

## Panel 3: Transparency and Access of Independent Experts to All Places of Detention

### Experience in Latin America<sup>1</sup>

*Remarks of Santiago Canton\**

#### INTRODUCTION

**T**HIS YEAR WE CELEBRATE THE 50TH ANNIVERSARY OF THE CREATION OF THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS. In this brief presentation, I will make reference to some of the most important activities of the Commission regarding the prevention of torture and other ill treatments during these five decades. From the first on-site fact-finding observation, to the Dominican Republic in October of 1961, to the last visit of a detention center in Jamaica in December of 2008, the Commission, using different mechanisms, has been able to address many of the issues that today brings us together. The different mechanisms used by the Commission along its history (visits, reports, cases, precautionary measures, etc.) are a direct consequence of the evolution of the system. Therefore, I will start my presentation with the creation of the IACHR in 1959<sup>2</sup>, and I will continue making references to the different mechanisms that the Commission has used to address this issue until the present days. In order to do that, I will use different examples of activities by the Commission to highlight the different mechanisms used in order to address the issue of torture, inhumane, cruel and degrading treatment.

#### CREATION, EVOLUTION AND MANDATE OF THE IACHR

The Commission was created in Santiago, Chile, by a Resolution of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, which mandated that “[the Commission be] composed of seven members, elected as individuals by the OAS Council.” The Resolution also indicated that the Commission should have the specific functions that the Council assigns to it through a Statute and shall be charged with furthering respect for human rights.

The OAS Council adopted the first Statute of the Commission in 1960. In that same year, the IACHR began its activities of promoting respect for human rights in the Americas, which were expressly understood to be those set forth in the American Declaration of the Rights and Duties of Man<sup>3</sup> (proclaimed in 1948 at the same Bogotá Conference that produced the OAS Charter, and notably preceded the Universal Declaration of Human Rights by some seven months).

According to the relevant parts of Articles 9(b) (c) and (d) of that Statute, the Commission shall “b) make recommendations

to the governments of the member states in general . . . for the adoption of progressive measures in favor of human rights . . . [and] appropriate measures to further the faithful observance of those rights (the Commission interpreted this as empowering it to make recommendations to each individual member state, as well as to all of them)<sup>4</sup>; c) prepare such studies and reports as it considers advisable in the performance of its duties; and d) urge the governments of the member states to supply it with information on the measures adopted by them in matters of human rights.

Article 11 of the Commission’s first Statute authorized the Commission to “move to the territory of any American state when it so decides by an absolute majority of votes and with the consent of the government concerned.” Those two provisions, according to the Commission’s own interpretation, gave legislative authority to the Commission for developing the system of country studies and on-the-spot/on-site observations (*visitas in loco*).

On the basis of such a somewhat weak constitutional framework, the Commission initiated its activities by deciding at its first session that it would embark upon studies investigating situations relating to human rights; issue reports documenting large-scale violations of human rights in various OAS member states; and address recommendations to the respective government(s). On the other hand, the Commission also decided that its first Statute did not authorize it to make any individual decisions regarding written communications.<sup>5</sup> However, it could use these communications as a source of information in preparing country reports as well as in deciding whether to make a particular country the subject of an investigation.

#### EARLY REPORTS (CUBAN POLITICAL PRISONERS – 1962 AND 1963)

The interplay between a formally in-existent petition system, the on-site investigations and the country studies was of fundamental importance in making effective the Commission’s response to the ambitious tasks and demanding functions assigned. This interrelationship between the different mandates, in practice viewed and developed by the Commission as complementing one another, continues to this date and will be stressed throughout this presentation.

Indeed, despite the inexistence of a petition system, in the early years after its creation, the Commission immediately started receiving hundreds of communications denouncing human rights violations in OAS member states. Several of these communications related to alleged human rights violations in Cuba. Interestingly, however, the Government of Cuba, before

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## FIRST ON-SITE OBSERVATION FOLLOWED BY A COUNTRY REPORT (DOMINICAN REPUBLIC - 1965)

being suspended to the OAS, was one of the most active in supporting the Commission. Particularly in trying to provide the Commission with the mandate to process petition.

As a matter of fact, in the course of its first three periods of sessions, the Commission received 391 communications denouncing specific and concrete facts affecting the rights of an individual or a group of individuals in Cuba.<sup>6</sup> The large majority of these communications related to persons deprived of liberty, and in such context denounced arbitrary detention, torture and cruel, inhuman or degrading conditions of detention of “political” prisoners and their families. Thus the activities of the Commission with regard to country studies and on-site observations – from their very beginning – were closely related to the rights of persons deprived of liberty.

In response to these communications, the Commission asked the Cuban Government to supply it with information on the measures adopted in relation to those cases. Most of the relatively few responses provided by the Cuban government at the time limited themselves to indicating that the Commission had erroneously interpreted Article 9 (d) of its Statute when it asked the government for information on specific cases (“the Commission shall have the power to urge the governments of the member states to supply it with information on the measures adopted by them in matters of human rights”).

Between November 1961 and September 1962, the Commission also submitted three written requests to the Government of Cuba for either information or consent to visit the country in order to conduct a fact-finding investigation. The Cuban Government did not reply to these requests and the Commission decided to issue a report on the situation of political prisoners.

In order to prepare the first report on Cuba, the Commission examined the hundreds of complaints received and heard witnesses. The Commission, with the consent of the United States Government, transferred its operations to Miami, Florida temporarily, in order to hear oral testimony of former prisoners and family members of current prisoners. The Commission delegation interviewed more than 80 people while in Miami.<sup>7</sup>

The Reports produced examined the situation of political prisoners and their families in Cuba in light of the provisions in Articles XXV (right of protection from arbitrary arrest/detention and right to humane treatment), XXVI (presumption of innocence, right to due process of law and protection from cruel, infamous or unusual punishment) and XXVIII (limitation of right by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy) of the American Declaration.

Largely relying on the written communications and the oral testimonies received, as well as on the evidence available, the Commission described the conditions of several prisons in Cuba, the existence of concentration camps, instances of summary execution of detainees, death by lack of medical attention, insanity as a result of mistreatment, physical and psychological torture, cruel, inhuman or degrading treatment or punishment and conditions of detention, humiliating inspections, verbal offenses, incommunicado detention and solitary confinement.

The first on-site observations conducted by the IACHR took place in the Dominican Republic, in October 1961 and May 1963. However, they were not followed by the publication of a Country Report.

A few years later, the Commission was again formally invited to conduct an on-site observation in the Dominican Republic. After the eruption of a revolutionary movement on April 24, 1965, authorities from both antagonist governments, the “Constitutional Government” and the “Government of National Reconstruction” formally invited the Commission to visit the country. Indeed, on May 10 and again on May 24, 1965, the IACHR was asked by the Constitutional Government “to move to the territory of the Dominican Republic” (in conformity with Article 11 of its Statute) with a view to verifying and adopting the necessary measures related to the abuses and killings perpetrated by the Armed Forces of the Government of National Reconstruction. On its part, the Government of National Reconstruction requested that the Commission conduct an on-site investigation on the human rights situation in the Dominican Republic.<sup>8</sup>

In response, the Commission actually set up a provisional office at the Ambassador Hotel in Santo Domingo, and some member or staff of the Commission was present in the Dominican territory starting from June 1 until September 27, 1965. In a preliminary report presented to the Commission on June 22–24, 1965, the President of the Commission noted that the single most negative aspect of the human rights situation observed in the Dominican Republic was the condition of prisons under the authority of the Government of National Reconstruction, in particular the overcrowding in some cells, which resulted in degrading treatment or punishment as well as created sanitary and physical problems that should be avoided.<sup>9</sup> As an immediate result, the State Secretary of Foreign Affairs – at the request of the President of the Commission – ordered the transfer of some detainees to less crowded cells and expedited the procedures to verify whether there were detainees without charges in order to release them.

In its final report, the Commission concluded – in light of the provisions in Article I (right to life, liberty and personal security) of the American Declaration – *inter alia*, that thousands of people had been imprisoned despite the inexistence of formal charges against them; that in some prisons the detainees had been kept in inhumane overcrowding, incommunicado detention and had been submitted to physical mistreatment; and that the infrastructure of many prisons were deplorable and in itself violated the dignity of the human person. According to well-respected human rights experts, the presence of the Commission during the Dominican civil war “saved hundreds of lives and obtained the release from detention camps and prisons of large numbers of political detainees.”<sup>10</sup>

In these early reports, the Commission used a number of written communications sent by victims of violations in order to illustrate widespread and systematic violations and/or to justify

its findings and conclusions. The Commission was compelled to use the written communications as a consequence of the lack of competence to process the complaints received and the lack of authorization to visit some countries.

Starting from late 1965, a number of developments increased the legitimacy and broadened the mandate of the IACHR in promoting respect for human rights in the Americas. In November of that year, the Second Special Inter-American Conference held in Rio de Janeiro, Brazil, adopted Resolution XXII, stating that the Commission shall have the power “to examine communications submitted to it and any other available information; to address the government of any American state for information deemed pertinent by the Commission; and to make recommendations, when it deems it appropriate, with the objective of bringing about more effective observances of fundamental human rights.”<sup>11</sup> This created the petition system that is the precedent of the one we have today.

In 1967, the Protocol of Buenos Aires was drafted containing extensive amendments to the OAS Charter. The Protocol entered into force in 1970, changing the status of the Inter-American Commission from an “autonomous entity of the OAS” into one of the principle organs of the organization. The revised OAS Charter gave institutional legitimacy and treaty-based status to the Commission as a conventional OAS organ. One year earlier, in 1969, the OAS member states adopted the American Convention on Human Rights (Pact of San José, Costa Rica), which entered into force in July 1978, creating the two-tiered system consisting of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. In 1979, the OAS General Assembly approved the currently in force Statute of the Commission, which includes specific authorization to carry out on-site investigations (Art. 18 g “conduct on-site observations in a state, with the consent or at the invitation of the government in question” – SEE also arts. 19 and 20 & American Convention Art. 41 Functions), among other powers,<sup>12</sup> and gives the Commission the authority to examine petitions concerning possible violations of the American Declaration by OAS member states that are not parties to the American Convention. With respect to the States Parties to the Convention, the Commission discharges its duties in conformity with the powers granted under the Convention.

### REPORT ON THE SITUATION OF HUMAN RIGHTS IN CHILE (1974)

In the midst of all these legislative advancements, the Commission conducted an on-site observation to Chile in the first years of the Pinochet dictatorship (1973–1990). Beginning September 11, 1973, with the fall of the government elected in 1970, and the installation of the government junta under the presidency of General Augusto Pinochet, the Commission received numerous complaints alleging human rights violations. After the Commission sent three communications requesting information with regard to denunciations concerning alleged violations of human rights, the Chilean Government acquiesced to a visit of the IACHR’s Executive Secretary “solely for information purposes.”<sup>13</sup> The Executive Secretary effectively visited Chile in October 1973.

Since the situation in Chile continued to deteriorate, and the Commission continued to receive a large number of communications denouncing human rights violations, the Commission decided to request authorization to conduct an on-site investigation. Such visit effectively took place from July 22 to August 2, 1974. Similarly to previous experiences, most communications received by the Commission regarding Chile referred to violations of the rights of persons deprived of liberty.

As noted by the Commission in its Report, “one of the most important tasks accomplished by the Commission was to visit a number of detention facilities to examine the conditions under which persons deprived of liberty were kept, and to conduct interviews with a large number of such persons.”<sup>14</sup> Moreover, the Commission observed that in some cases the day before it arrived in Santiago, a number of detainees were transferred to other locations, and many places previously identified as torture centers were emptied. In other cases, the Commission was informed that its visit had caused considerable improvement in the treatment of prisoners.<sup>15</sup>

At the express request of some of the prisoners, all reference to their particular cases was omitted from the Report because they expressed fear that their attitude would provoke reprisals. More importantly, the Commission also included in its Report a section referring to the installations the Commission was not able to visit and which were denounced as torture centers.<sup>16</sup> Military authorities told the Commission members that such visits could not be carried out because the installations had been recently declared “military areas.”<sup>17</sup>

The 1974 Report on Chile was the first time that a Country Report was the object of a lengthy debate before the OAS General Assembly (1975). The GA also adopted a separate resolution dealing with the Chilean Report. And again, a new and much stronger Resolution was adopted in the 1976 General Assembly.

### REPORT ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA (1980)

Another important Country Report was the 1980 Report on the Situation of Human Rights in Argentina. After the 1976 military coup, the IACHR received hundreds of denunciations of serious violations of human rights in Argentina.<sup>18</sup> After informing the Argentine Government of its intention to prepare a Country Report and of its interest in conducting an on-site observation, the government extended a formal invitation to the Commission on December 18, 1978.

Just before such invitation, on July 18, 1978, as previously noted, the American Convention entered into force. A Resolution of the OAS Permanent Council entitled “Transition from the Present Inter-American Commission on Human Rights to the Commission provided for in the American Convention on Human Rights” ensured the interim authority of the “old” IACHR until the first elections of the members of the IACHR took place in May 1979, according to the American Convention.<sup>19</sup> The on-site observation to Argentina was thus delayed, and it ended up taking place in September 1979, and it lasted for 17 days.<sup>20</sup>

This visit together with the subsequent release of the country report is regarded as having made a significant contribution

to the collapse of the military government in 1983. According to Emilio Fermín Mignone, Cynthia L. Estlund and Samuel Issacharoff, in an article published by the Yale Journal of International Law in 1984, “the visit and the report were of tremendous importance in creating international political pressure on the Argentine Government, as well as receptivity to the thousands of political refugees leaving Argentina. Within Argentina, the report was prohibited but circulated clandestinely – it has now been published as ‘The Prohibited Report’ – and was of great value in awakening many Argentines to a situation many had chosen to ignore. The [Commission] visit, its report, and the principles of international human rights law upon which they were predicated, thus contributed indirectly to the demise of the Argentine dictatorship in 1983.”<sup>21</sup>

Significantly, Chapter V of the 1980 Report on Argentina focused on two very important aspects of the right to personal security: the prison system and the use of physical coercion and torture. During its on-site observation, the Commission paid special attention to verifying denunciations about violations of the right to personal security to the detriment of persons deprived of liberty. The IACHR visited various detention centers, spoke and obtained direct testimony from victims both still in prison and those who had been released, as well as from family members of prisoners and the disappeared. During its stay in Argentina, the Commission also received hundreds of letters from persons incarcerated in various detention centers.<sup>22</sup>

Most of the denunciations and the harsh conditions observed in-situ by the Commission related to persons detained, tried and sentenced for crimes classified as subversive, and to those classified as “terrorist criminals” (*Delinquentes Terroristas*) or DT detainees at the disposal of the Executive. Notably, the Commission received information regarding the existence of special secret detention centers that had widely been called “concentration camps.”

The Commission was able to visit some of these clandestine detention centers, but it did not find detainees. In fact, in the months prior to the visit, the Commission received information alleging that the government was relocating prisoners.

The Commission also concluded that the unlawful use of force and torture were mainly carried out in special interrogations centers (*chupaderos*). Examples of methods included brutal beatings, including of pregnant women, solitary confinement for several weeks, chaining to the headboards of beds, mock executions, actual executions, “submarine,” “electric rod,” burning with cigarettes, pins under the finger and toenails, threat and consummation of rape of both women and men, etc.

## OTHER REPORTS

Over the last decades, the Commission has frequently included in its Country reports a chapter on persons deprived of liberty (either through Article I of the American Declaration – right to life, integrity and personal security – or Article 5 of the American Convention – right to human treatment/personal integrity). More recently, for instance 1995 Haiti (The situation in the prisons); 1997 Brazil (Conditions of detention); 1999 3rd Colombia (The rights of persons deprived of liberty); 2001 2nd Peru (Prison Conditions).

In addition to the country reports and the reports of the visits, the Commission has also published a special report on a specific detention center in Peru: the Challapalca Prison (2003).

In 2003, the Commission published a report related to persons deprived of liberty at the Challapalca Prison in Peru, following an on-site observation, by attorneys of the Secretariat, that took place on August 22 and 23, 2002. The prison was located in the Andean cordillera at an altitude of 4,600 meters above sea level, and six hours away from the nearest city (Puno), with average temperatures of 8–9 degrees Celsius, dropping in the evening to –20 degrees.<sup>23</sup> In the report, the Commission reiterated the previous recommendations from a 2001 report on human rights in Peru that considered the prisons of Challapalca and Yanamayo inhospitable and recommended the government to close the Challapalca prison.<sup>24</sup>

## SYSTEM OF CASES

In addition to the visits and reports, the Commission, particularly during the last couple of decades, has decided several cases dealing with torture and/or prison conditions. The Inter American Court of Human Rights has also enhanced the jurisprudence of the system with decisions. For instance, the Inter-American Court declared that corporal punishment is per se incompatible with the right to personal integrity guaranteed by Article 5 of the American Convention.<sup>25</sup> In a case that dealt with a person convicted for rape to 20 years of imprisonment, hard labor and 15 strokes of the “cat-o-nine tails” (some sort of lash), the Court decided that the punishment was designed to inflict severe physical and psychological suffering and was incompatible to the American Convention.

Regarding conditions of detention, the organs of the Inter-American system have identified many practices in prisons all over the hemisphere that can be considered as torture or degrading and cruel treatment. In particular, when persons are held in incommunicado detention, that is, with no contact with the outside world and have no way to seek for any judicial review of the reasons for their detention, the Commission has found that it constitutes cruel and inhuman treatment.<sup>26</sup>

With regards to death penalty, as found by the European Court in the determination of the “death row phenomenon,” the organs of the Inter-American system have also claimed that prisoners living with the constant threat of being hanged or in any other way executed, may be terrified and depressed, which causes them serious harm on the health and integrity and therefore, may constitute cruel, inhuman and degrading treatment.<sup>27</sup>

Among the many cases that show the different approaches of the Inter-American System regarding torture and cruel, degrading and inhuman treatment, the following cases can be found:

### *VÍCTOR AMABLE ROSARIO CONGO V. ECUADOR*

The victim was held in preventive detention in September 1990. While in custody the victim, who suffered of a mental disorder, was hit several times in the head by the security guards. Despite of his illness, the intern was held in solitary confinement, where his mental and physical condition worsened. He was finally transferred to another penitentiary and later on to a

hospital, where he died. The IACHR decided on the merits of the case on April 1999.

The Inter-American Commission found the State responsible for the violation and stated that in cases regarding people with mental illnesses, special parameters should be used to analyze the case. In addition, the Commission decided that isolation can constitute inhuman treatment per se, especially when the victim has mental issues.

**CASE WALTER DAVID BULACIO V. ARGENTINA**

This case deals with detention, torture and the following death of the minor Walter Bulacio in April of 1991. The victim was detained in a Police operation, taken to the Police post and seriously beaten. The day after his detention, the victim was transferred to a hospital where he was diagnosed with “cranium trauma.” When declaring the State responsible for the violation, the Court declared that the manner in which the minor was detained did not follow the Conventional standards and that the State failed to ensure an appropriate treatment to the victim, a treatment that would respect his human dignity and his special condition as a minor.

**CASE “INSTITUTO DE REEDUCACIÓN DEL MENOR” (PANCHITO LÓPEZ) V. PARAGUAY**

In this case, the Court declared the International responsibility of Paraguay for the death of 14 persons and the injuries caused to 42 more that were interns of a State institution, between August 1996 and July 2001. Even though it was intended to be a shelter, this institution was used as a detention center and was overcrowded, lacked medical care and even mattresses to sleep on. Despite that it was called a “reeducation center,” the institution had no education plans for the interns and the guards were not dully trained for their jobs, which led to the use of violent and cruel punishment as well as torture. This situation caused an uprising of the interns and a confrontation with the guards. Finally, a fire ended with the death and severe injuries of many interns.

Besides recognizing the special rights of minors, the Inter-American Court reiterated its jurisprudence on the right of all detainees to receive treatment that respects their rights and human dignity. It established that the terrible detention conditions at the Institution produced a worsening of the mental state of the interns because they never had the proper conditions to enjoy a dignified life.

**CASE DANIEL DAVID TIBI V. ECUADOR**

This case also deals with violations of the right to personal integrity of an individual that was unlawfully detained by state agents on September 1995. During 28 months of preventive detention, the victim had to live in an overcrowded space, was forced to sleep on the corridor floors. Furthermore, the victim was subjected to several sessions of physical and mental treatment intended to obtain the victims inculcation. The physical conditions of the victim were verified by the doctors but never treated. The victim suffered permanent disorders as a consequence of the torture acts.

The Court established the international responsibility of the State and declared the absolute prohibition of torture. In addition, the Court reiterated its jurisprudence that having a detainee

in conditions of overcrowding, lack of ventilation and natural light, with no bed for resting nor adequate hygienic facilities as well as in isolation or with undue restrictions to the visits regime constitutes a violation to his right to personal integrity.

More recently, the IACHR has decided the following cases related to persons victims of torture:

**CASE ANTÔNIO FERREIRA BRAGA V. BRAZIL (REPORT NO. 35/08, CASE 12.019 ADMISSIBILITY AND MERITS, JULY 18, 2008):**

This case deals with the human rights of a person who was unlawfully arrested by civilian police on April 11, 1993. The following day he was tortured and forced to confess to the theft of a television set. Two of the police officers involved were convicted and sentenced to a total of 6 (six) months in prison. However, the Police Commissioner in charge of the station and the Police Inspector were acquitted. The sentence was ultimately confirmed and became final on May 12, 1999. However, on June 10, 1999, the same judge who confirmed the sentence then issued another decision in which she declared that enforcement of the sentence delivered in the case was time-barred by the statute of limitations because of the time elapsed between the date the complaint was entered and the date of the conviction.

The IACHR concluded that the domestic proceedings in this case were ineffective in determining the responsibility of all the accused and compensating the alleged victim. In this decision, the IACHR highlighted that under the American Convention and the Inter-American Convention to Prevent and Punish Torture, any situation in which the practice of torture has been shown must be investigated and prosecuted rapidly. All persons responsible for those actions must be convicted and punished, and the person tortured must be duly compensated.

The IACHR found the State responsible for failing to comply with its obligation to respect the rights and freedoms of the individuals within its jurisdiction, provided for in Article 1(1) of the American Convention, by its violation of the rights recognized in Articles 5, 7, 8 and 25 of the American Convention, and Articles 1, 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture.

Among other measures, the Commission recommended the State to take “the necessary measures to give legal effect to the obligation to investigate and effectively punish the authors of the unlawful detention of Antônio Ferreira Braga and the torture inflicted upon him. The State must ensure criminal due process to prevent the statute of limitations from being invoked as grounds for time-barring criminal punishment in the case of crimes like torture and to prevent unwarranted delays in due process.”

**GUANTÁNAMO BASE PRECAUTIONARY MEASURES**

Two months after the U.S. Government began transferring to the naval base at Guantánamo Bay, Cuba, individuals captured in connection with the military operation against the former Taliban regime and Al Qaeda, the Inter-American Commission granted precautionary measures in favor of the detainees at Guantánamo Bay and requested the U.S. Government to take urgent measures necessary to have the [i] legal status [ . . . ] determined by a competent tribunal.” Since then, the IACHR

has maintained and reiterated its precautionary measures and has amplified them to address other fundamental human rights concerns that have arisen since the detainees' initial incarceration, including the possible infliction of methods of interrogation that constitute torture or other cruel, inhuman or degrading punishment or treatment and the transfer of detainees to third countries where there is a real prospect of such treatment.

Finally, on July 2006, the Commission asked the U.S. Government to close the Guantánamo base, and specifically stated that:

*“Indicate that the failure of the United States to give effect to the Commission’s precautionary measures has resulted in irreparable prejudice to the fundamental rights of the detainees at Guantánamo Bay including their rights to liberty and to humane treatment.*

*Urge the United States to close the Guantánamo Bay facility without delay.*

*Urge the United States to remove the detainees from Guantánamo Bay through a process undertaken in full accordance with applicable forms of international human rights and humanitarian law.*

*Urge the United States to take the measures necessary to ensure that any detainees who may face a risk of torture or other cruel, inhuman or degrading treatment or punishment if transferred, removed or expelled from Guantánamo Bay are provided an adequate, individualized examination of their circumstances through a fair and transparent process before a competent, independent and impartial decision-maker. Further, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment, the State should ensure that the detainee is not transferred or removed and that diplomatic assurances are not used to circumvent the State’s non-refoulement obligation.*

*Urge the United States to comply with its obligation to investigate, prosecute and punish any instances of torture or other cruel, inhuman or degrading treatment or punishment that may have occurred at the facility, even in the event that Guantánamo Bay facility is closed.”*

## OTHER IMPORTANT DEVELOPMENTS

### CONVENTION

On December 9, 1985, the OAS member states adopted the Inter-American Convention to Prevent and Punish Torture. The Inter-American Convention defines “torture” slightly differently from the CAT: Art. 2 “For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.” Art. 3: public servant or employee acting in that capacity; or a person who at the instigation of a public servant or employee. . .

### RAPORTEURSHIP

Beginning in the late 90’s, the Commission started to create Rapporteurships in order to address more efficiently particular issues that the Commission considered to be a priority in the region. Probably because the Commission was already very active on the issue of prison conditions since the early days of its existence, it was not until 2004 that the IACHR decided to create a Rapporteurship on the Rights of Persons Deprived of Liberty.

The mandate of the Rapporteurship is as follows:

- a) To remain informed on the situation of all kinds of persons detained or imprisoned in any form in the member States, from any reliable source, without any exception based on age, sex or type of imprisonment or deprivation of liberty;
- d) To prepare reports for the Commission on the conditions of a particular prison, Country or region, with the necessary recommendations;
- e) To issue recommendations to State members on conditions of detention or imprisonment and do follow up on the implementation of said recommendations;
- f) To conduct promotion and education activities on human rights of detained persons, underlining the protection of fundamental rights and freedoms of detained persons and their families; on the duties and prohibitions of prison officials; and on international rules applicable to the use of force and firearms by law enforcement officials;
- g) To promote actions or urgent calls to States in cases of urgency concerning detained persons, in order to comply with their international obligations in this matter;
- h) To promote the adoption of legislative, judicial, administrative or any other kind of measures in order to ensure the rights of detained persons and their families;
- i) To coordinate promotion activities with Non-Governmental Organizations or with other organizations involved with international protection;
- k) To carry out any other activity or work the Rapporteur deems necessary for the protection of the rights of detained persons, within the mandate of the Inter-American Commission on Human Rights.
- b) To conduct visits to OAS member states in order to obtain information or formulate inquiries to State authorities regarding all persons deprived of liberty and their prison conditions;
- c) To visit places of detention or deprivation of liberty of underage children, even without previous notice to prison officials; to conduct interviews freely and in private with detained or imprisoned persons and prison officials; to interview siblings of detained persons, other detained persons as witnesses, members of Non-Governmental Organizations or any official or person; to film, record or photograph or use any other media appropriate to obtain information on the situation of detained persons;
- j) To coordinate activities of verification and follow-up on detention conditions in the member States with Ombudsman offices or national institutions working with human rights.

## PRINCIPLES AND GOOD PRACTICES

In March of 2008, the Commission approved the Principles and Good Practices regarding the Protection of People Deprived of Liberty in the Americas. This document is intended to provide the governments of the Americas with a series of standards needed to ensure the human rights of the people deprived of liberty. Hopefully, this Resolution will not only improve the standards in the region, but will also serve as the basis for a future Declaration for the region.<sup>28</sup>

## CONCLUSION

As we can see from this evolution in the Inter American system, the Commission since the first days of existence was very active in dealing with torture, cruel and inhuman treatment and prison conditions. In searching for ways to better deal with these violations of human rights, the Commission took advantage of all the different mechanisms at its disposal. The Commission wrote specific and country reports, visited countries, decided cases, granted protective measures, created a Rapporteurship, approved a series of principles and send cases to the Inter American Court.

While during these last 50 years the Commission has been very active in dealing with the issue of torture and cruel and degrading treatment, this plague still continues to affect all countries in the region in different degrees. The work of the Commission and Court could help to set legal standards and to resolve some individual cases, but it can't prevent a problem that is widespread and presents a systematic pattern of human rights violations throughout the region.

Governments throughout the region should make the fight against torture a priority in their agendas by creating internal mechanisms, first, to prevent the violation and, second, to ensure that any violation will be prosecuted. The Inter American system can provide some support, but it is a subsidiary system and it can't replace the obligation of the States.

If the last 50 years are a prologue, the Inter American system will continue to find new creative ways to fight against violations of human rights in the region. Let's hope that the combined efforts of the governments of the Americas and the Inter American Commission and Court of Human Rights will help to stop or at least to diminish the practice of torture in the region. Thank you very much for your time. **HRB**

## ENDNOTES: Experience in Latin America

<sup>1</sup> I would like to recognize Leonardo Hidaka, an attorney with the IACHR who contributed with the research and drafting for this presentation.

<sup>2</sup> The Fifth Meeting of Consultation of Ministers of Foreign Affairs held in Santiago Chile, on August 12–18, 1959, relying on Article 5(j) of the OAS Charter, adopted Resolution VII (See Final Act. OEA/Ser. C/II.5 – English, at 10-11, 1950)

<sup>3</sup> IACHR Statute, Article 2.

<sup>4</sup> IACHR, Report on the Work Accomplished During its First Session, October 3–28, 1960, OEA/Ser.L/V/II.1, doc. 32 (English), at 10 (1961).

<sup>5</sup> The petition system similar to the one currently in place was only created in 1965, when the Second Special Inter-American Conference held in Rio de Janeiro, Brazil, November 17–30, 1965 adopted Resolution XXII, stating that the Commission shall have the power “to examine communications submitted to it and any other available information; to address the government of any American state for information deemed pertinent by the Commission; and to make recommendations, when it deem it appropriate, with the objective of bringing about more effective observances of fundamental human rights” (The same provision was restated in the currently in force Statute of the Commission approved in 1979 – Article 20).

<sup>6</sup> See IACHR, First Report on the Situation of Political Prisoners in Cuba (1962).

<sup>7</sup> See IACHR, Report on the Situation of Political Prisoners and their Families in Cuba, OEA/Ser.L/V/II.7, doc. 4 (1963).

<sup>8</sup> See IACHR, Report on the Activities of the IACHR in the Dominican Republic, OEA/Ser.L/V/II.13, doc. 14 Rev (15 October 1965), Chapter I.

<sup>9</sup> *Id.*

<sup>10</sup> Thomas Buergenthal & Dinah Shelton, *Protecting Human Rights in the Americas: Cases and Materials* 291 (4th ed. 1995).

<sup>11</sup> The same provision was restated in the currently in force Statute of the Commission approved in 1979 – Article 20.

<sup>12</sup> Article 18.

<sup>13</sup> See IACHR, Report on the Status of Human Rights in Chile, OEA/Ser.L/V/II.34, doc. 21 corr. 1 (25 October 1974), Chapter II.

<sup>14</sup> See IACHR, Report on the Status of Human Rights in Chile, OEA/Ser.L/V/II.34, doc. 21 corr. 1 (25 October 1974), Chapter V, para. 1.

<sup>15</sup> *Id.*, para. 2.

<sup>16</sup> See IACHR, Report on the Status of Human Rights in Chile, OEA/Ser.L/V/II.34, doc. 21 corr. 1 (25 October 1974), Chapter VI.

<sup>17</sup> *Id.*, para. 4.

<sup>18</sup> See IACHR, Report on the Situation of Human Rights in Argentina, OEA/Ser.L/V/II.49, Doc. 19 corr. 1 (11 April 1980), Introduction.

<sup>19</sup> Permanent Council Res. 253 (343/78), O.A.S. Doc. OEA/Ser.G (Sept. 20, 1978).

<sup>20</sup> Meanwhile, after the entry into force of the American Convention, on-site observations were conducted to Haiti (August 1978) and Nicaragua (October 1978).

<sup>21</sup> *Dictatorship on Trial: The Prosecution of Human Rights Violations in Argentina*, 10 Yale J. Int'l L., 118, 120-121 (1984).

<sup>22</sup> IACHR, Report on the Situation of Human Rights in Argentina, OEA/Ser.L/V/II.49, Doc. 19 corr. 1 (11 April 1980), Chapter V, para. 3.

<sup>23</sup> IACHR, Report on the Human Rights Situation at the Challapalca Prison, Department of Tacna, Republic of Peru, OEA/Ser.L/V/II.118, Doc. 3 (9 October 2003).

<sup>24</sup> By February 2005, all prisoners in Challapalca were move to other prisons. Unfortunately, by March 2007 the prison was reopened

<sup>25</sup> Inter-Am. Ct. H.R., (Ser. C) No. 123, *Caesar v. Trinidad and Tobago*, Judgment of March 11, 2005, para. 70.

<sup>26</sup> IACHR, Report No. 64/99, *Ruth Rosario Garcés Valladares v. Ecuador*, para. 45.

<sup>27</sup> See for example IACHR, Report N° 56/02, *Benedict Jacob v. Grenada*.

<sup>28</sup> CIDH, Resolución 1/08, Principios y Buenas Practicas sobre la Proteccion de las Personas Privadas de Libertad en las Americas.