the Salvadoran government for its cooperation and for the unrestricted access to detention places during the course of the visit. It would also like to thank the nongovernmental organizations with which the delegation had the opportunity to meet. This visit was made possible thanks to the valuable financial support of the government of Spain.

During the visit, the Rapporteur on the Rights of Persons Deprived of Liberty and his delegation visited the "*Sendero de Libertad*" ["Path to Freedom"] Center for Social Integration (Ilobasco), the Quezaltepeque Prison, and the Zacatecoluca Maximum Security Prison. During these visits, the delegation met with the respective authorities in charge of these facilities and interviewed a significant number of individuals in custody. The Rapporteur also met with the Deputy Minister of Foreign Affairs, Trade, and Economic Promotion, Carlos Castañeda; the Director General of Human Rights of the Ministry of Foreign Affairs, David Morales; the Minister of Justice and Public Security, Manuel Melgar; the Director General of Prisons, Douglas Mauricio Moreno; the Deputy Director General of Prisons, Nelson Rauda; the Director General of Intermediate Facilities, Irma Mejía; the Executive Director of the Salvadoran Institute for the Integral Development of Children and Adolescents (ISNA), Luis Enrique Salazar; the Chief of the Social Integration Division, Israel Elías Figueroa Cárcamo; the Deputy Human Rights Ombudsman, Salvador Menéndez Leal; the Deputy Ombudsman for Civil and Political Rights, Walter Gerardo Alegría; the Deputy Ombudswoman for Children and Youth, Leonor Arteaga; and the Chief of the Penitentiary Unit of the Office of the Human Rights Ombudsman (PDDH), Rosa Elena Ramos. Commissioner Rodrigo Escobar Gil also met with Drs. Rodolfo González, Sidney Blanco, and Florentín Meléndez, magistrates of the Constitutional Chamber of the national Supreme Court of Justice. On the last day of the visit, the Rapporteur on the Rights of Persons Deprived of Liberty gave a press conference.

The Inter-American Commission appreciates the Salvadoran government's efforts to correct the serious deficiencies in the national prison system. In this regard, the IACHR takes note of important initiatives such as the strengthening of the Penitentiary School; efforts to purge the ranks of prison personnel; the establishment of national dialogue processes; measures planned to reduce prison overcrowding; plans to improve the management of the ISNA; and, in short, the attitude of greater openness that the government has shown toward civil society organizations. The IACHR also views as positive the fact that the prison situation has become an issue of national debate.

In keeping with the existing collaboration between the Salvadoran government and the IACHR, and in order to help bring about greater protection for the rights of persons deprived of liberty, the Commission—pursuant to General Assembly resolutions and based on the functions and powers it is granted under Article 41 of the American Convention on Human Rights—makes the following preliminary observations public.

First of all, the Office of the Rapporteur was able to attest that the Salvadoran prison system suffers serious structural deficiencies. This situation, which today has reached truly critical levels, is not a recent phenomenon, but rather the result of a decades-long failure to design and implement public policies and projects that would enable the prison system to fulfill the aims established by the American Convention on Human Rights: "the reform and social readaptation of the prisoners."

Another decisive factor in aggravating the situation of the prison system is the establishment of a public security policy focused primarily on repression. Under this policy, prison reforms have been implemented and judicial practices carried out that have inevitably resulted in an increase in the rates of imprisonment.

In this regard, the Inter-American Commission considers that penal reforms designed to produce significant changes must be accompanied by the corresponding modification of judicial and prison institutions, since these are the areas that will feel the direct impact of these legislative reforms. If this does not happen, the result will undoubtedly be structural deficiencies that will have a significant negative impact on citizens' enjoyment of their fundamental rights.

Below, the Office of the Rapporteur on the Rights of Persons Deprived of Liberty underscores some of the principal human rights violations it observed in the prison establishments of El Salvador:

1. One of the main deficiencies suffered by the Salvadoran prison system is the high rate of prison overcrowding. According to information provided by the authorities, adult prisons have an installed capacity of 8,110 beds but currently house more than 24,000 inmates, which means they are more than 300% over capacity. This high lockup rate in turn produces other situations, such as the worsening of detention conditions and insufficient access to reeducation and training programs essential for social reintegration. It also leads to violence, tensions, disturbances, and the commission of criminal offenses. In addition, taken in conjunction with the lack of adequate physical structures, this critical overcrowding hampers access to sanitary services, drinking water, and adequate physical spaces, and facilitates the spread of respiratory illnesses and skin infections among inmates. In general it creates an environment in which health, sanitation, and hygiene conditions are deplorable.

The Inter-American Commission considers that the construction of new prisons and the adaptation of those that already exist could be important measures to help solve this problem. However, to achieve solutions with long-term effects it is critical to analyze the causes of prison overpopulation. It is necessary to promote the use of other measures that do not involve deprivation of liberty in those cases in which the law provides for such possibilities. Moreover, it is important to bear in mind that imprisonment should be used as a measure of last resort and that, based on the presumption of innocence within the framework of a criminal process, the defendant should, as a general rule, remain free. In this vein, the Commission has stated that, in establishing legitimate reasons that could justify pre-trial detention, "the universal principles of presumed innocence and respect for the right to physical liberty should be taken into consideration in each case."<sup>1</sup> Therefore, in applying this measure, the judicial authority must determine the grounds that make its application necessary in each specific case.

The Commission reiterates that the State is in a position of guarantor with respect to the rights of persons deprived of liberty. As a result, every person deprived of liberty has the right to live in detention conditions that are compatible with his or her personal dignity, and the State must

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<sup>1</sup> IACHR, Report No 86/09, Case 12.553, Merits, Jorge, José, and Dante Peirano Basso, Eastern Republic of Uruguay, August 6, 2009, paras. 69 and 71.

guarantee that person the right to life and to humane treatment. In this regard, the Commission reiterates what the Inter-American Court has already established, to the effect that "the States cannot invoke economic hardships to justify imprisonment conditions that do not respect the inherent dignity of human beings."<sup>2</sup>

2. Another basic deficiency observed by the delegation, and recognized by the competent authorities, has to do with the fact that 45% of the inmates housed in Social Integration Centers have already turned 18. Thus, in detention facilities for children and adolescents who have broken the law, nearly half the population is composed of adults. The Inter-American Commission notes that both the American Convention on Human Rights and the Convention on the rights of the Child specifically establish that every child deprived of liberty shall remain in specialized centers, separated from adults, as a necessary condition to adequately fulfill the aim of the punishment, consistent with the person's reform and social rehabilitation.<sup>3</sup>

Indeed, the Commission takes note of the Salvadoran State's willingness, through the ISNA, to advance the implementation of the intermediate facilities and manage the current Social Integration Centers. Nonetheless, children and adolescents who are deprived of liberty are not being treated in accordance with their condition, in such a way that would lead to their rehabilitation and socialization, since they not only live alongside adults but also lack any specialized treatment and are subjected to the same regimen as the other prisoners.

Besides standing in the way of fully meeting the aims of reeducation and rehabilitation, the lack of separation between children and adults is a real risk factor for the children. Along these lines, the Commission reiterates that:

[T]he State's duty to protect the personal integrity of any person deprived of liberty includes the obligation to take all measures necessary to prevent attacks or assaults against a prisoner by agents of the State or private individuals. These obligations become all the more compelling when juveniles are involved. In such cases, the State must not only endeavor to protect their personal integrity, but also to promote the full development of their personality and their reintegration into society.<sup>4</sup>

3. Another aspect that concerns the Office of the Rapporteur on the Rights of Persons Deprived of Liberty involves the way in which, in prison facilities under the custody of the army, military forces carry out searches of inmates' relatives and of women deprived of liberty. This is because under Executive Decree No. 371, of 2010, the Armed Forces and/or National Civilian Police are authorized to exercise control and security functions in the country's prisons, such as conducting searches or controlling movement in or out of these facilities. To date, the army has taken control of only some of the country's major prisons, mainly those intended for members of the leading gangs: the Mara 18 and the MS-13 (Mara Salvatrucha).

In this regard, the delegation received consistent information from different quarters reporting that the army was exercising its functions in an abusive and arbitrary manner that even amounted to

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<sup>2</sup> I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006. Series C No. 150, para. 85; and I/A Court H.R., *Case of Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 169, para. 88.

<sup>3</sup> IACHR, Report No. 41/99, Case 11.491, Merits, Minors in Detention, Honduras, March 10, 1999, paras. 125-126.

<sup>4</sup> *Ibid.*, para. 140.

degrading treatment of relatives and prisoners. Thus, for example, it was reported that the searches done of women who come to visit inmates have included inappropriate vaginal and anal searches. These are applied in general to all women, without distinction, including pregnant women and senior citizens, and refusing to submit to such searches results in that family member's being denied permission to visit. Likewise, during its visit to the Quezaltepeque Prison, the delegation of the Office of the Rapporteur received complaints from female inmates housed in the section for mothers who live in the prison with children up to 5 years of age. According to testimony the Commission received, the women are forced to submit to such searches when they leave the prison to take their young children to medical appointments, and refusing to submit to such inspections means that they are not allowed to leave the facility. It was also reported that these procedures are not carried out under appropriate hygienic conditions, with the same glove being used on a number of women.

The delegation was able to attest that neither the prison authorities nor any civilian authorities do any monitoring or oversight whatsoever of the personal searches carried out by the army. Neither have procedures been established for complaints or appeals to the directors of the prison facilities in cases in which prisoners' relatives believe they have been victimized by the overreaching powers being exercised by the army without restraint.

With regard to the foregoing, the Inter-American Commission views with concern this lack of control and supervision of the broad powers that have been granted to the army. With respect to the bodily searches, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas establishes that:

[B]odily searches...shall comply with criteria of necessity, reasonableness and proportionality.

Bodily searches of persons deprived of liberty and visitors to places of deprivation of liberty shall be carried out under adequate sanitary conditions by qualified personnel of the same sex, and shall be compatible with human dignity and respect for fundamental rights. In line with the foregoing, Member States shall employ alternative means through technological equipment and procedures, or other appropriate methods.

Intrusive vaginal or anal searches shall be forbidden by law.<sup>5</sup>

The Inter-American Commission recommends the use of technological and other search methods, such as the use trained dogs, so as to avoid bodily contact, to the greatest extent possible, during searches of family members.

4. In addition, one of the measures adopted recently, which was the object of many complaints received by the Office of the Rapporteur, has to do with not allowing the entry of children and adolescents during family visits at eight prison facilities,<sup>6</sup> unless the minors are common-law companions or spouses. According to the authorities, this measure is intended to protect children and adolescents from potential acts of violence that could occur in the prisons. In this regard, the Inter-American Commission finds that, while this measure seeks a legitimate purpose, and while these types of incidents involving children have certainly taken place in the past, applying this measure as a general rule at all times is disproportionate and violates fundamental family rights.

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<sup>5</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, approved by the IACHR in the 131st period of sessions, held March 3-14, 2008. Principle XXI.

<sup>6</sup> Quezaltepeque, Sensuntepeque, Cojutepeque, Chalatenango, Ciudad Barrios, Izalco, Apanteos, and Zacatecoluca.

5. At the same time, the adoption of the aforementioned measure underscores another situation verified during the visit, namely that the majority of prisons do not have adequate installations to receive prison visitors in conditions that ensure order and security.

Along those lines, the Inter-American Commission reiterates that the State is directly responsible for its prisons and therefore has a fundamental obligation to exercise effective control over them. In this sense, it has the obligation to prevent, investigate, and sanction the crimes that are committed both within and from detention centers.<sup>7</sup> In the specific context of El Salvador, the authorities have adopted a series of necessary measures to prevent illegal objects from getting into prisons and to prevent crimes such as murders or extortions from being committed or ordered from inside prisons. Nevertheless, the implementation of such measures should be carried out in such a way that the inmates' and their relatives' right to personal integrity is respected, and that the restriction of other rights falls within the parameters established by international human rights law and constitutional guarantees.

6. Another aspect widely denounced during the visit and verified by the delegation in its visits to prisons was the inadequate food given to persons deprived of liberty. It was observed that the nutrition, quality, and hygiene of the food are clearly insufficient, with an almost total lack of protein. The food is also served in a degrading manner, with the inmates having to eat with their hands and on improvised dishes, which is a common cause of all sorts of gastrointestinal illnesses. Moreover, inmates who suffer different illnesses are not provided with diets adequate to their state of health. With respect to the food and drinking water that those deprived of liberty should receive, the Inter-American Commission has stated the following:

Persons deprived of liberty shall have the right to food in such a quantity, quality, and hygienic condition so as to ensure adequate and sufficient nutrition, with due consideration to their cultural and religious concerns, as well as to any special needs or diet determined by medical criteria....

Every person deprived of liberty shall have access at all times to sufficient drinking water suitable for consumption. Its suspension or restriction as a disciplinary measure shall be prohibited by law.<sup>8</sup>

The Commission recommends that the State review the quality levels of the food provided in detention centers and that it provide the prisoners with basic utensils so they can eat in minimum conditions of dignity.

7. The delegation also received numerous complaints of prisoner abuse during the inspections that are conducted inside the facilities with the support of the Unit to Maintain Order (UMO). According to the information received, during these procedures the authorities in charge of the inspections beat the prisoners and destroy their personal effects. With respect to these types of procedures, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas has established the following:

Whenever...inspections of installations and organizational measures of places of deprivation

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<sup>7</sup> IACHR, Press Release No. 98/10: IACHR Expresses Deep Concern over Situation in Paraguayan Jail. Issued on September 24, 2010.

<sup>8</sup> ACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, approved by the IACHR in the 131st period of sessions, held March 3-14, 2008. Principle XI.

of liberty are permitted by law....

The inspections or searches in units or installations of places of deprivation of liberty shall be carried out by the competent authorities, in accordance with a properly established procedure and with respect for the rights of persons deprived of liberty.<sup>9</sup>

The Inter-American Commission recognizes the need to maintain order and lawfulness within prisons, which implies the detection and confiscation of prohibited possessions such as arms, drugs, and cellular phones. However, the actions taken during these operations must not constitute cruel, inhuman, or degrading treatment of those in custody; nor should it be permitted to destroy implements or items that prisoners are not barred from owning under the law or under prison regulations. Actions of this type go beyond the bounds of necessity, reasonableness, and proportionality.

8. On another matter, the Inter-American Commission is particularly concerned about information provided to the delegation by the PDDH Deputy Ombudswoman on Children and Youth in which she indicated that so far this year, 12 deaths have been reported in centers for the social integration of children and adolescents, without any of the perpetrators having yet being identified. This situation is particularly serious in light of the State's general obligation, as guarantor of the rights of persons deprived of liberty, to investigate of its own accord and with due diligence any deaths that take place inside prisons. The fact that these crimes continue to go unpunished makes it more likely that such acts will be repeated. In this regard, the Commission reiterates that an essential measure to combat violence and situations of emergency in prison facilities is precisely to "[e]radicate impunity by investigating and punishing all acts of violence and corruption in accordance with the law."<sup>10</sup>

In the course of this working visit to El Salvador, the delegation composed of the Commissioner/Rapporteur for Persons Deprived of Liberty and staff members of the Office of the Rapporteur visited three detention facilities: one for children and adolescents who break the law and two for the adult population. In addition to the observations already made about generalized situations, below are the most relevant specific aspects observed during these visits.

***"Sendero de Libertad" ["Path to Freedom"] Center for Social Integration (Ilobasco)***

This center houses adolescent offenders who belong to the Mara Salvatrucha as well as others who are not affiliated with any gang. The delegation could attest that the fact of having these two groups housed in the same detention center poses a constant risk for acts of violence. Moreover, in practice this circumstance has a negative effect on other essential facets of life for the inmate, such as educational activities and sports. The Commission was also able to confirm that medical care is insufficient. According to the authorities, the center has only one physician assigned for two hours per day, who is not even present every day. Medications and medical supplies are also lacking, and antibiotics and medications for respiratory and skin-related illnesses are urgently needed.

The delegation could observe that this center lacks adequate physical installations. For example, waste from overflowing sewage drainage channels spills onto the floor. This detention center does not have any rooms for meetings, booths for attorney visits, installations for family visits, or cubicles for private therapy. During the visit, it was also evident that more bunks and mattresses are needed.

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<sup>9</sup> *Ibid.*, Principle XXI.

<sup>10</sup> *Ibid.*, Principle XXIII.

In addition, the center lacks adequate materials and installations for education, particularly taking into account the need to equip separate spaces, one for members of the MC-13 and the other for the rest of the inmates. Also, there are insufficient guidance counselors available to cover the entire population of the center.

Another serious deficiency that could be observed in this facility is the lack of protocols and equipment to respond to emergency situations such as fires. According to information provided by the authorities, fire extinguishers do not receive proper maintenance, and the nearest fire station is 40 minutes from the facility.

### **Quezaltepeque Prison**

This prison is meant to house male and female inmates tied to the Mara 18 gang. It has an installed capacity of up to 250 beds, but at the time of the visit it housed 958 inmates. This facility has a section where mothers are allowed to live with their children of up to 5 years of age. In this respect, the delegation viewed with concern the fact that this center does not have a nursery or special area where these children can stay during the day; rather, the children at all times share the common areas of the section for mothers. The Commission recommends that the State create a nursery or an area with appropriate staff who can take care of these children during the day. Many of the inmates in the maternal wing stated that they also have young children (older than 5) who live outside the prison and that the recent ban on them entering the prison during family visits causes them serious harm.

In this prison it could also be observed that the detention conditions in the isolation section are particularly unhealthy and unhygienic. Specifically, the detention conditions of the female inmates who are in *la isla* ("the island") violate human rights and are degrading. "The island" is a small area with a sewer but no sanitary facilities, which is practically unsheltered and floods when it rains.

During the visit to this prison, the delegation was able to observe that the main cause for concern of the inmates was the treatment that their family members were receiving from the army and the general restriction on children entering the facility during family visits.

With respect to the preventive measures for emergencies such as fires, it was observed that this prison has only three fire extinguishers and that it is 35 kilometers away from the nearest fire station. This, along with the lack of emergency plans and protocols, the level of overcrowding, which is four times the housing capacity, and the prison's deficient physical conditions, are factors that place the inmates' safety at risk.

### **Zacatecoluca Maximum Security Prison**

By its very nature as a maximum security prison, both the housing conditions and the interactions between the prison personnel and the inmates, as well as between the inmates and their family members, are different than in the other facilities. During the visit, the delegation observed with concern that those inmates housed in the "separation cell" had the right to be out to the patio for only 40 minutes one day of the week (on Wednesdays). This measure is not in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners, which establishes: "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits" (Rule 21.1).

*During the visit, the delegation received testimony of abuse inflicted on the prisoners by police forces and by security personnel in the prisons. In this regard, the IACHR recognizes the importance*

*of prevention as a way to eliminate violations of the right to humane treatment of persons deprived of liberty. It urges the Salvadoran State to ratify the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and to implement its prevention mechanisms.*