



**Public letter from *Observatorio Latinoamericano de Prisiones* to the Heads of State and of Government of the countries of the Americas in the framework of the Fifth Summit of the Americas**

Your Excellencies, Mmes. and Messrs. Presidents, Prime Ministers and Governors General, gathered in the Fifth Summit of the Americas:

*Observatorio Latinoamericano de Prisiones* joins together organizations that foster and defend the rights of people who have been deprived of liberty in twelve countries of the Americas. Each of these organizations has as the heart of their actions the dignity of those people who have lost their liberty and their human rights, which must be respected, guaranteed and protected in compliance with the Declaration of Human Rights of the United Nations and the Organization of American States and the general and specific international obligations contained in the human rights treaties and agreements signed by the member States of the OAS.

In our work of monitoring the status of the human rights of people deprived of liberty in the member countries of our organization —as well as those where, although we do not yet have a direct presence we have information from various sources—, we have been able to verify how seriously those Declarations and treaties have been affected and treated by the States in our region.

Article 3 of the **Universal Declaration of Human Rights** (*adopted and proclaimed by the Resolution of General Assembly 217 A (iii) of December 10, 1948*) provides that “Every one has the right to life, liberty and security of person”; likewise, Article 5 sets forth that: “No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.” In the same manner, the **American Declaration of the Rights and Duties of Man** (approved in the Ninth International Conference of American States in Bogotá, Colombia, 1948) in relation to the right to life, liberty, security and integrity of people, provides in Article I that: “Every human being has the right to life, liberty and the security of his person.”

With regard to treaties on human rights, Article 7 of the **International Covenant on Civil and Political Rights** (adopted and opened to the signing, ratification and to being adhered to by the General Assembly in resolution 2200 A (XXI), dated December 16, 1966), provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” And Article 10 sets forth that “1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person; 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”



In addition, Article 5 of the **American Convention on Human Rights** states that “(1) Every person has the right to have his physical, mental, and moral integrity respected.”; “(2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person”; “(4) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons”; “(5) Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors”; and lastly, that “(6) Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners”. It is obvious that there is an enormous gap between these postulates and the actual conditions that people deprived of their liberty endure in our region, as we have been able to verify.

According to a document stating the stand of thirteen United Nations experts regarding the situation of people deprived of liberty, who met in October 2008 by initiative of the High Commissioner of the United Nations for Human Rights, Mrs. Navanethem (Navi) Pillay, “the deprivation of liberty, whether legal or not, makes people extremely vulnerable to a wide range of violations of their human rights.” The experts further stated that “detention brings underserved restrictions to people who have been deprived of their liberty as regards access to health services and in terms of their rights to food, education, intimacy and family life. And what is worse, in many cases overcrowding, the lack of fresh air and sunlight, as well as the very low standards of hygiene, make detained persons vulnerable to disease.”

These are only some of the practices in violation of human rights that *Observatorio Latinoamericano de Prisiones* has also detected in the Americas and that is why we contribute to the initiative of the Inter-American Commission on Human Rights (IACHR) to create the “**Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas**”. This instrument, which was approved by the IACHR in March 2008, contains specific recommendations and standards to guarantee the human rights of people deprived of liberty in our region.

Among other aspects of this instrument about which we respectfully wish to draw your attention, we quote the following:

### **Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas:**

1. Humane treatment
2. Equality and non-discrimination
3. Personal liberty — Basic principle: As a general rule, the deprivation of liberty of persons shall be applied for the minimum necessary period. Deprivation of liberty of children shall be applied as a measure of last resort and for the minimum necessary period, and shall be limited to strictly exceptional cases
4. Special measures for persons with mental disabilities
5. Alternative or substitute measures for deprivation of liberty



6. Principle of legality — No one shall be deprived of his or her physical liberty except for the reasons and under the conditions established beforehand by domestic law, and in accordance with the provisions of international human rights law
7. Due process of law
8. Judicial control and supervision of punishments
9. Petition and response
10. Rights and restrictions — Persons deprived of liberty shall enjoy the same rights recognized to every other person by domestic law and international human rights law, except for those rights which exercise is temporarily limited or restricted by law
11. Admission, registration, medical examination and transfers
12. Health
13. Food and drinking water
14. Accommodation, hygiene and clothing
15. Education and cultural activities
16. Work
17. Freedom of conscience and religion
18. Freedom of expression, association and reunion
19. Measures against overcrowding
20. Contact with the outside world
21. Separation of categories
22. Personnel of places of deprivation of liberty
23. Bodily searches, inspection of installations and other measures — Bodily searches of persons deprived of liberty and visitors to places of deprivation of liberty shall be carried out under adequate sanitary conditions by qualified personnel of the same sex, and shall be compatible with human dignity and respect for fundamental rights. Intrusive vaginal or anal searches shall be forbidden by law
24. Disciplinary sanctions
25. Measures of solitary confinement — Law shall prohibit solitary confinement in punishment cells. Solitary confinement shall only be permitted as a disposition of last resort and for a strictly limited time
26. Prohibition of collective sanctions
27. Disciplinary competence — Persons deprived of liberty shall not be responsible for the execution of disciplinary measures
28. Measures to combat violence and emergency situations
29. Criteria for the use of force and weapons

The document concludes with the following interpretation: “In order to fully respect and ensure the fundamental rights and freedoms enshrined in the Inter-American system, Member States of the Organization of American States shall utilize extensive interpretation to human rights norms, so as to apply the most favorable clause to persons deprived of liberty.”

In view of the grave situation affecting most of the people who have been deprived of their liberty in our region, particularly those who are the most vulnerable—juveniles coming from low income areas, migrants, indigenous populations, disabled people, women—we are addressing you, honorable Mmes. and Messrs. Presidents, Prime Ministers and Governors



## *Observatorio Latinoamericano de Prisiones*

General of the Americas, in order to **request your political commitment and willingness in order to advance the following propositions:**

1. Your determined and prompt support to the creation of structuring spaces in our region in order to guarantee the participation of civil society organizations, people deprived of liberty, their relatives and other sectors—such as the religious and the academic sectors—for purposes of defining mandatory standards to all the Member States of the OAS, pursuant to the American Convention and with the Principles and Best Practices on the Protection of People Deprived of Liberty in the Americas;
2. Endow those institutions and structuring spaces that monitor that the human rights of people deprived of liberty are guaranteed, with the financial resources required to follow up on the obligations assumed;
3. Include in the agenda of every bilateral and multilateral meeting of the countries of the Americas, as a priority issue, the status of the penitentiary systems and, especially, the standard of living of people deprived of liberty, utilizing the standards provided for in the Principles and Best Practices for the Protection of People Deprived of Liberty in the Americas as the basis for the analysis and monitoring;
4. Urge those countries in the Americas that have not yet done so to definitively abolish the death penalty. This is an outstanding debt in our region.
5. Foster penitentiary policies specifically aimed to attend to incarcerated women, disabled people and foreign in prison (migrants).
6. We urge the States to create and execute public policies for the re-insertion in society of people deprived of liberty who are either close to serve their term and the released.
7. We urge all the States to adapt their criminal legislation to the standards provided for in the UN International Convention on Children's Rights, especially by revoking the death penalty and life imprisonment.
8. We exhort every State to ratify the American Convention on Human Rights and the UN Convention Against Torture, as well as its Optional Protocol, and implement their postulates by establishing proper domestic mechanisms to prevent torture.

Your Excellencies Mmes and Messrs. Presidents, Prime Ministers and Governors General, since the Americas have been pioneers in the world as regards agreements and covenants and instruments to guarantee Human Rights, we are confident that you will take the necessary steps to guarantee the human rights of people deprived of liberty, who are the most vulnerable among the vulnerable.

We wish to end by remembering the words of Nelson Mandela: “A nation –and we could said, a continent– should not be judged by how it treats its most illustrious citizens, but by the treatment given to the most marginalized: Its prisoners.”

### **Organizations that adhere to this statement:**

1. **Centro Nacional de Pastoral Penitenciaria de Colombia**
2. **Fundación Caminos de Libertad Bogotá – Colombia**
3. **Juristas Católicos de Latinoamérica y el Caribe – Jucalay – Capítulo Colombia**
4. **Pastoral Carcerária Nacional/ CNBB – Brasil**
5. **Centro de Derechos, Facultad de Derecho, Universidad Diego Portales de Chile**



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6. IELSUR Instituto de Estudios Legales y Sociales del Uruguay
7. Informe de XUMEK sobre Derechos Humanos 2008. Argentina
8. Fundación de Estudios para la Aplicación del Derecho (FESPAD). El Salvador
9. Centro de Prevención Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares (CPTRT). Honduras
10. Comisión Episcopal de Asistencia Social CEAS. Perú
11. Ciudadanos en Apoyo a los Derechos Humanos, AC (CADHAC). México
12. Comité de Solidaridad con los Presos Políticos de Colombia
13. Oficina de Derechos Humanos del Arzobispado de Guatemala ODHAG
14. Acción Solidaria
15. Observatorio Venezolano de Prisiones - Venezuela

Sincerely,

**For El Observatorio Latinoamericano de Prisiones**

**Humberto Prado Sifontes  
Executive Director**