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

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## 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. Rodríguez 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

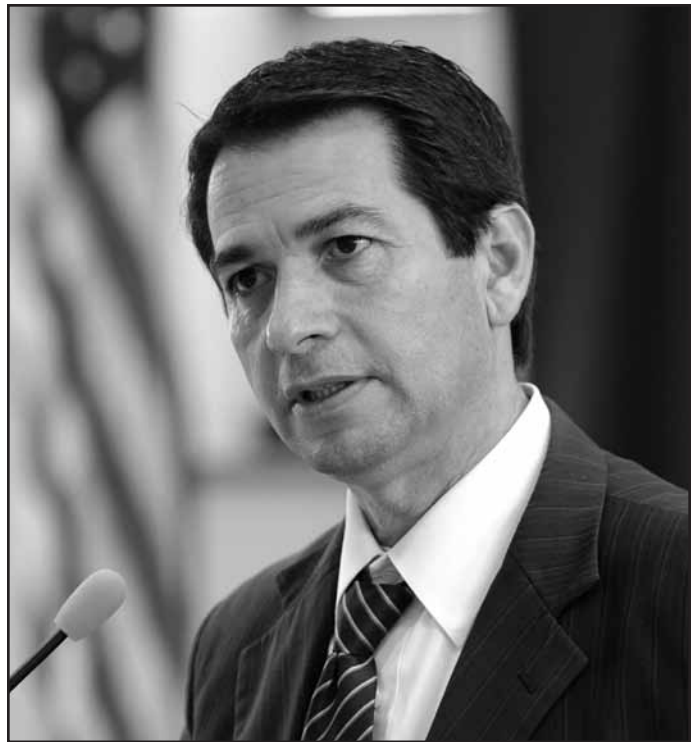
*\*Victor Rodríguez is a Member of the United Nations Subcommittee on Prevention of Torture. He served as President of the United Nations Subcommittee on Prevention of Torture from 2008–2010. He also serves as Director of the Center for Human Rights in the Americas at DePaul University, and he is the Leading Consultant of the Inter-American Institute of Human Rights in charge of the Justice and Human Rights Program. Formerly, Mr. Rodríguez was Deputy Secretary of the Inter-American Court of Human Rights.*

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

### 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.

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## Remarks of Andrés Pizarro\*

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### **THE APPLICATION OF INTERNATIONAL, REGIONAL AND NATIONAL STANDARDS ON PERSONS DEPRIVED OF LIBERTY: SOME REMARKS ON THE WORKING VISITS OF THE RAPPOREURSHIP 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.<sup>1</sup>

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.<sup>2</sup> 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.)<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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 through 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.<sup>7</sup> 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.

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## Remarks of Alessio Bruni\*

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### 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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

<sup>1</sup> 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.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* art. 11(c).

<sup>4</sup> *Loayza-Tamayo v. Peru*, Judgment of Sept. 17, 1997, Inter-Am. Ct. H.R. (Ser. C) No. 42 (1988).

<sup>5</sup> *Id.*

### Remarks of Andrés Pizarro

<sup>1</sup> 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>.

<sup>2</sup> All these United Nations documents are available at <http://www2.ohchr.org/english/law/index.htm>.

<sup>3</sup> “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.

<sup>4</sup> See *supra* note 1.

<sup>5</sup> 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); Haiti (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).

<sup>6</sup> Rules of Procedure of the Inter-American Commission on Human Rights, (Approved by the Commission at its 109<sup>o</sup> 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.

<sup>7</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> See generally Uganda Human Rights Commission’s Annual Reports, available at [www.uhrc.ug](http://www.uhrc.ug).

### Remarks of Alessio Bruni

<sup>1</sup> Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Torture Convention].

<sup>2</sup> *Id.* art. 28.

<sup>3</sup> 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.

<sup>4</sup> 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].

<sup>5</sup> Relevant international actors include Special Rapporteurs of the Human Rights Council, some Treaty Bodies such as CPT and SPT, and also NGOs.

<sup>6</sup> Istanbul Protocol.