

IACHR

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Report of the Inter-American Commission on Human Rights

on the Situation of Persons Deprived of Liberty in Honduras



Organization of
American States

ISBN 978-0-9270-5973-9



**Organization of
American States**

Inter-American
Commission on
Human Rights **IACHR**

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

OEA/Ser.L/V/II.147
Doc. 6
18 March 2013
Original: Spanish

**REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN
RIGHTS ON THE SITUATION OF PERSONS DEPRIVED
OF LIBERTY IN HONDURAS**

2013

Internet: <http://www.cidh.org>

OAS Cataloging-in-Publication Data

Inter-American Commission on Human Rights.

Informe de la Comisión Interamericana de Derechos Humanos sobre la situación de las

personas privadas de libertad en Honduras = Report of the Inter-American Commission on Human Rights on the situation of persons deprived of liberty in Honduras.

v. ; cm. (OEA documentos oficiales ; OEA/Ser.L)

ISBN 978-0-8270-5973-3

1. Human rights--Honduras. 2. Civil rights--Honduras 3. Imprisonment--Honduras. 4. Detention of persons--Honduras.

5. Prisoners--Legal status, laws, etc.--Honduras. 6. Prisons--Law and legislation--Honduras.

I. Title. II. Title: Report of the Inter-American Commission on Human Rights on the situation of persons deprived of liberty in Honduras.

III. Series. IV. Series. OAS official records ; OEA/Ser.L.

OEA/Ser.L/V/II.147 Doc.6

Cover: picture one of one of the cells that got completely burned during the fire that occurred on February 14, 2012 at the National Penitentiary of Comayagua. A total of 362 persons died in the fire in cells 6, 7, 8, 9 and 10.

Picture taken by the IACHR during its visit to Honduras on April, 2012.

The visit of the IACHR to Honduras was conducted thanks to the additional budgetary support given by the General Secretariat of the OAS.

Approved by the Inter-American Commission on Human Rights on March 18, 2013

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

MEMBERS

José de Jesús Orozco Henríquez

Tracy Robinson

Rosa María Ortiz

Felipe González

Dinah Shelton

Rodrigo Escobar Gil

Rose-Marie Belle Antoine

Executive Secretary. Elimilio Alvarez Icaza

Assistant Executive Secretary: Elizabeth Abi-Mershed

**REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE
SITUATION OF PERSONS DEPRIVED OF LIBERTY IN HONDURAS**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. VISIT TO HONDURAS BY THE RAPPOREURSHIP ON THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY	3
III. THE SITUATION OF PERSONS DEPRIVED OF LIBERTY IN HONDURAS	4
A. General overview of the Honduran prison system.....	4
B. Principal structural deficiencies noted	10
1. Delegation of internal control of the prisons to the prisoners, violence and abandonment	11
2. Overcrowding	22
3. Lack of sufficient allocation of resources and transition to the new penitentiary legal framework.....	27
4. Prison staff	30
5. Lack of separation based on sex	34
C. Highlights of the monitoring of the situation by international human rights agencies	37
IV. THE SITUATION IN THE COMAYAGUA PRISON AND THE FIRE OF FEBRUARY 14, 2012	44
A. General conditions in the Comayagua Prison prior to the fire that occurred on February 14, 2012	45
B. Status of the Comayagua Prison observed by the Rapporteurship at the time of its visit, and information received about the fire	49

	Page
C. Observations by the Inter-American Commission on the situation in the Comayagua Prison	55
V. CONCLUSIONS	58
VI. RECOMMENDATIONS.....	61

REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF PERSONS DEPRIVED OF LIBERTY IN HONDURAS

I. INTRODUCTION

1. On February 14, 2012, a fire occurred in the National Penitentiary of Comayagua, Honduras, in which 362 persons died, and which burned down half the cells in the prison. It was a tragedy of enormous proportions. However, such an event is not without precedent in Honduras: in May 2004, 107 inmates died as the result of a fire that occurred in cell (*bartolina*)¹ No. 19 of the San Pedro Sula Prison. These events, in which 469 persons in the custody of the State lost their lives in less than a decade, took place in the overall context of a collapsed prison system, with serious structural deficiencies and in which the fundamental rights of prisoners are systematically violated.

2. This grave structural crisis is the result of the absence of comprehensive public policies that would ensure that the corrections system complies with the purposes of the American Convention on Human Rights (hereinafter, “the American Convention”, or “the Convention”), namely, the reform and social readaption of convicted prisoners (Article 5.6). One consequence of this situation is that the State has *de facto* ceded basic aspects of prison administration to the prisoners themselves, and that so-called systems of “self-governance” or “shared governance” have come into being; these systems are exercised by the “coordinators”. This form of organizing power relationships within the prisons, without the appropriate supervision from the State, has been the cause of many of the serious acts of prison violence, and another series of abuses, assaults, irregularities and crimes that are routinely committed in and from within the prisons.

3. In this context, the present report stems from the concern of the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission”, “the Commission”, or “the IACHR”) over the serious structural crisis in correctional centers in Honduras, which resulted in the tragedy that occurred in Comayagua. In this regard, the present report sets out the principal points of concern identified by the Rapporteur on the Rights of Persons Deprived of Liberty of the IACHR (hereinafter “the Rapporteur”) following its recent working visit to Honduras.² These points are: (a) the delegation of internal control of the

¹ In Honduras, cells are also called “*bartolinas*” or “*hogares*” (“homes”).

² See IACHR, Press Release No. 43/12 (Tegucigalpa, April 27, 2012): Rapporteurship on the Rights of Persons Deprived of Liberty Finds Serious Structural Deficiencies in Prisons of Honduras. Document available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/043.asp.

correctional facilities to the inmates themselves; (b) overcrowding; (c) the lack of adequate budgets and normative framework; (d) prison staff; (e) failure to duly classify prisoners by categories; and (f) the situation in the Comayagua Prison in the context of the fire that occurred on February 14, 2012. In this regard, the purpose of the present document is to present in an organized manner the information available to the IACHR on the matter and to make pertinent recommendations to the State of Honduras, which is inherent to its monitoring mandate.

4. The draft of the *“Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of Liberty in Honduras”* was approved by the IACHR on November 28, 2012. In keeping with Article 60(b) of the Rules of Procedure of the Inter-American Commission, that document was transmitted to the Honduran State on December 7, 2012, which was asked to submit its observations within 30 days. After an extension of an additional 30 days, the State of Honduras submitted its observations on February 14, 2013.³ Those observations were studied by the IACHR and incorporated as pertinent to the draft of the report. The Inter-American Commission on Human Rights approved the final version of this report on March 18, 2013.

5. This document is structured in three fundamental parts: as assessment of the main structural shortcomings of the Honduran prison system, based on a special working visit by the Rapporteurship on the Rights of Persons Deprived of Liberty of the IACHR, a description of the specific situation of the National Penitentiary of Comayagua in the context of the fire that occurred on February 14, 2012; and a series of conclusions and recommendations directed at the State and geared to overcoming the critical situation of the prison system.

6. The present report is framed in the general context of the monitoring that the institutions of the Inter-American system and the human rights mechanisms of the United Nations have been conducting of the situation of persons deprived of liberty in Honduras. Thus, the recommendations made here complement the decisions of the Inter-American Court of Human Rights (“the Inter-American Court” or “the I/A Court H.R.”) in its sentences, as well as the previous recommendations of the IACHR.

³ Official Note No. 188-DGAE-13 of February 14, 2013, issued by the General Bureau of Special Affairs of the Ministry of Foreign Relations of the Republic of Honduras, which transmits Official Note No. SP-A-24-2013 of February 8 2013, issued by the Office of the Attorney General of the Republic, to the IACHR.

II. VISIT TO HONDURAS BY THE RAPPOURTEURSHIP ON THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY

7. The working visit by the IACHR Rapporteurship on the Rights of Persons Deprived of Liberty of the IACHR (hereinafter “the Rapporteurship”, or “the Office of the Rapporteur”) lasted five days, from Monday, April 23 to Friday, April 27, 2012. The Delegation consisted of Commissioner Rodrigo Escobar Gil, IACHR Rapporteur on the Rights of Persons Deprived of Liberty and staff of the Office of the Rapporteur.

8. The Rapporteur met with the Sub-secretary for Foreign Affairs, Mireya Aguero de Corrales; the Director General for Special Affairs of the Ministry of Foreign Affairs, Ambassador Ramon Valladares Reina; the Sub-secretary for Security, Marcela Castañeda; the National Director of Corrections, Abraham Figueroa Tercero; the Secretary for Human Rights, Ana Pineda; the Solicitor General, Ethel Deras; the Attorney General, Luis Alberto Rubí; the Special Prosecutor for Human Rights, German Enamorado; the National Commissioner for Human Rights, Ramón Custodio Lopez; the Mayor of San Pedro Sula, Juan Carlos Zuñiga; the Governor of the Department of Cortes, Gabriel Garcia, and with representatives of the Office of the Attorney General (*Ministerio Publico*) of the city of San Pedro Sula.

9. The members of the Rapporteur’s Office also met with representatives of the *Jueces de Ejecucion de Penas y Medidas de Seguridad* (judge in charge of monitoring the execution of sentences and security measures, hereinafter “Juez de Ejecucion”^{*}); the National Mechanism for the Prevention of Torture (CONAPREV); CARITAS in San Pedro; the Reflection, Investigation and Communications Team of the Company of Jesus (ERIC); the group Convergence for Human Rights; the Center for the Treatment and Rehabilitation of Victims of Torture and their Families (“CPTRT”); and the Committee of Families of Victims of the Fire at Comayagua. The Rapporteur also met with Monsignor Romulo Emiliani, Auxiliary Bishop of San Pedro Sula; Monsignor Angel Garachana, Bishop of San Pedro Sula, and representatives of the Prison Ministry (*Pastoral Penitenciaria*).

^{*} The mandate of the *juez de ejecución* is to ascertain that preventive detention and prison sentences are carried out in accordance with the law and the judicial decisions. The *juez de ejecución* is also competent to decide on all incidents arising during the execution of a prison sentence, as well as to ensure that the rights of convicts are respected. In discharging his or her duties, the *juez de ejecución* hears and rules on requests from detainees regarding conditional release, complaints of unlawful disciplinary measures and violations of their fundamental rights. In addition the *juez de ejecución* keeps track of the time spent in custody, including pretrial detention.

10. In the course of the visit, the Rapporteur visited the San Pedro Sula Prison, the Marco Aurelio Soto Prison in the Valley of Tamara and the Comayagua Prison⁴.

11. At the conclusion of the mission, Commissioner Rodrigo Escobar was received by the President of the Republic, Porfirio Lobo Sosa, whom he thanked for the Government's openness and good will, and informed him of the main areas of concern noted during the visit. Commissioner Escobar then held a press conference in the Office of the Organization of American States (OAS) in Honduras.⁵

III. THE SITUATION OF PERSONS DEPRIVED OF LIBERTY IN HONDURAS

A. General overview of the Honduran prison system

12. The Republic of Honduras is a State Party to the following human rights treaties adopted within the Organization of American States: the American Convention on Human Rights (since August 9, 1977); the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém Do Pará" (since December 7, 1995); and the Inter-American Convention on Forced Disappearance of Persons (since November 7, 2005). Honduras also accepted contentious (adjudicatory) jurisdiction of the I/A Court of Human Rights on September 9, 1981. Likewise, Honduras has ratified, *inter alia*, the following United Nations treaties: the International Covenant on Civil and Political Rights (since August 25, 1997); the Convention on the Rights of the Child (since August 10, 1990); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (since December 5, 1996) and its Optional Protocol (since June 26, 2006).

13. Domestic law applicable to persons deprived of liberty consists basically of the Penal Code and the Code of Criminal Procedure; the Law on the Rehabilitation of the Offender (Decree No. 173-84), which has been in effect since January 1985, and the Special Regulations on the Operations of the National Prison System (Agreement No. 027-2011), in force since August 2011; the Law on Prisoners awaiting Sentence [*Reo sin Condena*] (Decree No. 127-96); and the

⁴ This time the Rapporteurship focused its visit on adult prisons. However, it will continue to monitor the general situation of prisons in Honduras, including the situation of the juvenile detention centers, of which, according to information received by the IACHR also face important challenges.

⁵ See, IACHR, Press Release No. 43/12 (Tegucigalpa, April 27, 2012): *Rapporteurship on the Rights of Persons Deprived of Liberty Finds Serious Structural Deficiencies in Prisons of Honduras*.

Special Law for Persons Deprived of Liberty with a Terminal Illness and Degenerative Diseases of the Nervous System (Decree No. 5-2007).

14. The administration of prisons is currently responsibility of the National Bureau of Special Preventive Services (National Bureau of Prisons), which is part of the General Directorate of the National Police, as provided for in the Organic Law on the National Police (Articles 2, 11 and 52),⁶ and is therefore part of the portfolio of the Secretariat (or Department) of Security.⁷

15. Honduras also has a number of authorities and institutions that, under current law, have some type of mandate related to prison management or monitoring the situation of persons deprived of liberty, namely: (a) the *Jueces de Ejecucion*;⁸ (b) the National Mechanism for the Prevention of Torture (CONAPREV)⁹; (c) the National Commissioner for Human Rights (CONADEH);¹⁰ (d) the Office of the Attorney General, through its the Special Prosecutor for Human Rights¹¹; (e) the Secretariat for Justice and Human Rights;¹² (f) the Inter-Agency Commission to Address and Prevent the Situation in Prisons;¹³ and (g) Departmental or State Governors, whose functions include “*supervising the functioning of penitentiaries and prisons*”.¹⁴

⁶ See also, Article 29 of the General Law on Public Administration, Decree No. 146-86, which establishes the functions of the Secretariat for Security; and Article 5 of the Law on Rehabilitation of the Offender (Decree No. 173-84) which sets out the functions to be performed by the Director General of Prisons.

⁷ The administration of the prisons was the responsibility of the Ministry of the Interior and Justice [*Ministerio de Gobernación y Justicia*] from 1982, until 1998, the year in which the Central Penitentiary collapsed as the result of Hurricane Mitch, and was transferred to the Marco Aurelio Soto prison facility. As of that year, control of the prisons was transferred to the National Police, which still has responsibility for them. The first legal provision on prisons was the Law to Regulate Prisons of 1909, which was repealed in 1985 by the Law on Rehabilitation of the Offender, which was replaced in 2012 by the current Law on the Prison System.

⁸ See on this matter Articles 60, 381, 382 and 383 of the New Code of Criminal Procedure, Decree No. 9-99-E (February 2002).

⁹ See the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Decree No. 136-2008 of October 31, 2008, in particular Articles 2 and 13 thereof.

¹⁰ See Article 59 of the Constitution of the Republic (1982) and Articles 6, 7 and 9 of the Ley of Constitution of CONADEH, Decree No. 2-95 of October 24, 1995.

¹¹ See Article 16(8) of the Law on the Office of the Attorney General Decree No. 228-93 of December 13, 1993, and the Internal Regulations of the Office of the Attorney General, which define the functions of the Special Prosecutor for Human Rights.

¹² See Article 87-D of Executive Decree No. PCM-027-2011 of April 26, 2011.

¹³ Created by Executive Decree PCM-005-2012 of February 21, 2012 (following the fire in the Comayagua Prison).

¹⁴ See Article 7(2) of the Law on Municipalities, Decree No. 134-90.

16. Honduras has twenty-four adult prisons, eleven of which are classified as *National Penitentiaries*: Marco Aurelio Soto, San Pedro Sula, F.A.S., Comayagua, El Porvenir, Choloteca, Danlí, Santa Rosa de Copan, La Paz, Gracias and Juticalpa; and thirteen as *Prisons or Penal Centers*: Olanchito, Marcala, La Esperanza, Puerto Lempira, Nacaome, Ocotepeque, Yoro, El Progreso, La Ceiba, Puerto Cortes, Tela, Trujillo and Santa Barbara. The State also has a maximum security unit called the Administrative Segregation Unit (PN-MAS).

17. In the public hearing held in March 2012 at IACHR headquarters, the Secretary for Security presented the following data on the physical infrastructure of the prisons, and the distribution and legal status of the prison population:

Prison facility	Construction materials	Year constructed	Actual population	Number of slots	Over-population
Yoro Penal Center, Yoro	Adobe, wood and tiles	1870	191	150	27%
Trujillo, Penal Center, Colon	Combination of adobe, brick and sheeting	1890	309	120	158%
Ceiba Penal Center, Atlantida	Adobe, wood and tiles	1906	284	100	184%
La Esperanza Penal Center, Intibuca	Adobe, wood and tiles	1937	301	100	201%
Santa Barbara Penal Center, Santa Barbara	Adobe, wood and tiles	1940	195	70	179%
Puerto Cortes Penal Center	Blocks, brick and sheeting	1950	153	50	206%
San Pedro Sula National Penitentiary, Cortés	Combination of adobe, brick and sheeting	1953	2216	800	177%
Olanchito Penal Center, Yoro	Blocks, brick and sheeting	1961	144	60	140%
Puerto Lempira Penal Center	Blocks, wood and sheeting	1967	61	20	205%
P. Nal. Femenina de Adaptación Social	Blocks, concrete, sheeting and brick	1974	164	200	n/a (-36)
Marcala Penal Center, La Paz	Blocks, brick and sheeting	1975	123	120	2%
Tela Penal Center, Atlantida	Blocks, brick and sheeting	1975	159	160	n/a (-1)
El Progreso Penal Center, Yoro	Blocks, brick and sheeting	1976	402	120	235%

Prison facility	Construction materials	Year constructed	Actual population	Number of slots	Over-population
Comayagua National Penitentiary ¹⁵	Blocks, concrete, sheeting and brick	1978	471	240	96%
Nacaome Penal Center, Valle	Blocks, concrete, sheeting and brick	1978	220	120	83%
Danlí National Penitentiary, El Paraiso	Blocks, concrete, sheeting and brick	1980	482	240	101%
Santa Rosa de Copán National Penitentiary	Blocks, concrete, sheeting and brick	1980	602	240	151%
El Porvenir National Penitentiary, Atlántida	Blocks, concrete, sheeting and brick	1980	445	240	85%
La Paz National Penitentiary, La Paz	Blocks, concrete, sheeting and brick	1984	208	120	73%
Dr. Marco Aurelio Soto National Penitentiary	Blocks, concrete, sheeting and brick	1998	2,844	2,500	90%
Choluteca National Penitentiary, Choluteca	Blocks, concrete, sheeting and brick	2001	562	800	n/a (-238)
Ocotepeque Penal Center, Ocotepeque	Blocks, brick and concrete	2001	158	150	5%
Gracias National Penitentiary, Lempira	Blocks, concrete, sheeting and brick	2002	561	600	n/a (-39)
Juticalpa National Penitentiary, Olancho	Blocks, concrete and sheeting	2007	454	800	n/a (-346)
Totals			11,709	8,120	Not occupied places: 697

*This table provided by the Secretariat for Security does not include the Administrative Segregation Unit (PN-MAS).

18. The documents provided by the State in that hearing also confirm that as of February 2012, there were in Honduran prisons: 125 mentally ill, 202 elderly persons, 60 prisoners who were convicted when they were minors, and 9 terminally ill prisoners; and that in 2011, 2,275 people were released from prison for the following reasons: 342 parole; 3 under the Law on Prisoners awaiting Sentence; 246 commuted sentences; 8 statute of limitations; 356 conditional suspensions of criminal prosecution; 1,050 conciliations; and 270 acquittals.

¹⁵ After the fire of February 14, 2012 in which 361 prisoners (and one female visitor) lost their lives, and five of the ten cell blocks of the prison were damaged.

19. According to statistics provided in the course of the visit by the Coordinator of the *Jueces de Ejecucion*, the twenty-four prison facilities in Honduras held a total of 11,727 persons deprived of liberty (not counting the prisoners in the Administrative Segregation Unit-PNMAS), of whom 11,318 were men and 409 women. Of the total number of prisoners, 5,627 were awaiting trial and 6,100 were convicted, yielding a ratio of 47.98% awaiting trial to 52.02% convicted. Since the status of a prisoner's case is not a criterion for classification in Honduran prisons, inmates in preventive detention (approximately 5,627) are generally mixed with those who have already been convicted.

20. As of the date of those statistics, the Judiciary had a total of 27 *Jueces de Ejecucion* for adult criminal cases, or an average of 434 prisoners per judge.¹⁶ The Judges' workload is not evenly distributed: for example, the Tegucigalpa judicial circuit has a ratio of 603 prisoners to one judge; similarly, the court in the Choluteca judicial circuit has 777 persons deprived of liberty under its judicial supervision, from two prisons (the Choluteca Prison and the Nacaome Prison). There are five prisons to which no *Juez de Ejecucion* has been assigned, and therefore, they must be served by judges originally assigned to other prisons. These facilities are the Prisons of Olanchito, Puerto Lempira, Marcala, Nacaome and Ocotepeque.

21. According to updated information provided by the State¹⁷, in January 2013 the total prison population of Honduras was 12,263 persons, of whom 6,143 (50.09%) were said to have been persons facing trial, and 6,120 (49.91%) convicts. Of that total number of persons deprived of liberty, approximately 457 were women, equal to 3.7% of the prison population.

22. Before addressing its main concerns, the IACHR will refer to certain aspects that demonstrate that it is possible for Honduras to achieve positive progresses in the management of prisons. In this regard, the IACHR reiterates its acknowledgement of the cooperation that the authorities of the Honduran State provided for the visit of the IACHR Rapporteurship on the Rights of Persons Deprived of Liberty; the transparent provision of information; the unrestricted access to the prison facilities; the facilities made available for conducting

¹⁶ Information contained in the *Assessment by the Supervising Courts*. At the time of writing of the present report, June 2012, this number of *Jueces de Ejecucion* had been reduced to 26, since one of the judges was removed from office and his replacement had not been named.

¹⁷ Official Note No. 188-DGAE-13 of issued by the General Bureau of Special Affairs of the Ministry of Foreign Relations of the Republic of Honduras, which transmits Official Note No. SP-A-24-2013 of February 8 2013, issued by the Office of the Attorney General of the Republic, to the IACHR. Source: National Bureau of Special Preventive Services. Daily communication of Monday, January 28, 2013.

interviews with the prisoners; and the invaluable logistical support provided by the Foreign Ministry for the visit.

23. The Commission notes that all of the authorities interviewed acknowledged the seriousness of the prison situation in Honduras. During the visit, the Rapporteur noted with satisfaction that despite the evident challenges and limitations, there are personnel and institutions that are committed to working to gain respect for and guarantees of the fundamental rights of persons deprived of liberty, such as the *Jueces de Ejecucion* and the members of CONAPREV.

24. The IACHR also values the State's decision to reach a friendly settlement agreement in the proceedings before the I/A Court H.R. in the case of Pacheco Teruel *et al.*, about the death of 107 inmates in a fire occurred at the Penitentiary of San Pedro Sula, which contains reparation measures *erga omnes* that go beyond the specific context of the victims' families, and that, if implemented effectively, would have a positive impact on the structural deficiencies in the prisons. In this regard, the IACHR acknowledges and notes with attention the active monitoring by the Office of the Attorney General of the Republic of compliance with the measures to which the State committed itself in that agreement.¹⁸

25. Another positive note is the ratification by the State of Honduras in May 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "OP-CAT"), and the creation of the National Mechanism for the Prevention of Torture called for in that treaty ("CONAPREV"), by Decree No. 136-2008. CONAPREV's mandate, in accordance with OP-CAT and Article 2 of that decree, is "*regularly to examine the treatment of persons deprived of liberty in places of detention, with a view to strengthening protection against torture and other cruel inhuman or degrading treatment, and to make recommendations, proposals and observations to the competent authorities.*" This institution shall have "*administrative, technical and budgetary autonomy*" (Article 7); and shall consist of three members named by the Executive Branch, the National Congress, and Civil Society Organizations respectively (Article 8). The compliance with the provisions of the OP-CAT and the activities conducted by CONAPREV are significant means for the improvement of the prison conditions in Honduras".

¹⁸ The Office of the Attorney General has taken an approach of dialogue and attempts to sensitize the personnel who work with prisons; this has been noted by some human rights organizations.

B. Principal structural deficiencies noted

26. The IACHR notes that there are serious structural deficiencies in the prisons that have led to their collapse, and to a situation of generalized violation of human rights that is incompatible with the international obligations undertaken by the State. This grave structural crisis is the result of the decades-long absence of comprehensive public policies designed to ensure that the prison system meets the purposes set forth in the American Convention on Human Rights, namely, the reform and social readaptation of convicted persons.

27. In this regard, the IACHR has received consistent information about the following deficiencies:

(a) With regard to prison administration: the lack of an appropriate legal framework; lack of monitoring and transparency; a shortage of well-paid, trained prison personnel with the appropriate tools for working in prisons; the repeated failure by the Secretariat for Security to comply with the decisions of the *Jueces de Ejecución* and with the corrective *habeas corpus* issued by the Supreme Court of Justice concerning the prisons; and the failure to set up interdisciplinary technical teams in the prison facilities.

(b) With regard to the prisons: over-population and overcrowding; the lack of appropriate, safe physical installations; deplorable health and hygiene conditions; failure to provide adequate food and drinking water; the lack of adequate medical care; a shortage of study and work programs; the failure to segregate prisoners by category. And,

(c) With regard to the administration of justice: court delays; the failure to provide sufficient human resources so that the judges can perform their functions to the full.

28. The IACHR has also had the opportunity in the past to address the standards of international human rights law in relation to juvenile justice systems and the special duties of protection derived from Articles 19 of the American Convention and VII of the American Declaration in relation to children and adolescents in conflict with the law.

29. While the conditions of the correctional facilities for minors in conflict with the law is outside the scope of the present report, the Commission deems appropriate to take this opportunity to refer to the recommendations already made in its thematic report on *Juvenile Justice and Human Rights in the*

*Americas*¹⁹. In light of the special obligations of the States pertaining persons deprived of liberty under the age of 18, the IACHR refers to the recommendations contained in the aforementioned report.

1. Delegation of internal control of the prisons to the prisoners, violence and abandonment

The absence of adequate security measures, supervision and control inside the prisons

30. The IACHR acknowledges that allowing prisoners to organize themselves for their recreational, cultural, sport and religious activities is beneficial for their mental and physical health, and for the realization of the essential aim of the punishment.²⁰ However, the Inter-American Commission observes that one of the most serious and deep-rooted problems in Honduran prisons –a problem that has been broadly denounced both by national human rights organizations and institutions²¹ and international human rights bodies,²² is that internal control of the prisons has been ceded into the hands of the prisoners themselves. Thus, given the shortage of prison personnel, and the deficiencies in the penitentiary management, most of the penal centers and national penitentiaries in the country are run under systems of “self-government” or “shared government”, where certain inmates called “coordinators” are those who exercise internal control.

31. In this system, the inmates themselves are responsible for applying disciplinary punishment; setting the prices and collect the illegal payments that inmates must pay for the living space in cells and beds; collecting the fees that

¹⁹ IACHR, *Report on Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 78, adopted on July 13, 2011, dis document is available at: <http://www.oas.org/en/iachr/reports/thematic.asp>.

²⁰ See in this regard, the Standard Minimum Rules for the Treatment of Prisoners, Rule 78.

²¹ Thus, for example, the Center for Prevention, Treatment and Rehabilitation of Victims of Torture (CPTTRTR), in its response to the questionnaire circulated in connection with the Report on the Rights of Persons Deprived of Liberty in the Americas, indicated that one of the main problems facing the Honduran prison system is “the figure of the *coordinators* of the cellblocks, in all of the prisons, who physically punish the other persons deprived of liberty”, and “the illegal collection by the cellblock coordinators of up to \$250, in order to be able to stay in a particular cellblock or home”. IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, adopted on December 31, 2011, par. 44. The ERIC has also reported that the coordinators (also called “*rondines*”) “are persons deprived of liberty who enjoy the trust of the directors of the prisons, and who, in many cases, have been involved in arms and drugs trafficking, and in humiliating and torturing other prisoners, all with the complicit silence of the authorities”. Reflection, Investigation and Communications Team of the Company of Jesus (ERIC), *Diagnóstico del Sistema Penitenciario Hondureño a la Luz de los Derechos Humanos* (2005) [Assessment of the Status of the Honduran Prison System in the Light of Human Rights], p. 65. (*Spanish only*).

²² See in general, SPT, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras, CAT/OP/HND/1, February 10, 2010*, par. 205-207, 229 and 236, available at: http://www2.ohchr.org/english/bodies/cat/opcat/spt_visits.htm.

those who run informal business within the prison must pay; resolving conflicts of daily life that arise among inmates; distributing and setting the prices of food; and, in short, deciding various issues related with the day-to-day administration of the prisons. But above all, the “coordinators” serve as spokesmen or liaisons with the prison authorities, and are really privileged prisoners who exercise a degree of decision-making power within the prisons,²³ often sharing the benefits with the prison authorities.

32. The prison where the authorities’ lack of effective control and where real control lies with the inmates is seen most dramatically in the San Pedro Sula Prison. Here, the gate giving access to the main prison yard has two padlocks, one that the inmates lock from the inside, and the other closed by the authorities from the outside. The prison guards know that they must not cross into the yard (the yellow line, or “line of death”) without the authorization of the inmates, while the inmates refuse to leave the external perimeter in police custody. In this sense, as the then Director of the prison said to the Rapporteurship, the prisoners do not escape because they prefer not to upset this balance, since if they decided to do so, *“not even the entire police force of San Pedro Sula could stop them.”* Similarly, the second officer in command told the Rapporteurship that the prison authorities of this prison *“have no power to change anything”*.²⁴

33. In fact, when the Rapporteurship visited the San Pedro Sula Prison, their entry did not depend on the Director of the prison, but rather on the authorization given by the “coordinator,” Noe Betancourt, with whom the prison authorities negotiated the admission of the IACHR Delegation. Similarly, in the Marco Aurelio Soto Prison, those who authorized the Rapporteurship to enter, and who accompanied its members during their visit to the cellblocks were the “coordinators”. The Coordinator of the *Jueces de Ejecución* said to the Rapporteurship that in practice, there are prisons into which the judicial authorities themselves cannot go unless they have the inmates’ authorization, and where the prison directors must “mediate” with the inmates, given that it is impossible for them to retake power. The situation was different in the Comayagua Prison: there, it was the Director of the prison who accompanied the delegation during the visit, and facilitated the interviews of inmates selected by the Rapporteurship.

²³ Thus, for example, during its visit to the Marco Aurelio Soto Prison, the Rapporteurship noted in one of the cell blocks visited that the “coordinator” lived in a cell whose walls were lined with varnished wood, the bathroom was equipped with a washbasin, toilet and floor tiles in very good condition, and in the bedroom where he slept (alone), a good-sized bed with a mattress and clean sheets, individual air conditioning with remote control, television, and decorations.

²⁴ These statements were made by the aforementioned officials during their interview with members of the Rapporteurship during the visit to the National Penitentiary of San Pedro Sula.

34. During the visit to Honduras, the Rapporteurship observed that the authorities systematically justify the existence of these systems of “self-government” or “shared government” by arguing that this model is a “necessary evil” given the ongoing lack of funds and personnel. This system, as was observed, is accepted by the prison authorities as the only viable way of maintaining order and stability between them and the prison population, and the “coordinators” are considered as collaborators and even as allies of the authorities.

35. An official document issued in 2005 by the National Bureau of Special Preventive Services as part of an internal court case, said the following regarding the figure of “coordinator”:

(1) The inmates in the various prisons, like any group of individuals, organize themselves in order to improve their living conditions and personal safety; this has historically been the case in all of the prisons in the country. (2) The so-called prisoner coordinators are named by the prisoners themselves, without any intervention by the prison authority – that is a right that we cannot curtail. The criteria that are used for these coordinators must be in accordance with the prisoners’ own selection, and of course, these coordinators must be persons of good behavior and conduct. (3) Instructions have been given on many occasions to the directors of prisons to strengthen the legitimate prison authority, namely, the Prison Police; that this authority may not be delegated, and therefore no coordinator may be legitimized to exercise the function of internal security; if such a case were to arise, it would be irregular.²⁵

36. This report of the Secretariat for Security was provided in response to an order issued by the competent judicial authority in which it was proven that a group of four inmates in the Comayagua Prison had been physically wounded and threatened by the “coordinators” of that facility. It was also proven that the “coordinators” went about armed with wooden cudgels twenty-four hours a day, and that as a general rule, they were prisoners who had been sentenced for serious crimes such as homicide and assassination. Operative point (3) of this court order provides that the National Director of Special Preventive Services should order the necessary inquiries to determine: *“what criteria are used to name the cell coordinators; why the inmate coordinators are outside their cells late at*

²⁵ Note SS-DGSEP-0870-2005 of June 9, 2005 from the Director General of Special Preventive Services of the Secretariat for Security, attorney Jaime Banegas Zeron, at the request of the Supervising Judge of the Comayagua Judicial Section.

night (9:00 p.m.); and for what reason are the coordinators allowed to use wooden cudgels to put down, intimidate and assault other prisoners, creating a privileged class inside the prisons?" This court order also concludes that those who really exercise discipline in that prison are the so-called "coordinators".²⁶ This is but one specific example among others of how this situation has been documented by the competent judicial authorities.

37. The Coordinator of the *Jueces de Ejecucion* told the Rapporteurship that most of the complaints about physical assault received by the judicial authorities are complaints against the "coordinators" for having assaulted other prisoners, "*in the sight of and tolerated by the prison police.*"²⁷

38. In this regard, the Commission underlines that one of the basic limits on the exercise of disciplinary authority inside prisons is precisely that it should not be delegated to the prisoners themselves. This practice creates an anomalous and very serious situation that the State must eliminate, as being per se contrary to the respect for and guarantee of the right to personal integrity.²⁸

39. The President of CONAPREV stated that the delegation of control over the prisons to the prisoners themselves is one of the causes of the high rates of the ungovernable situation and corruption that exist. The IACHR notes that this system of "self-government" and the omnipresent corruption in the prison system are indeed closely linked. In this regard, the SPT's (Subcommittee on Prevention of Torture) report on its visit to Honduras states that:

[C]orruption was institutionalized by way of a sophisticated system that included procedures, steps and time frames. It starts the moment a prisoner arrives in the facility, and seems to have reached an alarming level of institutionalization and sophistication. [...] The system of corruption and privileges described above has

²⁶ Supervising Court of the Judicial Section of Comayagua, Order of June 6, 2005, Complaint file No 108/2005.

²⁷ These statements were made in a meeting with members of the Rapporteurship.

²⁸ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, OEA/Ser.L/V/II, adopted on December 31, 2011(hereinafter, "*Report on the Human Rights of Persons Deprived of Liberty in the Americas*"), para. 393 and 396, available at: <http://www.oas.org/es/cidh/informes/tematicos.asp>. In this regard, the Principles and Best Practices provide: "Persons deprived of liberty shall not be responsible for the execution of disciplinary measures, or for custody or surveillance activities, not excluding their right to take part in educational, religious, sporting, and other similar activities, with the participation of the community, non-governmental organizations, and other private institutions." IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, approved by the IACHR at its 131st Period of Sessions, held on March 3–14, 2008, Principle XXII.5, which is consonant with Rule 28 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, and Rule 62 of the European Prison Rules.

spread to all aspects of daily prison life, and covers the obtaining of beds, mattresses, food, air conditioning units, televisions and radios. [...] [C]orruption plays a fundamental role in the incidence of torture and ill-treatment. People enter the system under duress and become corrupt so as not to suffer abuse. Corruption pervades the entire detention system and involves all actors, prison staff, prisoners and outsiders. It discriminates against anyone who fails to comply and places them in a position of extreme vulnerability; and it sets up a system of relationships in which every aspect of daily life is subject to a financial transaction. Prisoners who do not follow the rules are sent to places where their lives and physical well-being are in serious danger. This affects the right to health and to food, the right to an adequate standard of living, and the right to communicate with the outside, especially the family. Corruption also ensures silence, blocks complaints and guarantees impunity. A system of corruption as hermetic and complex as the one observed by the Subcommittee offers no choice as to entering it and no way to escape from it. Those who do not enter the system go under.²⁹

The IACHR notes with concern the extent to which these practices are firmly embedded and rooted among the prisoners and their families, and among the prison authorities themselves.

40. Another of the serious consequences of the lack of effective control and the ingrained nature of the “self-government” systems, in which the authorities do not exercise effective control over the penitentiaries, is the high level of prison violence and the impunity it produces.

41. For example, on March 29, 2012 at 11:00 a.m. –only three days after the hearing held at IACHR headquarters in which the State of Honduras appeared– there was a riot in the National Penitentiary of San Pedro Sula, in which the inmates killed the then “coordinator general”, Mario A. Henriquez A., originally in charge of the kitchen, and the twelve inmates who made up his inner circle. During these events, weapons were fired, and the beginnings of a fire occurred.³⁰ “Don Mario”, as he was known, was decapitated, his genitals mutilated, and his heart torn out (they later gave the heart to his dog to eat, and then killed the

²⁹ SPT, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, CAT/OP/HND/1, February 10, 2010, paras. 206-208.

³⁰ Report of the Director of the National Penitentiary of San Pedro Sula, Eleazar Roberto Hernandez Martinez to the National Director of Special Preventive Services, March 30, 2012.

dog).³¹ His head was thrown outside the prison yard where it fell on a roof facing the office of the Prison Director.³²

42. This brutality against the “coordinator general” occurred precisely because, it seemed, he was abusing his power and mistreating the inmates; but above all else, because he decided to increase the price of the services provided inside the prison, such as food and living quarters³³. Following these events, the national authorities, including the court officers and magistrates, were unable to enter the main prison yard for the next three weeks. It was not until April 19 – precisely three days before the visit of the Rapporteur– that the authorities were able to enter with the support of 200 police officers, and the Director could resume something as routine and essential as the daily head-count of prisoners.³⁴

43. These incidents of violence are part of a longstanding pattern of prison violence in Honduras. In this regard, the IACHR also takes into account the events known as the “killings or massacre of El Porvenir”, which occurred in April 2003 in the National Penitentiary of El Porvenir, Atlántida, in which 69 persons died. This incident also took place because of conflicts between the “coordinators” of the prison and members of the “Mara 18” gang.³⁵

44. With regard to number of deaths (violent and of natural causes) that occurred in Honduran prisons between 2006 and the first quarter of this year,

³¹ See, for example, The Washington Post, *Inmates, corruption rule Honduras’ deadly Prisons despite multiple calls for reform*, published on May 27, 2012, available at: http://www.decipost.com/world/2012/05/27/inmates-rule-honduras-deadly-prisons_s_1698248.html.

³² The IACHR called attention to these events in the annex to its Press Release No. 36/12 issued at the close of its 144th Period of Sessions, available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/036a.asp. The Rapporteur on Persons Deprived of Liberty again referred to them at the conclusion of his visit to Honduras, see: IACHR, Press Release No. 43/12 (Tegucigalpa, April 27, 2012): *Rapporteurship on the Rights of Persons Deprived of Liberty Finds Serious Structural Deficiencies in Prisons of Honduras*.

³³ The said was confirmed to the Rapporteurship by the police officers in charge of the Penitentiary San Pedro Sula during the visit. See also, The Washington Post, *Inmates, corruption rule Honduras’ deadly Prisons despite multiple calls for reform*, published on May 27, 2012.

³⁴ See also: *La Tribuna, Penal sampedrano continúa controlado por los reclusos* [San Pedro prison still under control of prisoners], April 20, 2012, available at: <http://www.latribuna.hn/2012/04/20/policia-interviene-penal-sampedrano>; *La Tribuna, Masacre de 13 reos del penal podría quedar en impunidad* [Massacre of 13 prisoners could go unpunished], April 21, 2012, available at: <http://www.latribuna.hn/2012/04/21/masacre-de-13-reos-del-penal-podria-que-dar-en-impunidad/>.

³⁵ See in general, CONADEH, *Informe Especial y Recomendaciones sobre la Matanza ocurrida el 5 de abril de 2003, en la Granja Penal “El Porvenir”, Atlantida* [Special Report and Recommendations on the Killings that took place on April 5, 2003 in the El Porvenir Prison Farm, in Atlantida] (Spanish only).

the National Bureau of Special Preventive Services provided the Office of the Rapporteur with the data below:³⁶

Prison facility	2006	2007	2008	2009	2010	2011	2012	Total
P.N. El Porvenir, Atlántida ³⁷	1	1	3	4	1	1		11
C.P. La Ceiba, Atlántida	3	1	1	2	3			10
C.P. Tela, Atlantida						1		1
C.P. Trujillo, Colon	1	1		3	1			6
P.N. Comayagua		3		2		2	361 ³⁸	368
P.N. Santa Rosa de Copan		2	1	3	2	1		9
P.N. San Pedro Sula, Cortes ³⁹	6	5	14	15	8	27	14	89
C.P. Puerto Cortés, Cortés		1	2					3
P.N. Choluteca, Choluteca		2	7			2		11
P.N. Danli, El Paraíso	1	2	5		2			10
P.N. "Dr. Marco A. Soto" ⁴⁰	39	44	41	20	11	23	2	180
C.P. Puerto Lempira								0
C.P. La Esperanza, Intibuca					1			1
P.N. La Paz, La Paz	2		1					3
C.P. Marcala, La Paz	1	2	1					4

³⁶ Note DNSEP-DN-No.315-2012, of April 26, 2012 from the National Director of Special Preventive Services of the National Police (Secretariat for Security) Abraham Figueroa Tercero. On the violent deaths that have occurred over the last year, see in general: *La Tribuna*, *30 muertes violentas en cárceles de Honduras durante el 2011* [30 violent deaths in Honduran prisons in 2011], available at en: <http://www.latribuna.hn/2012/03/30/30-muertes-violentas-en-carceles-de-honduras-durante-el-2011/>.

³⁷ As stated earlier, on April 5, 2003, a serious violent incident occurred in the Prison of El Porvenir in which 69 persons died.

³⁸ Total numbers of deaths (violent and from natural causes occurred in the San Pedro Sula Prison in previous years were as follows: 12 (2000); 12 (2001); 7 (2002); 14 (2003); 112 (2004, the year in which 107 prisoners died in the fire that occurred in cell No. 19); and 6 (2005). Note DNSEP-DN-No.315-2012, of April 26, 2012 from the National Director of Special Preventive Services of the National Police (Secretariat for Security) Abraham Figueroa Tercero.

³⁹ The figure of 361 deaths that occurred in the Comayagua Prison does not include the death of Mrs. Katia Gissela Figueroa Franco, who also died in the fire that occurred in that prison on February 14, 2012 while she was staying the night with one of the prisoners, in violation of the Special Regulations for the Operations of the National Prison System.

⁴⁰ Total number of deaths (violent and from natural causes) recorded in the Marco Aurelio Soto Prison in previous years were: 21 (2000); 11 (2001); 16 (2002); 14 (2003); 36 (2004); and 28 (2005). Note DNSEP-DN-No.315-2012, of April 26, 2012 from the National Director of Special Preventive Services of the National Police (Secretariat for Security) Abraham Figueroa Tercero.

Prison facility	2006	2007	2008	2009	2010	2011	2012	Total
P.N. Gracias, Lempira		1	2	2		4		9
C.P. Ocotepeque	2					1		3
P.N. Juticalpa, Olancho	1	6	1					8
C.P. de Amapala								0
C.P. Santa Barbara		1			1			2
C.P. Nacaome, Valle		2	4	1				7
C.P. de Yoro		2	1	1				4
C.P. El Progreso, Yoro		1	4	3	1	1		10
C.P. Olanchito, Yoro		1				1		2
P.N. Femenina de A.S.	1	2	1			1		5
Total per year (2006-2012)	58	80	89	56	31⁴¹	65	377	756
No. of violent deaths	38	59	72	28	19	49	376	641
No. of deaths from natural causes	20	21	17	28	11	16	1	114

45. In this context, the IACHR notes that on the night of Wednesday, May 16, 2012, there was an exchange of gunfire between two groups of inmates in the San Pedro Sula Prison, which left one dead and several wounded. This fight caused tension in the prison that lasted until the early hours of the following day, thanks to the mediation of Monsignor Romulo Emiliani.⁴²

46. On July 12, 2012, a major incident occurred in the “Renaciendo” Juvenile Detention Center in the Valley of Tamara, in which young men associated with the “Mara 18” gang, after a search of their “home” or cell block, started an uprising that left one inmate dead and several wounded. In the disorder, the inmates set fire to the Center, burned the Director’s office, along with psychology and social work files; and took apart the dental clinic and the health center.⁴³ The weekend following these events, other serious acts of rule-breaking occurred in

⁴¹ For 2010, the State reports that there were 19 violent deaths and 11 deaths from natural causes, which adds up to a total of 30; however, when it provides the information for that year broken down by prison facility, the figures show a total of 31 deaths.

⁴² See: *El Heraldo*, *Enfrentamiento mortal en San Pedro Sula* [Deadly confrontation in San Pedro Sula], May 17, 2012, available at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Enfrentamiento-en-centro-penal-deja-un-muerto-y-al-menos-siete-heridos-en-el-norte-de-Honduras>; *La Prensa*, *Reclusos viven 16 horas de pesadilla en centro penal sampedrano* [Prisoners live through 16-hour nightmare in San Pedro prison], May 18, 2012, available at: <http://eng.laprensa.hn/Secciones-Principales/Sucesos/Reclusos-viven-16-horas-de-pesadilla-en-Centro-Penal-Sampedrano#.UEsI7KPV8E>.

⁴³ See for example: *El Heraldo*, *Varios heridos deja motin de pandilleros en centro para menores infractores “Renacer”*, [Several wounded in gang uprising in Renacer juvenile detention center], July 13, 2012, available at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Varios-heridos-deja-motin-de-pandilleros-en-centro-para-menores-infractores-Renacer>; *La Tribuna*, *Motin en carcel de menores* [Uprising in juvenile prison], July 12, 2012, available at: <http://www.latribuna.hn/2012/07/12/amotinamiento-en-renacer/>.

this facility.⁴⁴ The “Renaciendo” juvenile center is under the responsibility of the Honduran Institute for Children and the Family (IHNFA), an agency of the Executive Branch.

47. On Tuesday, July 24, 2012, there was an exchange of gunfire in the Administrative Segregation Block of the Marco Aurelio Soto Prison, resulting in three inmates being wounded, precisely in the so-called State’s maximum security block.⁴⁵ Furthermore, on August 10, 2012, a number of State security forces conducted an operation in the Marco Aurelio Soto Prison, in which they found, in block 23 (or “Scorpio” [“*Escorpion*”] cellblock), which houses members of the Mara 18 gang, an arsenal consisting of an Uzi submachine gun, three automatic pistols, four fragmentation grenades, eleven explosives, more than five hundred projectiles and seven launchers. They also seized “slow fuses”, detonators, lighters and homemade weapons.⁴⁶ Less than ten days after these seizures, the authorities found the bodies of two inmates belonging to the Mara 18 gang, who had presumably been killed (strangled) by other members of the same gang.⁴⁷

48. The lack of effective internal control over prison facilities is also a serious obstacle to maintaining security in the installations where the inmates are housed. In this regard, the State must take the necessary measures to prevent

⁴⁴ *Proceso Digital*, *Reportan motín en “Renaciendo”, 72 horas despues de otro que dejó un muerto*, [Uprising reported in “Renaciendo”, 72 hours after another that left one dead] July 15, 2012, available at: <http://www.proceso.hn/2012/07/15/Caliente/Reportan.mot.C/54627.html>; *El Heraldo*, *Otro amotinamiento en centro de internamiento “Renaciendo”*, [Another uprising in the “Renaciendo” detention center], July 15, 2012, available at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Otro-amotinamiento-en-centro-de-internamiento-Renaciendo>.

⁴⁵ See, *El Heraldo*, *Enfrentamiento en carcel de maxima seguridad; al menos tres heridos* [Confrontation in maximum security prison; at least three wounded], July 24, 2012, available at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Enfrentamiento-en-carcel-de-maxima-seguridad-al-menos-tres-heridos>; *El Heraldo*, *Aun se desconoce informe de tiroteo en cárcel* [Still no report on shooting in prison], July 26, 2012, available at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Aun-se-desconoce-informe-sobre-tiroteo-en-carcel>.

⁴⁶ See, *La Prensa Grafica*, *Policia decomisa arsenal en carcel de Tegucigalpa, Honduras* [Police confiscate arsenal in prison in Tegucigalpa, Honduras], August 10, 2012, available at: <http://www.laprensagrafica.com/internacionales/centroamerica/277115-policia-decomisa-arsenal-en-carcel-de-tegucigalpa-honduras.html>; *La Tribuna*, *Armas, granadas y municiones decomisan a mareros de la 18* [Arms, grenades and munitions confiscated from Mara 18], August 10, 2012, available at: <http://www.latribuna.hn/2012/08/10/decomisan-artefactos-explosivos-en-la-penitenciaria-nacional>; BBC News, *Explosives found in Honduras jail sweep*, August 10, 2012; available at: <http://www.bbc.co.uk/news/world-latin-america-19219006>.

⁴⁷ See: *La Prensa*, *Ultiman a dos reos en penitenciaría de Honduras* [Two prisoners killed in Honduran prison], August 20, 2012, available at: <http://www.laprensa.hn/Secciones-Principales/Sucesos/Ultiman-a-dos-reos-en-la-penitenciaría-de-Honduras>; *El Heraldo*, *Por “soplones” asesinan a dos pandilleros de la “18” en la Penitenciaría Nacional de Tamara*, [Two Mara 18 gang members killed in Tamara prison for “informers”], August 20, 2012; available at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Por-soplones-asesinan-a-dos-pandilleros-de-la-18-en-la-Penitenciaría-Nacional-de-Tamara>.

49. The lack of effective control over the internal security of the prisons facilitates the commission of crimes inside and from inside the prisons, such as drug trafficking, sales of arms, extortion payments by prisoners or their families, and the planning and coordination, from the prison, of criminal acts such as homicides, kidnappings and extortion.

The failure of the State to provide basic elements to prisoners, and the presence of unregulated and uncontrolled commercial activities and cash flow inside the prisons

50. The lack of a budget for operations and building maintenance has led to its being financed out of the money collected from the businesses run inside the prisons, or from what is collected in, for example, payments for the use of conjugal rooms, which also collected by the “coordinators”.⁴⁸ Thus, creating a parallel, informal and unregulated administration to which we referred earlier. Similarly, the scant budget provided by the State for food leads the inmates themselves to procure their own food by their own means, which has resulted in the flourishing within the prisons of an impressive informal food market. This situation has the collateral effects of, for example, lack of control over entry of goods into the prisons; and the obvious inequity that arises from the fact that some inmates have greater economic resources or other forms of being able to secure better food, to the detriment of the rest.

51. Another consequence of the lack of effective control, and of governance by the “coordinators” is the existence of an entire informal, unregulated marketplace within the prisons, which generates a significant amount

⁴⁸ In a study conducted in the Comayagua Prison in 2009, the following was noted in relation to the rooms set aside for conjugal visits: “There are a total of ten conjugal rooms inside the Comayagua Prison, which are administered by two prisoners [...] According to the Mayor, the rooms are rented by the hour at a cost of ten Lempiras. The prisoners state that they are charged fifty Lempiras per hour, and between one hundred and fifty and two hundred Lempiras for the night. An average of forty couples used the conjugal rooms during visiting days; on Saturdays and Sundays, this number of couples usually increases. At the New Year’s holidays, the conjugal rooms are packed with couples; on December 24, 2008, they were used by ninety-two couples, and on December 31, a total of ninety-four couples used them. At the cost of ten Lempiras, the conjugal rooms could be generating an average of eight thousand Lempiras a month [approximately US\$ 421], an average of ninety-six thousand Lempiras per year [approximately US\$5,052]”. Report: *Situación de la Población en la Penitenciaría Nacional de Comayagua [Situation of the Population in the Comayagua Prison]*, Lic. Marlon Edgardo Zúñiga Briceño, Social Worker, Comayagua, Comayagua, January 12, 2009. See also: Guzmán V., Malcolm E., *Breves consideraciones al Reglamento Especial para el Funcionamiento del Sistema Penitenciario Nacional a la luz de la normativa legal vigente y la realidad actual de los establecimientos penitenciarios*, [Brief considerations concerning the Special Regulations for the Operations of the National Prison System in light of current legislation and the current realities of the prisons], pp. 23 and 24.

of money over which there is no official control at all, no monitoring, and no transparency. In the San Pedro Sula Prison, what may best be described as a large market or bazaar operates in the prison yard that houses 1,200 prisoners– the Rapporteurship observed that there were barbers’ shops, cafeterias, bakeries, sales of fruit and food of all kinds, sales of medications and cloth; tailoring workshops, a cobbler’s shop, a leather workshop, carpentry, a cabinetmaker’s workshop, crafts, manufacture of mirrors, billiard tables, games tables, and many soft drink dispensing machines. According to the prison authorities, each business must pay a fee to the “coordinator general”; however, there is no official control over these transactions. This pattern, which in San Pedro Sula is absolute, is replicated in most of the country’s prisons.

52. The IACHR observes that the open, uncontrolled development of commercial activities in the prisons has serious consequences for the lives of the inmates. It offers power to certain prisoners; it generates uncontrolled circulation of money inside the prison; it promotes corruption; it gives room for bringing in illicit goods such as drugs and alcohol, circulation of which inside the prisons is a factor that generates violence; and it may produce a totally anomalous and prejudicial de facto situation in which these informal (and definitely illegal) businesses are replacing the prison administration in providing the basic necessities of the prisoners. In some cases the presence of this informal trade becomes so ingrained in prisons that is understood and accepted as normal, when in fact it is not.

53. In light of the situation described in this section, the Inter-American Commission reiterates to the State of Honduras its previous statements in its *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, namely:

[F]or the State to be able to effectively ensure prisoners’ rights it must exercise effective control over the prisons. In other words, the State should take charge of the fundamental aspects of prison administration, for example maintaining security inside and outside the prison; providing the basic goods and services necessary for the prisoners’ lives; and preventing crime from being committed in or from prisons.

Accordingly, the fact that the State exercises effective control of the prisons implies that it must be capable of maintaining internal order and security within prisons, not limiting itself to the external perimeters of the prisons. It should be capable of ensuring at all times the security of the prisoners, their family members, visitors, and those who work in the prisons. It is not admissible under any

circumstance for the prison authorities to limit themselves to external or perimeter surveillance, leaving the inside of the facilities in the prisoners' hands. When this happens, the State puts the prisoners at permanent risk, exposing them to violence in the prison and to the abuses of other more powerful prisoners or the criminal groups that run such prisons.

Similarly, the fact that the State exercises effective control over centers of detention also implies that it should adopt the measures necessary to prevent the prisoners from committing, directing, or ordering such criminal acts within or from the prisons.⁴⁹

54. Accordingly, the Inter-American Commission considers that within the territory of a State, no areas may exist—in this case, prisons—in which the State is incapable of exercising effective control and ensuring that the law is enforced. If it were otherwise, the constitutional order and the rule of law⁵⁰ would be violated, and the very sovereignty of the State, the essence of its own political existence, would be undermined.

55. Therefore, the Inter-American Commission considers that the Honduran State should take decisive measures—as part of its compliance with its international obligations in the area of human rights— progressively and irreversibly, to retake effective control of all prison facilities.⁵¹

56. Moreover, the Commission stresses that the State must ensure that persons under its custody have access to, *inter alia*, the following minimum requirements: drinking water, sanitary facilities, personal hygiene, floor space, light and ventilation, sufficient and adequate food, and adequate bedding.⁵²

2. Overcrowding

57. Overcrowding in the prisons has been a constant in Honduras for the last decade. At the beginning of the 1990s, the prison population was approximately 5,700 persons. This number increased progressively to 12,500 in

⁴⁹ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, paras. 76-78.

⁵⁰ Article 1 of the Political Constitution of Honduras establishes the fundamental principle that Honduras is a sovereign State based on the rule of law.

⁵¹ See the specific recommendations made by the Inter-American Commission: IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 259.

⁵² IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 432; IACHR, *Follow-up Report - Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, OEA/Ser/L/V/II.135. Doc. 40, adopted on August 7, 2009, Ch. V, para. 123.

2001. Since then, the number of persons deprived of liberty has remained relatively stable, in 2003, the number of persons deprived of liberty was 10,397, in 2004, 11,123,⁵³ and at the end of 2005, 11,545,⁵⁴ with similar numbers recorded in the following years: 2007 (10,988), 2008 (11,390), 2009 (11,041), 2010 (12,356) and 2011 (11,921).⁵⁵

58. According to information supplied by the *Jueces de Ejecucion*, the total capacity of the twenty-four corrections centers in Honduras is currently 8,120 for 11,727 prisoners (male and female), and therefore, nationally, there is a shortage of approximately 3,600 prison slots, or the equivalent of 44% of the total number of slots currently existing. This situation becomes even more serious when one looks at the critical levels of over-population found in some prison facilities, such as, for example, the El Progreso Prison (230.83%), La Esperanza Prison (212%), La Ceiba Prison (180%), San Pedro Sula Prison (178%), and the Santa Barbara Prison (175.71%). In absolute terms, the worst shortages of places (or surplus of prisoners) are in the following five prison facilities: San Pedro Sula (1,429), Santa Rosa de Copán (363), Marco Aurelio Soto (353), Juticalpa (335), and El Progreso (277).⁵⁶

59. In practice, the problem of overcrowding is even more serious because of the system of “self-government” that exists in the prisons, the criteria for apportioning space inside is none other than the inmate’s purchasing power or other real factors of power. In addition, there are certain categories of prisoners who may not be integrated into the general population and who must necessarily be held in separate cells. Therefore, the distribution of space is not uniform, and hence, in even the most overcrowded prisons, there are areas in which some inmates enjoy bigger space and more facilities, to the detriment of those who cannot be allowed access to them and who, in the general situation of overcrowding, live in even more crowded conditions.⁵⁷

⁵³ Reflection, Investigation and Communications Team of the Company of Jesus (ERIC), *Diagnostico del Sistema Penitenciario Hondureño a la Luz de los Derechos Humanos* (2005) [Assessment of the Honduran Prison System in the Light of Human Rights], pp. 26 and 26, citing figures from the Inter-Agency Commission on Prison Reform and the National Coordinator of Supervising Judges.

⁵⁴ CPTRT, COFADEH, *Situacion de las personas privadas de libertad en Honduras* (2006) [Situation of persons deprived of liberty in Honduras], document available at: http://www.enlaceacademico.org/uploads/media/CARCELES_HONDURAS.pdf (Spanish only).

⁵⁵ Information contained in the *Assessment by the Supervising Courts*, supplied by the Coordinator of the *Jueces de Ejecucion* during the visit of the Rapporteurship.

⁵⁶ Information contained in the *Assessment by the Supervising Courts*, provided by the Coordinator of the *Jueces de Ejecucion* during the visit of the Rapporteurship. Does not include the Administrative Segregation Unit (PN-MAS), a different type of facility, whose capacity, according to these data, is 220, and which houses a total of 41 prisoners.

⁵⁷ The Prison Ministry informed the Rapporteurship that: “[i]n the dynamics of the spaces, those who can pay enjoy privileged spaces to the detriment of the poorer prisoners who live in the common area. But the
Continues...

60. Thus, for example, the Rapporteurship found during its visit to the San Pedro Sula Prison that there were a total of 2,199 prisoners, while the prison capacity is 800. Two clearly differentiated areas are found in this prison: the perimeter, the location of the cellblocks of the Mara 18 and the Mara Salvatrucha gangs, former members of these gangs (who are called “*pesetas*” or “*peseteados*”), the mentally ill, police officers (who had been imprisoned), and the segregation cellblock (those inmates who belong to none of the above groups but who also have serious problems of living alongside the regular population); the population of all of these cellblocks around the perimeter is more than 500 persons. On the other hand, the so-called “main yard” houses the nearly 1,700 inmates who belong to none of these special categories (they are called “*paisas*”). In fact, all the cells in the main yard are part of a system of gradually descending prices, and the person who sets the prices, gets the money, and assigns the cells is the “coordinator”.⁵⁸

61. Another example of the unequal distribution of the living space can be found in the Prison of El Progreso, in which, in spite of having the relatively highest level of overcrowding in the country (230.83%), has a block—No.7—in which only 21 individuals live, and which even has air conditioning.⁵⁹ An analysis of the figures supplied by the State at the hearing of March 2012 (see *supra* para. 15) shows that despite the overcrowding, the Honduran penitentiary system has some 697 places unoccupied, 623 of which are in three facilities constructed between 2001 and 2007: the Choluteca Prison, the Gracias Prison and the Juticalpa Prison. The authorities should take these available spaces into account when addressing the overcrowding in the remaining prison facilities.

62. In their interviews with the members of the Rapporteurship, both the Director of the Penitentiary of San Pedro Sula and Monsignor Romulo Emiliani—who performs his pastoral work there—were categorical in considering that the

...continuation

root of the problem lies in who controls the territory and space in the prisons”. It added that control over space has been ceded completely to the prisoners, particularly in the country’s large prison facilities. Document: *El Sistema Penitenciario Hondureño: algunos criterios de comprensión, un “agujero negro” de la estructura socio-política. The Honduran Prison System: some thoughts on understanding a “black hole” in the social and political structure* (Spanish only).

⁵⁸ According to the document entitled: *Recuento de Internos por Bartolina [Inmate Count by Cell]* of April 23, 2012, provided to the Rapporteurship by the Director of the prison. To understand this a little better, it is useful to look at how the prisoners are distributed among the cellblocks: 1-A (200); 1-B (221); 2-A (148); 2-B (225); 3-A (165); 3-B (293); 4 (58); 5 (1); 6 (37); 7 (68); 8 (for the Mara Salvatrucha, 43); 9 (ingresos, 60); 10-A (85); 10-B (M 2 + H 11, 13); 10-C (M 2 + H 8, 10); 11 (21); 12 (53); 15 (16); 16-A (2); 16-B (mentally ill, 24); 17 (cooks, 0); 19 (former gang members, 91); 20 (0); 21 (Mara 18, 102); 22 (21); 23 (police officers, M 1 + H 46, 47); 24 (55); 25 (segregation M 1 + H 88, 89); 26 (24); 27 (in solitary, 10); 28 (M 1 + H 16, 17).

⁵⁹ CONAPREV, *Diagnóstico del Sistema Penitenciario en Honduras (15.11.2011)* [Assessment of the Prison Situation in Honduras], page. 59. (Spanish only).

prison has already collapsed. The national authorities told the Rapporteurship of plans to construct a new penitentiary to replace the current prison in San Pedro Sula. This facility is expected to be located on an eighty-six block plot of land in the town of Naco; which is currently under litigation after having been seized by the authorities in a drug trafficking case. The Government, in its endeavor to realize this project, appointed a Commission ten years ago; signed an inter-agency agreement of mutual cooperation between the Secretariat for Security and the Town of Puerto Cortes; and issued a law whereby all seized assets being administered by the Office for the Administration of Seized Assets (*Oficina de Administración de Bienes Incautados*) will be assigned immediately to certain institutions of the State (this law provides that these assets may subsequently be restored to their owners in the event the courts so order).⁶⁰

63. The IACHR takes note of the measures indicated by the State regarding construction of a new prison in San Pedro Sula; however, it observes with concern that ten years after the committee to build the new prison was constituted, the State still does not have ownership of the land where the new prison will be built. Further, beyond the material challenges involved in this work, the IACHR deems relevant to refer to the reluctance of the inmates of the current San Pedro Sula Prison to be transferred from there to another district; that is particularly true of those who have significant vested interests within the current prison. The authorities are aware that the inmates themselves expressly say that they will resist implementation of this measure. This shows once again the existence of strong economic interests and power in prisons.

64. Another factor that considerably worsened the problem of overcrowding in the Honduran prison system is the fire that occurred in the Comayagua Prison, not only on account of the material damage that occurred when half the cells burned down; but also, given the dramatic overcrowding, it is not in a position to receive any more inmates. New admissions are therefore being sent to the La Esperanza Prison, the capacity of which is 100 slots but which already houses 337 inmates (328 men and 9 women); and to the La Paz Prison, which has a capacity of 120 places and is already housing 275 persons (259 men and 16 women).⁶¹

65. The IACHR observes that, as in other countries of the region, overcrowding in Honduras is the predictable consequence of the following basic

⁶⁰ Law on Emergency Availability of Seized Assets, Decree No. 23-2012 of April 13, 2012. According to the text of this law, it will be in effect on April 19, 2012, the date on which it was published, until November 25, 2013.

⁶¹ According to a note of June 7, 2012 from the *Juzgado de Ejecucion* of the Judicial Section of Comayagua, and forwarded directly to the IACHR Rapporteurship on the Rights of Persons Deprived of Liberty.

factors: (a) lack of adequate infrastructure in which to house the growing prison population; (b) implementation of repressive social control policies (called “heavy handed” or “zero tolerance” policies) that propose deprivation of liberty as the basic response to the requirements of citizen security; (c) the excessive use of preventive detention and of deprivation of liberty as a criminal sanction; and (d) the lack of an effective, rapid response by the judicial systems in handling both criminal cases, and all those matters inherent in sentencing (for example, the handling of applications for parole).⁶²

66. Overcrowding produces constant friction among inmates and increases the levels of violence in the prisons; it makes it difficult for inmates to have a minimum of privacy; it reduces space for access to showers, bathrooms, the yard, etc.; it paves the way for the spread of disease; it creates an environment in which health and hygiene conditions are deplorable; it is a risk factor for fires and other emergencies; it makes it difficult to classify inmates by categories, and it produces serious problems in the management of medical services and the exercise of security arrangements. It also breeds systems of corruption in which prisoners have to pay for space and access to basic resources.⁶³

67. The overcrowding of persons deprived of liberty may, in and of itself, come to constitute a form of cruel, inhumane and degrading punishment that violates the right to personal integrity (in the terms of Articles 5.1 and 5.2 of the American Convention).⁶⁴

68. Addressing overcrowding effectively requires that policies and strategies be adopted that include, for example: (a) legislative and institutional reforms needed to ensure a more rational use of preventive detention, and that resort be had to this measure only exceptionally; (b) observance of the maximum length of time allowed by law for persons to remain in preventive detention; (c) promotion of the use of alternative measures to replace preventive detention and the deprivation of liberty as punishment; (d) the use of other figures inherent in sentencing, such as early release, parole and remission of sentence for work or study; (e) modernization of the systems of administration of justice so that they become more efficient and deal more quickly with criminal cases; and (f) efficient, rational and transparent management of existing prison spaces, in such a way that the distribution of prisoners in each of the prisons and in the prison system in

⁶² IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 451.

⁶³ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, paras. 455-457.

⁶⁴ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 460; IACHR, Press Release 76/11 –IACHR Recommends Adoption of a Comprehensive Public on Prisons in Uruguay. Washington, D.C., July 25, 2011, annex, para. 21.

general follows objective criteria, and not the laws of the black market in spaces that is in the hands of the inmates themselves.

69. Another measure for dealing with overcrowding that is found in the Principles and Best Practices is that occupancy of prisons above the number of allowed places should be prohibited by law, and that the law should set out the mechanisms for immediately remedying any situation in which occupancy exceeds the established number of places. And also that the competent judicial authorities should take appropriate remedies in the absence of effective regulations.⁶⁵ The creation of new prison slots –whether by building new facilities or remodeling existing facilities– is undoubtedly essential to addressing overcrowding, particularly when existing installations are old, in short supply and inadequate. However, this measure alone does not represent a solution that is sustainable over time. Immediate impact measures such as presidential pardons, or mass release of certain categories of prisoners, for reasons of age, health, or minor crimes, among others, are also not a real solution to the problem; although they may be necessary in certain situations.⁶⁶

70. As of the adoption of this report, the total prison population of Honduras comes to approximately 12,263 persons; which means that if the prison system's (official) capacity in terms of prison slots or places is 8,120, the general level of occupation of the prison system is 151%, which is a serious level of overcrowding, there being a deficit of capacity for 4,143 persons.⁶⁷

3. Lack of sufficient allocation of resources and transition to the new penitentiary legal framework

71. According to information presented by the head of the National Director of Special Preventive Services, the budget allocated by the National Government for prison management in 2012 is 364,598,091 Lempiras (equivalent to US\$19,189,373). Of this amount, 83% (300,988,641 L./ US\$15,841,507) is earmarked for staff salaries; 15% (58,000,000 L./ US\$3,052,631) is invested in food and 2% (5,609,450 L./ US\$295,234) is used for operating costs and miscellaneous

⁶⁵ IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, adopted by the IACHR at its 131st Period of Sessions, held March 3–14, 2008, Principle XVII.

⁶⁶ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, paras. 461-463.

⁶⁷ Official Note No. 188-DGAE-13 of issued by the General Bureau of Special Affairs of the Ministry of Foreign Relations of the Republic of Honduras, which transmits Official Note No. SP-A-24-2013 of February 8 2013, issued by the Office of the Attorney General of the Republic, to the IACHR. Source: National Bureau of Special Preventive Services. Daily communication of Monday, January 28, 2013.

expenses.⁶⁸ The authorities interviewed during the visit were unanimous in saying that the average amount budgeted for feeding one prisoner is 13 Lempiras (US\$0.65) per day. It is therefore evident that there is no budget for infrastructure.

72. The IACHR also observes that as an immediate response to the serious prison crisis, Executive Decree No. PCM-032-2010 was issued on July 13, 2010, declaring a state of emergency and calamity in the following nine prisons: San Pedro Sula, Santa Barbara, Puerto Cortes, la Esperanza, El Progreso, Trujillo, Yoro, La Ceiba and Puerto Lempira, in an effort to improve their infrastructure and resolve overcrowding. Subsequently, that decree was extended by Executive Decree No. PCM-058-2011 of September 6, 2011, and then, Executive Decree No. PCM-006-2012 of March 20, 2012 again extended the state of emergency, and expanded its scope to include the Comayagua Prison. However, it appears from the information received both from the authorities and from representatives of civil society that the issuance of these decrees, beyond being a policy statement by the Executive Branch, has not brought about an increase in the budget earmarked for the prisons covered, nor has it produced real and tangible changes in them.

73. The Inter-American Commission is aware of the situation of Honduras and the budgetary limitations of its government; however, in accordance with the international obligations assumed by the State –and with its own constitutional order–, the State is in a unique position as guarantor of persons deprived of liberty under its jurisdiction, which involves a specific, material commitment⁶⁹ to take the measures necessary to assure respect for and guarantee of the fundamental rights of prisoners.

74. Therefore, in addition to State’s policy statements that it will deal with the challenges of the prison situation, and the steps they may take institutionally and legislatively, the importance of an adequate budget appropriation must be seen as enabling public policies to be implemented in the prisons. As both the Commission⁷⁰ and the Court⁷¹ have consistently stated, that a

⁶⁸ Note DNSEP-DN-No.315-2012 of April 26, 2012 from the National Director of Special Preventive Services of the National Police (Secretariat for Security) Abraham Figueroa Tercero.

⁶⁹ IACHR, *Special Report on the Human Rights Situation in the Challapalca Prison in Peru*, adopted on October 9, 2003, para. 113; IACHR, Report No. 41/99, Case 11.491, Merits, Minors in Detention, Honduras, March 10, 1999, para. 135.

⁷⁰ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 60 and 62; IACHR, Press Release 104/10 – *IACHR Office of the Rapporteur Attests to Structural Deficiencies in Prison System of El Salvador*. Washington, D.C., October 20, 2010; IACHR, *Annual Report 2006*, Chapter IV, Haiti, OEA/Ser.L/V/II.127. Doc. 4 ver. 1, adopted March 3, 2007, para. 129; IACHR, *Annual Report 2005*, Chapter IV, Haiti, OEA/Ser.L/V/II.124. Doc. 7, adopted February 27, 2006, para. 245.

⁷¹ I/A Court H.R., *Case of Velez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 198; I/A Court H.R., *Case of Boyce et al. v. Barbados*.

State may not invoke economic hardship to justify conditions of detention that do not comply with minimum international standards in this area and do not respect the dignity of the person. This principle applies independently of the level of development of the State Party to the Convention.⁷²

75. According to information provided by the Office of the Attorney General of the Republic, the draft of the new Law on the National Penitentiary System was enacted by the National Congress of the Republic by Legislative Decree No. 64-2012 of May 14, 2012, and published in the Official Gazette [*La Gaceta*] No. 32,900 of December 3, 2012.

76. This law creates the National Prison Institute, which would be a decentralized agency of the Secretariat of the Interior and Population. It would be up to this new institute to organize, administer and operate all of the country's prisons. The Prison Institute would operate independently, and would not answer to the National Police. This law also creates a professional career for the staff that will work at the new correctional system. The Commission considers that an appropriate transition to these new institutions and their effective functioning, would be a major step forward in meeting international standards relating to the nature and functions of the penitentiary personnel (see *infra* paras. 84-86).

77. The IACHR notes that the entry into force of this new Law on the National Penitentiary System should be accompanied by implementing regulations, and backed up with an adequate budgetary appropriation that will enable it to become operative. Otherwise, the new legal framework will have no impact on the correctional system. It is also important that the transition to the new institutions and authorities established by the said law takes place with full transparency.

...continuation

Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, para. 88; I/A Court H.R., *Case of Montero Aranguren et al (Retén de Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 85; I/A Court H.R., *Case of Raxcaco Reyes v. Guatemala*. Judgment of September 15, 2005. Series C No. 133, para. 96.

⁷² IACHR, Report No. 49/01, Cases 11.826, 11.843, 11.846, 11.847, Merits, Leroy Lamey, Kevin Mykoo, Milton Montique, Dalton Daley, Jamaica, April 4, 2001, par. 203. With regard to prison administration, the IACHR notes with interest that a report by the Psychologist of the *Juzgado de Ejecucion* of Comayagua, refers in her recommendations that: "*there are a number of solutions that could help improve the mental health and rehabilitation and reintegration of the population which can be done, and for which all that is needed are willingness, daring and good will*". In the same opinion, the psychologist recommends to the prison authorities that they take rapid steps to control the growth of the [prison] population, which she considers as "*feasible and viable for the prison authorities to do*". This was, of course, said in full knowledge of the real context of shortages and limitations. Report presented to attorney Glenda Carolina Ayala, Supervising Judge of Comayagua, October 27, 2008, by Ms. Delia Lizeth Sanchez, Psychologist of the Court of Supervision of Comayagua.

4. Prison staff

78. Another of the serious deficiencies noted by the Rapporteurship is the shortage of professional, specialized prison staff able to perform their duties in appropriate, safe working conditions. The Commission stresses that the police are a security force whose duties are the prevention of crime and maintaining public order;⁷³ but they do not have the proper training to manage prisons.⁷⁴ The majority of those interviewed by the Rapporteur during the visit were unanimous in speaking of police participation in and benefit from the networks of corruption and illicit business generated in the prisons.⁷⁵ Additionally, as has been amply documented by local organizations and other international mechanisms for the protection of human rights, there continues to be reports that police officers are torturing or mistreating people in the course of their investigations or inside the prisons.⁷⁶

79. The effective implementation of any prison policy and of the objectives of the deprivation of liberty⁷⁷ depends on those personnel directly

⁷³ Constitutionally in Honduras, the mandate of the National Police is “to ensure the preservation of public order, prevent, control and combat crime; protect the safety of persons and their property, [and] execute the resolutions, provisions, mandates and legal decisions of the authorities and public servants” (Article 293 of the Constitution of the Republic).

⁷⁴ According to the statements made to the Rapporteurship by the representatives of the Prison Ministry of San Pedro Sula, it was in the ideological context of the 1980s and the growing militarization that “snatched” control of the prisons away from the civilian authorities (formerly under the responsibility of the Secretariat of the Interior and Justice), and it was the “military character” and the characteristics inherent in police culture that set the pattern for discipline and communal living in the prisons. Thus, the patterns of behavior that the police show in other areas are replicated in the prisons, where persons deprived of liberty are in a situation of greater vulnerability. Document: *El Sistema Penitenciario Hondureño: algunos criterios de comprensión, un “agujero negro” de la estructura socio-política* (internal think piece) [The Honduran Prison System: some thoughts on understanding a “black hole” in the social and political structure] (*Spanish only*). Also, the President of CONAPREV categorically assured the Rapporteurship that the problems with the prisons became worse after control passed to the National Police in 1998, which was emerging from the aegis of the military. The National Commissioner for Human Rights agreed with this point during his interview with the Rapporteur.

⁷⁵ As to the current situation of the police in Honduras, see in general: *El Faro, Así es la policía del país mas violento del mundo*, [This is what the police are like in the most violent country in the world], March 19, 2012, available at: <http://www.salanegra.elfaro.net/es/201203/cronicas/7982/>. For example, the Office of the Rapporteur received information to the effect that the former director of the Comayagua Prison, Wilmer O. Lopez I., arranged for a dozen or so prisoners to get out of the Gracias Prison –of which he was director until January 2012 before being assigned to the Comayagua Prison– and took them to work on his coffee plantation on March 14 last. According to the National Commissioner for Human Rights, Ramon Custodio Lopez, the use of prisoners as manpower for private work is a well-known practice, of which the authorities are very well aware. .

⁷⁶ See for example, SPT, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras, CAT/OP/HND/1, February 10, 2010*; Press Release (Tegucigalpa, May 4, 2012): *Expertos de la ONU y organo hondureño en acción conjunta para prevenir la tortura*, [UN Experts and Honduran agency take joint action to prevent torture], at: <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=12121&LangID=S>.

⁷⁷ Former Judge Guillermo Lopez L. considers that: “*beyond the policies that seek to ensure security in the prisons is the goal of social rehabilitation. In these tasks of re-adaptation and subsequent re-entry into society,* Continues...

responsible for the administration of the prisons. The IACHR reiterates that it is highly important that prison officers are recruited, trained and supervised in their work according to international standards and rules of law. Moreover, it is necessary that the State implement mechanisms not only for the monitoring of these agents, but also to ensure proper accountability by the prison administration.

80. It is essential that all practices that contribute to maintaining or fostering a culture of violence among the custodians of persons deprived of liberty must be eliminated. The IACHR stresses the principle that the effective observance of human rights requires a system in which law enforcement personnel are trained in the principles of participatory, informed democracy. Further, corruption is not an abstract or fuzzy phenomenon, but rather a concrete reality that refers precisely to the ethical integrity of the personnel into whose charge the prisons are given, and therefore, to their suitability.⁷⁸

81. According to an analysis by CONAPREV of the personnel hired by the Office of the National Director of Special Preventive Services nationally, the number of prisoners per each professional in closest contact with them is as shown below:

Title of position	Number of professionals	Average number of inmates per professional (baseline of 11,571 prisoners)
Nurse's aide	3	3,857
Cook	10	1,157
Nurse	2	5,786
Photographer	1	11,571
Physician (general practitioner)	8	1,446
Dentist	7	1,653
Psychologist	6	1,929
Social worker	5	2,314

These figures refer to personnel formally contracted, since in practice – as indicated by CONAPREV and confirmed by the Rapporteur—the shortage of

...continuation

the preponderant role is that of the technical experts in the field; these are phases in which the National Police, given their specialty, should not intervene; even the custody of persons deprived of liberty should be entrusted to specialized security bodies". Lopez Lone, Guillermo, *Contenido y alcance del Reglamento Especial para el Funcionamiento del Sistema Penitenciario Nacional* [Content and scope of the Special Regulations for the Operations of the National Prison System], p. 11. (Spanish only).

⁷⁸ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, paras. 171, 178 and 182.

professional health care staff is covered by inmates who are designated to perform this work. Thus, for example, in the San Pedro Sula Prison, the Rapporteur observed a basic shortcoming, which was that the medical doctor goes there only three hours a day, to care for a prison population of 2,199 individuals.⁷⁹

82. Although the overall figure is 1,157 prison police hired nationwide⁸⁰ [considering that there are 24 penitentiaries in Honduras], it must be kept in mind that each shift lasts for six hours, and there are therefore four shifts per day, and that there are always a changing number of police who are on vacation, on leave, legal holidays, or else assigned to transfer or transport prisoners, and therefore, while doing that work, they are not on duty in the prisons.⁸¹

83. As to the level of education of the police officers in charge of prisons, CONAPREV has reported that 73% of the prison police officers have not finished 6th grade of primary school; another 19% have graduated from 6th grade of primary school, but have not necessarily completed all of their basic education, or who have finished the III general culture course.⁸² Only 8% of the prison police have gone further than these levels; and in fact, only two prison directors at the national level have studied professional degrees in prison science (Marvin Rajo Galo and Danny Rodriguez).⁸³ The fact that there is no degree in prison science is a key element in the weaknesses of the human resources assigned to prison management.

⁷⁹ According to the document entitled: *Recuento de Internos por Bartolina* [Inmate Count by Cell] of April 23, 2012, provided to the Rapporteurship by the Director of this prison.

⁸⁰ Official Note No. 188-DGAE-13 of issued by the General Bureau of Special Affairs of the Ministry of Foreign Relations of the Republic of Honduras, which transmits Official Note No. SP-A-24-2013 of February 8 2013, issued by the Office of the Attorney General of the Republic, to the IACHR. Source: National Bureau of Special Preventive Services. Daily communication of Monday, January 28, 2013.

⁸¹ This situation was corroborated by all of the Directors of the prisons visited.

⁸² CONAPREV, *Diagnostico del Sistema Penitenciario en Honduras (15.11.2011)*, [Assessment of the Prison Situation in Honduras] (*Spanish only*). pp. 37 and 38.

⁸³ Both received their training in the Federal Prison School of Argentina. According to a study provided to the Rapporteurship by the then National Coordinator of the Courts for Sentencing Supervision [*Juzgados de Ejecucion de las Penas y Medidas de Seguridad*], “none of the Directors of Corrections Centers or National Penitentiaries has a law degree, as required by law: eight of them have B.A.s in Police Sciences, one is studying for that degree, and only one is studying for a law degree; five of the directors report that they did not complete their secondary education, and nine completed middle school, seven of whom have certificates in accounting, and two high school graduates in arts and sciences”. Guzman V., Malcolm E., *Breves consideraciones al Reglamento Especial para el Funcionamiento del Sistema Penitenciario Nacional a la luz de la normativa legal vigente y la realidad actual de los establecimientos penitenciarios* [Brief considerations on the Special Regulations for the Operations of the National Prison System in the light of current legislation and the realities of the prisons], p. 4 (*Spanish only*).

84. The working conditions of the prison staff are deplorable, according to CONAPREV, “*police officers’ salaries are simply very poor, given the number of hours they work away from their homes, trying to support their families*”. According to official information supplied by the Secretariat for Security, the salary of a prison police officer may range from 5,500 to 9,134 Lempiras; that is, between US\$289.47 and US\$480.73 per month.⁸⁴ The final budget allocated to food per day for each prison police officer is, according the National Director of Special Services himself, 17 Lempiras per day (about US\$0.90).

85. It is also a reality that prison officers are to a large degree subject to the same deplorable conditions in the prisons as the inmates, and in some circumstances, to conditions that are even worse. Thus, for example, during the visit to the San Pedro Sula Prison, the Rapporteurship observed that one of the watch towers around the perimeter is located in a place where a large amount of garbage is thrown and piles up, and water accumulates. The guards on duty at this post climb up on portable ladders and stay there for six or eight hours, with no access to a bathroom, and exposed to a hot, unhealthy environment and a constant smell of putrefaction.

86. The notable inferiority in the numbers of prison police compared to the prison population is, per se, an additional risk factor for the police. The deputy in charge of the San Pedro Sula Prison explained to the Rapporteurship that one of the reasons why proper searches cannot be done in that prison is precisely on account of the overwhelming number of prisoners (generally armed) who are crowded into the narrow cells. As a result, the prison officers have to “coordinate” the searches with the inmates, because to do otherwise would put the security personnel at unnecessary risk.⁸⁵

87. In order to overcome these deficiencies, the State of Honduras should ensure that the prisons are administered and guarded by specialized prison personnel who are civilians and who are public servants. That is to say, these duties should be entrusted to a security corps that is independent of the military and police forces and that has had specialized training in prison affairs. Training of prison staff is not only essential to proper management of the prisons, but also basic to the respect for and guarantees of the fundamental rights of persons deprived of liberty. Existing prison staff should be sufficient to cover the workload in the various prisons, since the lack of sufficient prison staff causes, among other

⁸⁴ CONAPREV, *Diagnostico del Sistema Penitenciario en Honduras (15.11.2011)*, [Assessment of the Prison Situation in Honduras] pp. 43 and 44.

⁸⁵ Statements made by this officer in an interview with members of the Rapporteurship during the visit to the San Pedro Sula Prison.

things, problems of internal security within the prisons, which endanger the safety of the inmates, prison guards and visitors.⁸⁶

88. The Commission considers it crucial that the prison officers receive a fair remuneration that will enable them and their families to have a decent standard of living, given the risks, responsibilities and stressful situations inherent in their work, and the technical capacity that their profession demands. It is also a widely-noted reality that the prison officers' poor remuneration is one factor that may make them susceptible to corruption or to seek another type of income or "bonuses". As to the other working conditions of prison staff, the IACHR considers that they should have: (1) safe and hygienic working conditions; (2) the hours of the workday should be honored, and the necessary psychological and physical support provided; (3) a system of rest days and vacations proportionate to the wear and tear involved in their permanently-stressed work; and (4) regular training. The IACHR also recommends that the personnel who work in correction facilities be given the necessary physical and mental care.⁸⁷

89. Finally, the Commission notes that while it is inherent in prison administration that prison directors be transferred from time to time, the frequency with which prison directors are continuously rotated from one prison to another in Honduras is striking. This debilitates the institutions, and contributes to the consolidation of other real factors of power that exist in the prisons, which is of particular concern in Honduras because of the system of "self-government" or "shared government" that is exercised by means of the "coordinators".

5. Lack of separation based on sex

90. According to the information presented by the *Jueces de Ejecución*, Honduras has a total prison population of 11,727, 409 of whom are women (3.4% of the total population); however, the only prison specifically for women in Honduras is the National Women's Social Adaptation Penitentiary (PN-FAS), with a capacity of 200, and which, according to information provided by the Secretary for Security, houses only 164 females. The remaining women deprived of liberty are in "mixed" prisons, which have been adapted by adding an "annex" or "section" for women; but they are, nonetheless, clearly prisons for male prisoners. In at least

⁸⁶ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, paras. 193, 196, 199 and 206.

⁸⁷ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, paras. 211, 213 and 214.

two of these prisons, women live alongside men: in the San Pedro Sula Prison, as directly confirmed by the Rapporteurship, and in the El Progreso Prison.⁸⁸

91. In its visit to the San Pedro Sula Prison, the Rapporteurship was informed that women's cellblock No. 7 housed 68 prisoners,⁸⁹ and it noted that that cellblock is inside the general yard where the male cellblocks are located, and where, during the day, men and women mix together. As stated earlier, the yard is a large market where all types of products are sold, and a variety of commercial activities are carried on. Many of the women prisoners work in businesses such as cafeterias, selling fruit and other small enterprises, and deal on a regular basis with the male population.⁹⁰ According to reliable reports, many of these women, when they first enter, need to find themselves a "husband" (usually a male prisoner with a certain amount of power) to seek protection and find a place in the social structure of the prison.

92. The Inter-American Commission considers that although this reality is seen by the prisoners and by some authorities as natural –and even though the Director of the Prison has said that there were no sexual assaults on women, and that no pregnancies had been reported– the situation is totally anomalous, aberrant and contrary to international law. It is aggravated by the fact that it is a prison in which internal control is exercised completely by the prisoners and the women find themselves in a particularly vulnerable situation. It is very striking that in the San Pedro Sula Prison, the authorities have located on the periphery of the prison –that is, outside the main yard– the cellblocks of groups such as gang members and former police officers who, for security reasons, cannot be mixed with the general population, but that the women do remain in the main yard.

⁸⁸ The Supervising Judge of El Progreso, Judicial Circuit of San Pedro Sula, informed the Rapporteurship that in the Progreso Prison, there are 11 female inmates who, during the day, mix freely with the men. According to the national analysis done by CONAPREV, "[t]he block assigned to women is extremely small, and has only a single bath and toilet". CONAPREV, *Diagnóstico del Sistema Penitenciario en Honduras (15.11.2011)* [Assessment of the Prison Situation in Honduras], p. 55.

⁸⁹ According to the document entitled: *Recuento de Internos por Bartolina* [Inmate Count by Cell], provided to the Rapporteurship by the Director of the prison, there were sixty-eight women in block No. 7; however, in another document on the prisoners' overall situation (or status of their case), also provided by the Director of the Prison, it appears that the total number of women is 75. A careful reading of the first document shows that the remaining seven women who are not in cellblock No. 7 are recorded as living in cellblocks Nos. 10-B (2), 10-C (2), 23 (1), 25 (1) and 28 (1), all of which house male prisoners.

⁹⁰ In its mission report, the SPT indicated that during its visit to the San Pedro Sula Prison, "had clear indications, on the basis of accounts corroborated by its own observations that some women prisoners were working as prostitutes in the two prisons visited". SPT, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras, CAT/OP/HND/1*, February 10, 2010, para. 259.

93. This complete failure to segregate prisoners by sex—which continues to this day in the San Pedro Sula Prison—was clearly noted by the Rapporteur for the Rights of Persons Deprived of Liberty, Florentin Melendez, in his visit to Honduras in 2004; he reiterated his concern to the State in the public hearing conducted in March 2006.⁹¹

94. The segregation of sexes in prison is one of the fundamental guarantees that States must ensure for the protection of the life and personal integrity of women in its custody. With regard to segregation [of prisoners], the Principles and Bests Practices provide that different categories of persons deprived of freedom “shall be kept in separate places of deprivation of liberty or in different sections within the same institution”, taking account of their sex, with particular importance being given, *inter alia*, to the separation of men and women (Principle XIX). Similarly, the Working Group on Arbitrary Detention has considered, that “[i]t is imperative to allocate entirely separate premises to women in institutions which receive both men and women, if it is not possible to detain women in separate institutions”⁹².

95. The segregation of men from women must be effective. That is, women must be housed in places different from those allocated to male prisoners; or in those centers that have a “section”, “annex” or “block” for women, it must be ensured that they not be in contact with male prisoners, nor with male prison guards working in the male prisoner wings.

96. Maintaining women’s sections in male prisons brings with it a special duty of supervision and control by the State. Thus, is inadmissible under any circumstances that there should be places allocated to housing women in mixed prisons where internal control is exercised by the prisoners themselves. The women prisoners would otherwise be placed at permanent risk of being subject to abuse and assault of all kinds.

97. The Commission considers that Honduras should take immediate steps to ensure the effective segregation of men and women, and in particular, should remove from those prisons such as San Pedro Sula and El Progreso the cellblocks in which women openly mix with men, and put a definitive end to this system.

⁹¹ IACHR, Minutes of Hearing No. 29: *Situation of persons deprived of liberty in Honduras*, March 7, 2006, 124th Period of Sessions. Participants: representatives of the State and representatives of COFADEH, Casa Alianza, CEJIL, CODEH and CPTRT.

⁹² United Nations, Working Group on Arbitrary Detention, Report submitted to the Human Rights Council, A/HRC/7/4, adopted on January 10, 2008, para. 57.

C. Highlights of the monitoring of the situation by international human rights agencies

98. Monitoring by international human rights agencies of the serious prison situation in Honduras is not new. Over the last decade, the organs of the Inter-American System and of the Universal System of the United Nations have consistently referred to the serious structural deficiencies of the Honduran prison system, which led to the tragedy that occurred in the Comayagua Prison on February 14, 2012.

99. Thus, for example, in December 2004 the then Rapporteur of the IACHR on Rights of Persons Deprived of Liberty, Florentin Melendez, visited the San Pedro Sula Prison and the Marco Aurelio Soto Prison in Tegucigalpa,⁹³ and observed with concern “*overcrowding, the lack of adequate sanitary conditions, and a shortage of human and budgetary resources, as well as the absence of effective controls to prevent weapons being brought into the detention centers.*”⁹⁴ Similarly, in January 2006, in light of the violent events that took place in the Marco Aurelio Soto Prison where thirteen inmates lost their lives, the IACHR issued a press release in which it said:

[T]he Commission urges the Honduran State to take the necessary steps to safeguard the life and personal safety of the persons deprived of liberty in the prison system, as well as in the other detention centers in Honduras. In particular, the State must exercise control over force and discipline in the detention centers, as well as over the entrance and carrying of arms. Further, it must prevent such acts of violence and loss of human life from recurring in future by conducting the corresponding administrative and judicial inquiries.⁹⁵

100. In its judgment in the case of Juan Humberto Sanchez v. Honduras (2003), the Inter-American Court of Human Rights ruled that Honduras should draw up a registry of detained persons in order to verify the legality of the

⁹³ IACHR, Press Release No. 26/04 (Tegucigalpa, December 4, 2004): *Inter-American Commission on Human Rights and UNICEF Express Concern over Situation of Boys, Girls, and Adolescents Involved with Gangs in El Salvador, Guatemala, and Honduras*.

⁹⁴ IACHR, Press Release No. 2/06 (Washington, January 6, 2006): *The Inter-American Commission on Human Rights Expresses Concern over Violence in Honduran Penitentiary*, available at: <http://www.cidh.org/Comunicados/English/2006/2.06eng.htm>.

⁹⁵ IACHR, Press Release No. 2/06 (Washington, January 6, 2006): *The Inter-American Commission on Human Rights Expresses Concern over Violence in Honduran Penitentiary*.

detentions.⁹⁶ Three years later, in its judgment in the case of *Lopez Alvarez v. Honduras* (2006), the Court ruled, as a measure of non-repetition, that Honduras should, within a reasonable time frame, “ensure the inmates an adequate diet, medical attention, and physical and sanitary conditions pursuant with the international standards on this subject”; and “implement [...] a training program on human rights for the officers that work in the penitentiary centers.”⁹⁷

101. In May 2008, in light of the serious violence that had occurred in the San Pedro Sula Prison in which nine inmates lost their lives, and in the Marco Aurelio Soto Prison in which eighteen prisoners died, the IACHR reminded the State that it has the duty to investigate this type of event “thoroughly and to prosecute and punish those responsible”; and underscored that,

State human rights obligations include the obligation to adopt all necessary measures to adequately address the current prison situation. In this regard, the IACHR calls on Honduran authorities to urgently take appropriate actions and measures to solve the structural problems affecting the country’s prisons.⁹⁸

102. On October 22, 2010, the IACHR adopted Merits Report No. 118/10 referred to the fire occurred on May 17, 2004 in the cell No. 19 of the National Penitentiary of San Pedro Sula, and the lack of adequate investigation of this incident. In this report the IACHR made various recommendations to the State, some of them with effects directed to the whole penitentiary system.⁹⁹ As a consequence of the lack of compliance with this decision, the IACHR submitted the case to the Inter-American Court on March 11, 2011; one year later, on April 27, 2012, the Court delivered its sentence on the merits, reparations and costs.

103. In its decision, the I/A Court H.R. established *inter alia* that these events were the direct result of a series of structural deficiencies in that prison and

⁹⁶ I/A Court H.R. *Case of Juan Humberto Sanchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, par. 189 and 201(12), which as per the Court’s monitoring of its decisions, is still pending compliance: I/A Court H.R. *Case of Juan Humberto Sanchez v. Honduras*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, February 20, 2012, operative point 2(c).

⁹⁷ I/A Court H.R. *Case of Lopez Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, par. 209 and 210, which is also pending compliance: I/A Court H.R. *Case of Lopez Álvarez v. Honduras*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 06, 2008, operative paragraph 2(b). This was reiterated by the Court itself in 2012: I/A Court H.R. *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations and Costs. Judgment of April 27, 2012 Series C No. 241, para. 94.

⁹⁸ IACHR, Press Release No. 20/08 (Washington, May 8, 2008): *IACHR laments violent deaths in Honduran prisons*.

⁹⁹ IACHR, Report No. 118/10, Case 12.680, Merits, Rafael Arturo Pacheco Teruel *et al.*, Honduras, October 22, 2010, par. 144, available at: <http://www.oas.org/en/iachr/decisions/cases.asp>.

in cell No. 19, of which the competent authorities were aware. Regarding the investigation of these events, the Court determined that the court authorities' actions were geared only to determining the potential criminal responsibility of the Director of the prison at the time of the fire, and that no new inquiry had been started or other lines of investigation followed; nor had the potential criminal, administrative or disciplinary responsibility of other authorities or personnel been raised.¹⁰⁰ The Court ruled that:

[T]he State must incorporate into the design, structure, construction, improvement, maintenance and operation of detention centers, all the physical mechanisms that [will] minimize the risk of emergency situations or fire and, should these situations occur, ensure that it can react with due diligence, guaranteeing the protection of the inmates or a safe evacuation of the premises. These mechanisms include effective systems of fire detection and extinction, alarms, and emergency protocols that ensure the safety of those deprived of liberty.

104. It also reiterated its opinion that “*States cannot claim financial difficulties to justify detention conditions that do not comply with the relevant minimum international standards and that fail to respect the inherent dignity of the human being*”. It further said that: “*In cases such as this one, in which there has been a recurring pattern of disasters in the Honduran prison system, guarantees of non-repetition are of greater relevance as a measure of reparation...*”¹⁰¹

105. By mean of this sentence, the Court endorsed the friendly settlement agreement signed by the Parties on February 28, 2012 and determined the scope and forms of execution of the measures that had been agreed to.¹⁰² In the context of the present report, and from the standpoint of monitoring the situation of persons deprived of liberty in Honduras, the IACHR observes that this

¹⁰⁰ I/A Court H.R. *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations and Costs. Judgment of April 27, 2012, Series C No. 241, par. 57, 60 and 62. Also see the official summary of the case, available at: http://www.corteidh.or.cr/docs/casos/articulos/resumen_241_esp.pdf.

¹⁰¹ I/A Court H.R. *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations and Costs. Judgment of April 27, 2012 Series C No. 241, par. 67(I), 68 and 92.

¹⁰² On February 28, 2012, during the public hearing on the case of *Pacheco Teruel et al.*, the representatives of the victims and of the State signed a friendly settlement agreement, and an implementation timetable which were then submitted to the jurisdiction of the I/A. Court H.R. The public hearing at which this agreement was announced is available at the following link: <http://www.vimeo.com/corteidh/videos>. Also see in general: I/A Court H.R., Press Release No. 2/12 (San José, Costa Rica, February 28, 2012): *Acuerdo de solución amistosa sobre muertes en una cárcel en Honduras* [Friendly settlement agreement on deaths in a Honduran prison] (*Spanish only*).

judgment set out the following guarantees of non-repetition that the State must implement:¹⁰³

Category / Measure	Timeframe for implementation
(a) Construction and improvement of the physical conditions of the prisons	
Construction of a new prison to replace the current one in San Pedro Sula.	Construction will begin immediately following the award of the project by public tender in 2013 and will continue in 2014 following approval of funds in the general budget of the Republic for those fiscal years.
Assessment and identification of the physical needs of the prisons declared in emergency. Start of improvement work.	Between April and December 2012. In 2014 and 2015.
Adopt the following immediate measures in the prisons as set out in the agreement: (i) the separation of those [awaiting sentence] from those who have been convicted; (ii) an assessment of prison overcrowding; (iii) an evaluation of critical situations such as fires, and (iv) mechanisms and equipment to respond to fires.	Within six months of the date of notification of the judgment (17.05.12).
(b) Adoption of legislative measures	
Review, modify or repeal article 332 of the Penal Code and other similar legislative provisions or regulations, in accordance with the guidelines set forth in paragraphs 100--108 of the judgment.	Within one year of the date of notification of the judgment (17.05.12).
Approve the Law on the National Prison System; review and amend the Special Regulations on the Operations of the National Prison System; and prepare a Prison Administration Manual, in accordance with the guidelines set forth in paragraphs 109--112 of the judgment.	Within one year of the date of notification of the judgment (17.05.12).

¹⁰³ I/A Court H.R. *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations and Costs. Judgment of April 27, 2012 Series C No. 241, par. 95-114, 143.

(c) Training of prison officers and emergency plans	
Training programs that include training on human rights and emergency and evacuation plans in case of fire or other catastrophic events. These programs or courses should be ongoing, and designed for prison system personnel at all levels.	These training programs and courses should begin within six months of the approval of the Prison Administration Manual, that is, eighteen months at the latest following notification of the judgment (17.05.12).

106. Furthermore, the United Nations mechanisms with competence over the subject of persons deprived of liberty have referred in similar terms as the bodies of the Inter-American System with regards to the prison situation in Honduras. In 2006, the Working Group on Arbitrary Detention (WGAD) emphasized the lack of judicial control over police detentions and the lack of records of these arrests;¹⁰⁴ and also referred to “*the absence of a proper prison administration*”, and highlighted the unwarranted abdication of prison administration by the police; the failure to separate prisoners held without sentence from those who have been sentenced; poor and insufficient food; the lack of medical and hygiene services; the free mixing of male and female prisoners in the San Pedro Sula y La Ceiba prisons; and the shortfall in the budget assigned to the prison system.¹⁰⁵

107. Also in 2006, the [UN] Human Rights Committee (HRC) pointed to the following as matters of concern: the high number of inmates in preventive detention; the overcrowding and poor conditions in the prisons; the failure to segregate convicted prisoners from those awaiting trial; the shortage of drinking water and sanitation services; the practice of solitary confinement; and the ease with which prisoners obtain drugs and weapons.¹⁰⁶

108. In 2009, the Committee Against Torture (CAT) also called attention to the large number of deaths of prisoners that have not been investigated; overcrowding; the lack of drinking water; insufficient food; bad sanitary conditions; the failure to segregate convicted prisoners from those awaiting trial, and men from women; rates of prisoner-on-prisoner violence; the frequent cases of mistreatment and torture, excessive use of force at the time of detention, and the

¹⁰⁴ WGAD, *Implementation of General Assembly Resolution 60/251 of 15 March 2006, Mission to Honduras*, A/HRC/4/40/Add.4, December 1, 2006, paras. 61-67, Document available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/152/67/PDF/G0615267.pdf?OpenElement>.

¹⁰⁵ WGAD, *Implementation of General Assembly Resolution 60/251 of 15 March 2006, Mission to Honduras*, A/HRC/4/40/Add.4, December 1, 2006, para. 77 and 78.

¹⁰⁶ HRC, *Consideration of reports submitted by States parties under article 40 of the Covenant – Concluding Observations*, Honduras, CCPR/C/HND/CO/1, December 13, 2006, par. 14 and 15. Document available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/603e371c3f36d612c12572590050bac1?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/603e371c3f36d612c12572590050bac1?Opendocument).

acts of extortion committed by members of the security forces, and high rates of preventive detention.¹⁰⁷

109. Subsequently, the Subcommittee on Prevention of Torture (SPT), established by the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), paid its first regular visit to Honduras on September 13—22, 2009. As the result of this mission, the SPT drew up a comprehensive, detailed report with its observations, conclusions and recommendations on the situation of persons deprived of liberty in Honduras. This report refers, *inter alia*, to basic issues such as: the lack of reliable records of detentions; the deplorable physical conditions in which detainees are held in police stations; the function of the *Jueces de Ejecucion*; the failure to comply with *habeas corpus* decisions of the Constitutional Bench of the Supreme Court of Justice concerning the country's main prisons; structural deficiencies in the management of the prison centers, making special mention of the networks of corruption that exist, and the role of the so-called "coordinators" or "rondines"; and the status of women deprived of liberty. In its report, transmitted to the State on January 7, 2010, the SPT makes approximately eighty-five specific recommendations on these and other matters.¹⁰⁸

110. The Subcommittee on Prevention of Torture paid its second visit to Honduras between April 30 and May 4, 2012. The main objectives were to provide technical advice to the National Committee against Torture (CONAPREV), and to follow up on the recommendations made after its first visit in 2009. In a press release at the conclusion of the mission, the Vice Chair of the Subcommittee and head of the delegation to Honduras stated:

Unfortunately, we have found that most of our recommendations, which include measures designed to do away with prison overcrowding and overpopulation, lessening of impunity for cases of torture, and strengthen the criminal justice system, have not been complied with. The situation observed in 2009 has not improved. Until our recommendations, and those of other human rights agencies, are put into practice, regrettable events such as those that occurred in the Comayagua and San Pedro Sula Prisons may occur again. The Government of Honduras should begin a

¹⁰⁷ CAT, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention - Concluding Observations, Honduras*, CAT/C/HND/CO/1, June 23, 2009, paras. 14, 16 and 17. Document available at: <http://www2.ohchr.org/english/bodies/cat/cats42.htm>.

¹⁰⁸ SPT, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, CAT/OP/HND/1, February 10, 2010, CAT/OP/HND/1, February 10, 2010.

thorough and comprehensive reform of its prison system as soon as possible, using as a guide the standards of the United Nations system and of the inter-American system for the protection of human rights. Accordingly, we hope that the new prison law will be approved as soon as possible, and that action be taken as needed to implement it promptly and effectively.

111. The SPT also considered that it was essential for CONAPREV be strengthened, and that the National Government provide it with all necessary political and financial support so that it can carry out its functions effectively.¹⁰⁹ In this respect, the Commission notes that not only is the budgetary allocation to this institution important, but also that the necessary administrative steps be facilitated for the agile use of these funds.

112. The Inter-American Commission also underscores the value of CONAPREV as an institution created in compliance with obligations arising out of an international treaty that has been ratified by the State. The work of CONAPREV is particularly important in the current state of prisons in Honduras, and especially at a moment in time as complex as this, when there will be a transition to a new legal and regulatory framework, and a transfer of these functions to a new prison institute.¹¹⁰

113. The IACHR also expresses its deep concern over the information received from the President of CONAPREV, Ms. Odalis Najera, according to whom, on the night of Friday, June 15, 2012, unknown persons assaulted the headquarters of CONAPREV and broke the kitchen door, although she said that they took nothing. Ms. Najera also reported that this is the second time in less than a year that assailants had forced their way into the headquarters of the National Mechanism for Prevention of Torture. The first incident occurred on July 27, 2011, when three heavily-armed men entered CONAPREV's offices, pointed at Ms. Najera and the cleaning woman with a gun, and forced them to lie down on the floor. They also stole Ms. Najera's vehicle, and she has not been able to recover it to date. In this regard, the Commission recalls that acts of violence and harassment against defenders of human rights affect the guarantees inherent in every person, and are also an attack on the fundamental role they play in society.

¹⁰⁹ Press Release (Tegucigalpa, May 4, 2012): *Expertos de la ONU y órgano hondureño en acción conjunta para prevenir la tortura*, [UN Experts and Honduran agency take joint action to prevent torture].

¹¹⁰ Cooperation with and support for CONAPREV from the Secretariat of Justice and Human Rights, whose functions include coordination and liaison with institutions responsible for promoting and protecting the rights and guarantees of, inter alia, persons deprived of liberty. This is particularly the case since it is an institution of the State whose functions are to strengthen the institutional basis of the protection of human rights in the State. The support that the Secretariat of Finance can also provide to the National Prevention Mechanism in handling the budget required by CONAPREV for its operations is decisive.

IV. THE SITUATION IN THE COMAYAGUA PRISON AND THE FIRE OF FEBRUARY 14, 2012

114. Following the fire that occurred in the Comayagua National Penitentiary on February 14, 2012 in which 362 people died – an event of unprecedented magnitude in the region—the Inter-American Commission took four specific steps: (a) it issued a statement in a press release;¹¹¹ (b) based on its powers under Article 41 of the American Convention, it addressed a request to the State for information¹¹²; (c) it convened on its own motion a public hearing with the presence of the State to be held during the period of sessions in March 2012;¹¹³ and (d) it decided to pay a monitoring visit to Honduras.¹¹⁴

115. The information provided below is given in three stages: (1) the overall conditions in the Comayagua National Penitentiary prior to the fire that occurred on February 14, 2012; (2) the situation in the Comayagua Prison as seen by the Rapporteurship at the time of its visit, and information received with regard to the fire; and (3) the observations by the Inter-American Commission.

116. As stated earlier, the purpose of the present document to report on the situation of the Comayagua Prison in the context of the prison situation in Honduras, and to make recommendations to the State, in order to remedy the

¹¹¹ IACHR, Press Release No. 19/12 (Washington, February 15, 2012): *IACHR Deplores Deaths in Fire in Honduras Prison*. Available at http://www.oas.org/en/iachr/media_center/PReleases/2012/019.asp. The Office of the UN High Commissioner for Human Rights (Geneva) issued a press release on February 17 in which it reiterated the statements by the IACHR, and called on the Honduran authorities to conduct a thorough, independent investigation of the causes of the fire, and consider the extent to which conditions in the Comayagua Prison contributed to this enormous loss of life. OHCHR, Press Briefing Note, *Prisons in Latin America*. Document available at: <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11836&LangID=E>.

¹¹² The State of Honduras responded this request by Official Note No. SP-A-45-2012 issued by the Office of the Attorney General of the Republic, transmitted to the IACHR by Official Note No. 382-DGAE of March 20, 2012, issued by the General Bureau of Special Affairs of the Ministry of Foreign Relations of the Republic of Honduras.

¹¹³ In his statement to this hearing, the Rapporteur on the Rights of Persons Deprived of Liberty indicated that the prison situation in Honduras is extremely grave, and requires implementation of a comprehensive public policy designed to resolve the serious structural deficiencies that exist. The Rapporteur referred to the emergency decrees issued by the Executive Branch in recent years, and pointed out that emergencies are normally declared for short-term situations, and not in the case of structural crises. IACHR, Minutes of Hearing No. 12: *Situation of the human rights of persons deprived of liberty in Honduras*, March 26, 2012, 144th Period of Sessions. Participants: representatives of the State. The audio and video of the hearing are available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=125>.

¹¹⁴ On February 24, 2012, the IACHR advised the government of Honduras of its interest in paying a visit to the country, and began to organize it in coordination with the Office of the Director General for Special Affairs of the Foreign Ministry. The IACHR appreciates the fact that –independently of its decision to request a visit to Honduras–, the Permanent Representative of the Mission of Honduras to the OAS wrote a letter to the IACHR on February 16 in which he said that “any mission that the IACHR wishes to pay to conduct an *in situ* evaluation of the situation will be received with pleasure and esteem”.

grave deficiencies that lead to the death of the victims of the fire and to prevent the repetition of similar incidents. In contrast to a case, the IACHR has drafted the present report in exercise of its mandate of monitor situations that may affect the enjoyment of human rights, and of making recommendations oriented to improve and support the implementation of specific measures by the State.

A. General conditions in the Comayagua Prison prior to the fire that occurred on February 14, 2012

117. According to documentation provided by the *Jueza de Ejecucion* of Comayagua,¹¹⁵ the city's Fire Department issued two "reports on prevention visits" to the Comayagua Prison Farm in 2004 and 2005, in which it concluded that the facility presented a high risk of fire, and made recommendations as to its administration.

118. The first of these reports, written on October 5, 2004, following an unscheduled inspection carried out that day, said that the Comayagua Prison presented a "*high probability of fire*" and a "*high risk of fire*". And it indicated the following as being required corrective actions:

I. Total rehabilitation of the electrical system, mainly in the prisoners' area. (II) Portable extinguishers and smoke or heat detectors are needed at strategic points. (III) An emergency evacuation plan is needed. (IV) Signs for evacuation routes. (V) Reduce the amount of flammable material in areas where there is highest risk of fire. (VI) An evacuation area for prisoners should be constructed adjacent to the Prison.

119. In its report written on June 7, 2005, following a special inspection carried out that same day, the Fire Department reported that the Comayagua Prison offered "*no protection against fire*" and that the "*risk of fire was high*". This technical opinion also detailed the dangers and deficiencies that had been found, as follows:

1. Electrical intake lines in the front feel too warm. 2. Prisoners working with power outlets incorrectly. 3. Some splices are lined with nylon bags. 4. Locate the main circuit breaker at the front near the meters (corrective action).

¹¹⁵ According to the note issued on June 7, 2012 by the Supervising Court of the Judicial Section of Comayagua, and provided directly to the IACHR Rapporteurship on the Rights of Persons Deprived of Liberty.

Required corrective actions indicated:

1. Consult with ENEE personnel as to the reasons why wires are overheating.
2. Make prisoners aware that they should not “improvise” repairs.
3. Use insulating tape to cover the splices.
4. Install the main circuit breaker at the front near the meters.
5. Distribute the electric load better in order to prevent over-heating of the wires.

120. Furthermore, a detailed report prepared by the social worker of the *Juzgado de Ejecucion* of Comayagua in January 2009 indicates that the Prison Farm presents the following characteristics, inter alia:

Persons deprived of liberty have their own organizational structure, consisting of a general coordinator and ten cellblock coordinators, who define the rules for living inside the cellblock.

The spaces for sports and visiting areas are tremendously small, and the ambiance is therefore perceived as very disagreeable and inhumane; these are areas where, four days a week, some of the prisoners receive their mothers, wives and children.

Seven of the cellblocks house an average of 93 inmates each [...]. The overcrowding [...] is increasingly producing the following effects on the health of the population: headaches, anger, mass hysteria, greater use of drugs, discrimination, increase in mental illness, low self-esteem, depression, frustration and feelings of impotence. The current conditions of overcrowding in the cellblocks is creating an enormous time bomb, which grows larger as the population increases and, if there were a prisoner uprising, there is the risk of a high percentage of deaths [...].

121. This technical report proposes that measures be adopted such as: even distribution of the population among cellblocks; reduce and reorganize the private rooms; and construct a second set of ten cellblocks over the period 2009—2010.¹¹⁶

¹¹⁶ Report: *Situación de la Población en la Penitenciaría Nacional de Comayagua*, Lic. Marlon Edgardo Zuñiga Briceño, Social Worker, Comayagua, Comayagua, January 12, 2009.

122. After her inspection of the prison in July 2009, the *Jueza de Ejecucion* of Comayagua wrote the following in a minute:

In block No. 6, there are 96 prisoners, two of whom do not have beds and who are sleeping on the floor; in block No. 5, there are 96 prisoners, 17 of whom do not have mattresses; in block No. 4, there are 38 prisoners [...]; Block No. 7 has 82 prisoners, three of whom are sleeping on the floor, and 15 of whom have no mattress [...]; Block No. 8 has 95 prisoners, twenty of whom do not have a mattress [...]; in Block No. 3, there are 95 prisoners, with three sleeping on the floor and 16 who do not have a mattress [...]; block No. 2 has 38 prisoners; it is here that prisoners who hold trusted positions sleep [...]; block No. 9 has 14 prisoners [...]; in block No. 10, there are 97 prisoners, three of whom sleep on the floor and 25 of whom have no mattress [...]; in block No. 1, there are 98 prisoners, ten of whom have no mattress and who sleep on the floor [...].

We observed overcrowding that exceeds the limits of the prison's capacity, and that the conditions for the prisoners are poor, because they lack space and ventilation. We also noted that there is a great disproportion among cell-blocks: in one, there are 14 prisoners, and in another, 95 but the spaces are the same [...].¹¹⁷

123. In the court order in which this minute was admitted into evidence, the Judge was more specific about the over-population in the prison:

[T]he distribution among cellblocks that is done by the prison officer responds to private interests and not the interests of the general welfare; the principal point should be equal treatment for prisoners, but the way in which they have been distributed has created a marked inequality among them, and this represents a serious hazard to the lives and safety of the majority of the population.¹¹⁸

¹¹⁷ Minute of Inspection, Supervising Judge of Comayagua, together with the Secretary of that office following a visit to the Comayagua Prison, July 25, 2009.

¹¹⁸ Supervising Court, Judicial Section of Comayagua, Order of August 7, 2009, Complaint file No. 498, with regard to a complaint filed by persons deprived of liberty held in the Comayagua Prison July 28, 2009.

124. In its analysis of the state of prisons in Honduras, CONAPREV noted that the Comayagua Prison Farm has a population of 842 inmates, while its capacity is for 250; and that:

The prisoners live in cellblocks that are completely overcrowded, they sleep on four-story bunks, which puts the safety and lives of the prisoners at risk. There have already been cases of [prisoners] falling down; 10 to 15 prisoners are sleeping on the floors, each cellblock has 2 toilets, two baths, and an area for washing clothes that has a washtub and laundry. Ventilation in each cellblock is poor, and smells mingle, they are unhealthy places. [...] The custodial staff number 67, who change shifts every six hours in groups of 10. [...] The clinic is served by a medical doctor in the mornings, and by a nurse's aide and a prisoner for the rest of the day.¹¹⁹

125. According to information supplied by the CPTRT, the population of the five cell blocks that burned down was, until the fire, as follows: cellblock (or "home") No. 6 (106 prisoners); No. 7 (89); No. 8 (107); No. 9 (80); and No. 10 (105), while, according to CPTRT, the capacity of each cellblock was 25. The custodians numbered 67, who did shifts of six hours, in groups of approximately ten personnel. Moreover, the prison has a medical doctor who works three hours in the morning; a full-time nurse's aide; a dentist who works for three hours in the afternoons; and an attorney.¹²⁰ The State informed the IACHR that the total housing capacity of the Comayagua Prison at the time of the fire was between 300 and 350, and that its actual population at that time was 852.¹²¹

126. Regarding the Comayagua Prison's means of dealing with a fire, the State indicated: "it has a cistern with a capacity of three thousand gallons of water; the alarm system consists of firing guns into the air; but it does not have emergency extinguishers, and therefore did not have the appropriate equipment for putting out the fire, and therefore called the Fire Department."¹²²

¹¹⁹ CONAPREV, *Diagnostico del Sistema Penitenciario en Honduras (15.11.2011)*, [Assessment of the Prison Situation in Honduras] p. 72.

¹²⁰ CPTRT, *Informe sobre actividades en el Centro Penal de Comayagua a raíz del incendio ocurrido el 14 de febrero de 2012*, Chapters III and V.

¹²¹ Note No. SP-A-45-2012 of the Office of the Attorney General of the Republic, which was transmitted to the IACHR by means of Note No. 382-DGAE of March 20, 2012, from the Office of the Director for Special Affairs of the Secretariat for Foreign Affairs of the Republic of Honduras.

¹²² Note No. SP-A-45-2012 of the Office of the Attorney General of the Republic, which was transmitted to the IACHR by means of Note No. 382-DGAE of March 20, 2012 from the Office of the Director for Special Affairs of the Secretariat for Foreign Affairs of the Republic of Honduras.

B. Status of the Comayagua Prison observed by the Rapporteurship at the time of its visit, and information received about the fire

127. As stated earlier, on February 14, 2012 at 10:45 at night, a fire occurred in cellblock No. 6 of the Comayagua Prison, which spread rapidly throughout the block and reached as far as cellblock No. 10; burning down half of the cells in the prison.¹²³ The total number of dead was 362 (including a woman who was spending the night there without authorization),¹²⁴ and a total of 491 survivors, most of whom were housed in blocks 1 to 5, which suffered less damage; but another 69 or so managed to get out alive from the blocks that burned down.¹²⁵

128. In a special inspection conducted by the Comayagua Fire Department on the day following the fire, they found the following dangers and defects:

(1) There is no means of fire protection or suppression anywhere in the prison. (2) The electrical system throughout the prison is unprotected, in poor and unsafe condition, particularly in the inmate cellblocks. (3) There is too much flammable material in the prisoner blocks, which increases the risk of fire, and (4) There is no contingency plan approved [by the Fire Department], nor is there an evacuation point.

129. This expert opinion, issued by the Technical Office for Fire Prevention and Safety (OTPSCI) of the Fire Department, concludes that the prison is classified as being *at high risk of fire*, and it therefore indicates that the following

¹²³ A video available on the Internet shows the extent of the fire that occurred in the Comayagua Prison on February 14, 2012: <http://www.youtube.com/watch?v=-g4GtqGaD40>.

¹²⁴ The State informed the IACHR that: According to the report by the former Director of the Comayagua Prison [...] Mrs. Katia Gissela Figueroa Franco was authorized to enter and remain on a conjugal visit with prisoner Jaime William Aguirre [...], however, since the Special Regulations for the Operations of the National Prison System entered into force on August 12, 2011, the Secretary of State in the Security Office sent instructions to the prison facilities that they should comply with the rule prohibiting conjugal visits at nighttime. As a result, the authorities of the Office of the Director of Preventive Services held an evidentiary hearing on the administrative responsibility in the matter of the former director of the Comayagua Prison. [...] The Forensic Medicine Directorate indicated that the autopsies confirmed that there was only one woman among the dead, namely, Mrs. Katia Gissela Figueroa Franco. Note No. SP-A-45-2012 from the Office of the Attorney General of the Republic, which was transmitted to the IACHR by means of Note No. 382-DGAE of March 20, 2012 from the Office of the Director for Special Affairs of the Secretariat for Foreign Affairs of the Republic of Honduras.

¹²⁵ These survivors were distributed as follows: cell No. 6: five survivors; cell No. 7: eleven survivors; cell No. 8: twenty-seven survivors; cell No. 9: fourteen survivors; and cell No. 10: twelve survivors.

corrective measures should be taken within thirty days of the date of issuance (15.02.12):

(1) Locate fire extinguishers in strategic points that are properly identified and accessible. (2) Install smoke detectors in each block, and in other places determined by a study of the prison. (3) Reinstall a new network of electrical circuits throughout the prison protected by EMT tubing; this must be done by an electrical technician or engineer according to an electrical load study. (4) Regulate the amount of flammable material inside the blocks, using a method that will allow only what is necessary to be retained. (5) Develop an Emergency Plan in accordance with the study of the Comayagua Prison and present it to the Fire Department for review and approval: (6) Identify the meeting point in the event of evacuation, which should protect the physical safety of the prisoners and police when the prisoners are moved out, and (7) Install three emergency lights with rechargeable batteries, to be placed, one in the guard post, and the other two to light the passageway in the cellblocks.¹²⁶

This report was sent to the National Director of Special Preventive Services by the Director of the Comayagua Prison on March 7, 2012.

130. On February 17, the Chief of Operations of the OTPSCI and other experts went to the Comayagua Prison, and issued an expert opinion on the origin, causes and characteristics of the fire that occurred on February 14. This document states that the prison consists of two blocks, each having five cells (or “homes”), separated by a central corridor of 4.8 meters. Each cell measures 5.4 meters wide by 12 meters long. The cellblock that suffered the major damage was the block containing cells Nos. 6—10. Each cell had two lines of metal bunks. Each line had twelve rows of four spaces each, 2.9 meters high (except for cell No. 9 where the bunks were individual). In these spaces, the prisoners had their beds (which consisted only of a mattress), and also refrigerators, televisions, sound equipment, and fans, among other items; in order to have a little privacy, they covered each space with different materials, such as woven curtains or blankets. In addition, each prisoner used his space to store personal items, clothes for daily wear, and work materials; hammocks, baskets, netting and cleaning materials were stored inside each cell.

¹²⁶ This document was forwarded to the IACHR by Note No. 382-DGAE of March 20, 2012 from the Office of the Director for Special Affairs of the Secretariat for Foreign Affairs of the Republic of Honduras. Annex H: Report of the Technical Office for Fire Prevention and Safety (OTPSCI) of the Fire Department, of February 15, 2012.

131. In its conclusions as to the “dynamics of the fire”, the expert opinion established the following:

(1) It was determined that the place of origin of the fire was cell 6, and it spread to cell 10. (2) The intensity of the damage was such that all of the flammable material was completely burned up, weakening and stressing the physical structure of cells 6--10. (3) The use of accelerants to start and spread the fire is ruled out. (4) Based on observations at the scene of origin, it was determined that the “point of origin of the fire” was the upper bunk of the fourth row of bunks located along the western wall of the cell 6. (5) Cause of the fire: catching fire of solid flammable material due to conduction of heat from an open flame.¹²⁷

132. In the course of their visit to the Comayagua Prison on April 26, 2012, the staff of the Rapporteurship went through the facility, both the part that was completely burned in the fire, and those parts that were not; they interviewed the Director of the prison facility;¹²⁸ the Chief of Operations of the OTPSCI of the Fire Department; prisoners who had survived from the cells that burned down; the prisoner who, on the night of the fire, opened the doors of these cells, and the officer who was in charge of the keys.

133. In summary, the Rapporteur found that: (a) at that time, the Comayagua Prison housed 432 prisoners, and had lost in the fire half of its capacity, and there remained a high degree of overcrowding; (b) five of its cells were completely burned down, with only the scorched walls left standing; (c) the rest of the cells suffered only minor damage to the ceilings; (d) the cells were no more than 65 square meters in area, but housed up to 100 prisoners in rows of bunks up to four levels high, arranged one on top of the other and side by side, each having an inside space of not more than 80 centimeters square; (e) even after the fire, the prisoners continue to store a large volume of flammable materials, and still have informal electrical connections; (f) despite the fact that the State has taken some minor actions to prevent fire, it has not made any significant improvement in the structure of the prison; (g) one doctor and one staff nurse serve the prison, but it does not have any psychologists or social workers; and, (h)

¹²⁷ This document was sent to the IACHR by Note No. 382-DGAE of March 20, 2012, from the Office of the Director for Special Affairs of the Secretariat for Foreign Affairs of the Republic of Honduras. Annex H: Expert opinion signed by Sub-lieutenant Jorge Alberto Turcios Maldonado, Chief of Operations of the Technical Office of the Fire Department of Comayagua.

¹²⁸ At the time of the visit, the Director of the Comayagua Prison was Police Inspector Danny Alexander Rodriguez Valladares, who was appointed immediately after the fire occurred; the Director of the facility at the time of the events was Officer Wilmer O. Lopez.

since the cells that were not burned down (Nos. 1 – 5) are already overcrowded, there is no room there to relocate the survivors of the cells that were burned down. Faced with this situation, the authorities have opted to relocate them in cell No. 10, one of the cells that burned down during the fire.

134. In the interview with the Chief of Operations of the OTPSCI of the Fire Department, Sub-lieutenant Jorge A. Turcios M., he stated that the person who called the fire stations to give the alarm about the fire was a private citizen who was at the time at a gasoline station close to the prison,¹²⁹ and that barely five minutes passed between the time they received the call and verified it, and their arrival at the prison. Once there, they could not get inside because of the volleys of gunshots that were heard on the inside; the shots might have lasted for approximately ten minutes, therefore they had to wait outside the prison until the police stopped firing. A police guard then came to open the gates, and told them that there would be no more shooting because everything was under control. When they went inside, they saw that there were many people running from one side to the other; that the police themselves were running in fright; that nobody knew what to do; that nobody took charge. They saw that prisoners themselves were taking out people who had been burned, and that they were visibly angry because they knew that it was not the police that had opened the cell doors, but rather a prisoner who served as a nurse in the prison (and for that reason, he slept apart elsewhere). The Interior Ministry [*Ministerio Publico*] arrived on the scene at 2:00 a.m.

135. Sub-lieutenant Turcios stated that according to the standards of the Fire Department, the cells had a capacity for approximately twenty persons; however, they found that the cell that held the fewest people lodged ninety inmates. The firemen also found in the cells all kinds of electrical appliances: refrigerators, microwaves, ovens, toasters, DVD players, televisions, fans, air conditioning units; in addition, the inmates had lined their spaces with blankets, cardboard, wood, nylon curtains, etc. Since the prison is a large marketplace where the inmates sell netting, blankets, hats, etc., all that merchandise goes at night into the small space where they sleep, adding flammable materials to their cells. The mattresses that they use do not comply with safety standards, are not fire-resistant, but are simply made of sponge or foam; they also smoke cigarettes, crack, marijuana, etc. As to the origins and of the fire and how it spread, the Chief of Operations of the OTPSCI reiterated what had been said in the expert report of

¹²⁹ Sub-lieutenant Jorge A. Turcios M. also stated that they keep records of the calls they receive, and that that call in particular did not come from any of the authorities of the Comayagua prison; for that reason, they had to confirm it by calling back to the person who had phoned them, to check whether it was a genuine call. At first sight, this might seem to contradict the version of the former Director of the prison, who stated that it was the watch commander who called the Fire Department.

February 17, and indicated that no accelerant material (such as gasoline) was found at the scene of the events; that the fire was not induced, but was accidental; that it began in cell No. 6 and then spread to the rest of the cells in that block; and that the rapid way it spread was due to the excessive volume of flammable materials that the inmates kept in their cells.

136. In conclusion, the fire department official told the Rapporteurship that in 2004 and 2005, they carried out inspections in the Comayagua Prison Farm and made a number of recommendations, which were not complied with. Subsequently, in 2009, the [prison] police were asked to present their emergency plan, but they have not provided it to date. In fact, added Sub-lieutenant Turcios, in all of Honduras, there is not a single prison that has an emergency plan approved by the Fire Department. The risk of fire in all Honduran prisons is very high: they do not even have extinguishers; and also, since the prisoners rule inside the prisons, access is not easy. In order to ensure greater safety in the prison facilities, emergency plans must be prepared to establish how to proceed in the event of fire, earthquake or injury; early warning systems, automatic sprinklers, extinguishers and smoke detectors must be installed to ensure that prisoners do not smoke in their cells; in short, a change in the current system is definitely required.

137. The testimony of the surviving prisoners who were interviewed by the Rapporteurship team coincides on the following points: (a) it was not the police officer in charge of keeping the keys (the so-called “turnkey”) who opened the cells that were burning, but rather a prisoner by the name of Marco Antonio Bonilla (“el Chaparro”), who served as a prison nurse and therefore sleeps in the infirmary rather than in the general yard area;¹³⁰ (b) the police fired on the prisoners who tried to leave through the ceilings of the cells that were burning, and generally fired a great many shots in the minutes following the fire; (c) the firemen had to wait several minutes outside the prison gates before being able to get in; and (d) the survivors have not been given appropriate psychological treatment.

138. The Rapporteurship found that the keys to the cells were kept in the guardroom, under the responsibility of a custodian in charge of the keys, and for that reason, at the time of the fire, prisoner Marco Antonio Bonilla had to insist

¹³⁰ This was confirmed by the Director of the Prison and by the officer in charge of the keys on the day of the fire. Mr. Marco Antonio Bonilla, the nurse, provided additional details, and stated that the officer in charge of the keys did absolutely nothing at the time of the fire, that he had to convince him to hand him the keys in order to go and open the cells, and that the former merely threw the [keys] down onto the ground. Mr. Bonilla picked up the keys and went cell by cell to open them up, except for No. 1, which was opened by another prisoner who broke the lock with exercise weights.

that the officer with the keys hand them over to him, and he then went personally cell by cell to open them up.

139. The former director of the Comayagua Prison, Wilmer O. Lopez, who was on duty the day of the fire, told the Rapporteurship, *inter alia*, that they did not have emergency plans for how to proceed in the event of fire, and that they even lacked radios to communicate among the prison guards themselves. He also explained that there were two phases of shooting: the first were warning shots and the second round because some prisoners were jumping over the perimeter wall. According to him, what they wanted to do was to warn them not to jump over the wall, but rather go to the control point at the front of the prison. The former director stated that he did not know why the firemen had not entered, because in his opinion, they had no reason to be afraid, and that when they entered, the situation was already under control, in the sense that those persons deprived of liberty who survived were already safe.

140. After the visit to the Comayagua Prison, the Rapporteur met with representatives of the Committee of Families and Victims of the Comayagua Prison, who said, basically, that “*they categorically reject*” the theory that what happened was an accident, and stated their lack of confidence in the judicial system of the State. They adduce, *inter alia*, that the State already had received recommendations as to the measures it should take in the prisons to prevent incidents such as the one that occurred on February 14; court delays and overcrowding are risk factors; and that if the police had acted diligently at the time to open the locks on the cells, and if the firemen had been allowed to intervene promptly, the number of dead would at least have been fewer.

141. In short, the victims’ families consider that the tragedy of Comayagua Prison could have been avoided, and that these are not isolated events, but rather are set in an overall context of abandonment and structural deficiencies inherent in the Honduran prison system. The representatives of the Committee of Families and Victims of the Comayagua Prison also stated their concern over the fact that 32% of the victims of the fire were under the age of 25, and the 44% were between 25 and 35 years of age; that some corpses allegedly had bullet wounds¹³¹; and that, in their opinion, no significant progress had been made in the investigations. Moreover, they raised some questions, such as: Why were the services of the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) required to conduct an investigation into the causes of the fire?

¹³¹ In this regard see, for example: *El Heraldo*, *Al menos dos reos muertos en cárcel de Comayagua tenían disparos* [At least two dead inmates in the Comayagua prison had bullet wounds], September 10, 2012, available at: <http://www.elheraldo.hn/Secciones-Principales/Pais/Al-menos-dos-reos-muertos-en-carcel-de-Comayagua-tenian-disparos>

And why did the authorities not provide an official ballistics report on the weapons assigned to the prison guards?

C. Observations by the Inter-American Commission on the situation in the Comayagua Prison

142. The Inter-American Commission underscores that, in light of the mandate contained in Articles 8 and 25 of the American Convention, States have the obligation to conduct serious, diligent and impartial investigations of fires that occur in prison facilities, and that those investigations should lead to criminal or administrative sanctions of all authorities who had some degree of responsibility for the events, and that also lead to effective reparations to the victims.¹³² The Inter-American Commission has also indicated, in relation to the States' obligation to conduct serious investigations, that:

[T]he fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts does not constitute a failure to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.¹³³

143. In the present context, the IACHR takes into consideration the information provided by the State, according to which the competent authorities are conducting the corresponding criminal and administrative investigations. The Commission also takes note of the commitment made by the President of the Republic that the *"Government of the Republic has committed to conducting a prompt, efficient and transparent investigation to determine the cause of this tragedy and to assert criminal liabilities in the case."*¹³⁴ Nonetheless, given the nature of the events, the Commission urges the authorities of the State promptly to take the measures necessary to establish what liabilities there may be, whether of commission or omission, inasmuch as the victims were persons in the custody of

¹³² IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 295.

¹³³ IACHR, Report No. 118/10, Case 12.680, Merits, Rafael Arturo Pacheco Teruel *et al.*, Honduras, October 22, 2010, par. 130. IACHR, Report No. 33/04, Case 11.634, Merits, Jailton Neri Fonseca, Brazil, March 11, 2004, para. 97.

¹³⁴ Presidency of Honduras, Communiqué of February 15, 2012, available at: http://www.presidencia.gob.hn/index.php?option=com_content&view=article&id=272:comunicado&catid=34:asi-a-a-pacific&Itemid=54 (*Spanish only*).

the State, which was therefore legally responsible for guaranteeing their fundamental rights.

144. It also reiterates that it is essential that the State investigates both the theory that the fire was the result of an accident, as well as a hypothesis that might find criminal motives. And it urges the State to investigate the claims that there were serious omissions by the prison authorities in preventing and controlling the fire, and in rescuing the victims. Thus, it is the obligation of the State to exhaust all possible lines of investigation, and to clarify the events that occurred in Comayagua, both in order to punish those responsible and to satisfy the victims' right of access to justice, and also to take the corrective measures needed to ensure that events of such extreme gravity never occur again.

145. It is also essential that the State comply with its duty to provide appropriate medial and psychological care to the survivors and the families of the victims. The IACHR thus took into consideration the opinion of the Red Cross that *"the principal humanitarian consequence today is the psychological impact on the family members who are still waiting to go through their grieving process."*¹³⁵ According to the activities report of the CPTRT in the Comayagua Prison, the psychological problems found most frequently among the survivors were:

Persistent sadness, reactive crying, sleeplessness, re-living the trauma (hearing the cries of their companions at the moment the fire reached them, remembering the sights of the traumatic events, seeing them burning), nightmares about the fire and its consequences, hyper-vigilance, irritability, aggression, feelings of guilt and emotional blocks.

146. This report underscored the situation of those inmates who survived the fire who had been living in the cells that were completely burned down. As well as having lost their material possessions, such as clothing and personal items, they also lost significant emotional ties with family and friends, and experienced the catastrophe. This group in particular may be liable to develop: *"mood disorders, Post Traumatic Stress Disorder, progressive psychotic episodes and conversion disorders"*. The remaining prisoners who were in the cells that

¹³⁵ ICRC, *Honduras: los retos de la identificación de las víctimas del incendio en la cárcel de Comayagua* [The challenge of identifying the victims of the fire in the Comayagua prison], document available at: <http://www.icrc.org/spa/resources/documents/interview/2012/honduras-interview-2012-03-14.htm> (Spanish only).

suffered less damage may be liable to present with: “*mood disorders, Post Traumatic Stress Disorder, episodes of paranoia and states of delirium.*”¹³⁶

147. The Inter-American Commission considers that the State should design a strategy for medical and psychosocial care for the survivors of the fire and the families of the victims, which takes into account the need for individual care for the most serious cases, and also group therapy. In order to meet these goals, the State should ensure that suitable psychological staff are available to care for these groups of individuals. The organization and delivery of these services is primarily the responsibility of the national authorities.

148. The Inter-American Commission also considers that the Honduran State should undertake the necessary construction, changes and restoration of the Comayagua Prison in order to bring its physical facilities into line with the needs of its actual population, bearing in mind a potential increase in its population in the future. Thus far, the IACHR notes that the most significant thing that had been done to the prison structure at the time of the visit was that a roof had been installed over cell No. 10.¹³⁷ The Commission stresses the need for national authorities to bring the installations into line with the prisons’ real needs, and to comply fully with the many recommendations made by the Fire Department on the security conditions that must be followed and that are cited in the present report. In short, the work of reconstruction, remodeling and adaptations of the physical infrastructure of the Comayagua Prison should be taken up by the State as a priority matter, and should not be confined to mere palliative measures.

149. The IACHR observes with concern that due to the severe structural damages suffered by the Penitentiary of Comayagua, it was unable to receive intake prisoners; in consequence, the authorities were forced to place these inmates in the already full Penitentiaries of La Paz and La Esperanza.

150. The Commission also reiterates that relocating the survivors of the cells that burned down in rehabilitated cell No. 10, precisely one of those burned, is a form of degrading treatment that is contrary to human dignity and to the

¹³⁶ CPTRT, *Informe sobre actividades en el Centro Penal de Comayagua a raíz del incendio ocurrido el 14 de febrero de 2012*, [Report on activities in Comayagua Prison in light of the fire that occurred on February 14, 2012], Chapter VIII and Conclusions (*Spanish only*).

¹³⁷ The Commission notes, for example, that by note of May 24, 2012, the Director of the Comayagua Prison sent to the National Director of Special Preventive Services an analysis of the status of cells Nos. 6, 7, 8 and 9 that had been done by Civil Engineer Jobin Martínez, an employee of the ENEE of Comayagua. This report includes: activities budget, an overall budget by inputs, and sketches of the cellblocks and the electrical system; and makes specific recommendations as to the work that needs to be done to rehabilitate the cellblocks that burned down.

psychological recovery of those persons, not only for the conditions of that cell after the fire, but also for the trauma that represents for the survivors.

151. The Commission also observes that following the events that occurred in the Comayagua Prison, the Constitutional Bench of the Supreme Court of Justice began, on its own motion, the proceedings for a corrective habeas corpus (No. 126-2012) on behalf of all persons deprived of liberty in that prison; however, as of the time of the adoption of the present report, the Constitutional Bench of the Supreme Court of Justice had not issued its decision on the matter.

152. Finally, the IACHR notes with concern the statement made to the Rapporteurship by the Committee of Families and Victims of the Comayagua Prison, to the effect that its members had been subjected to threats, mistreatment and intimidation, allegedly by security and defense institutions of the State. Thus, the IACHR notes that one of the rights of victims of violations of human rights is precisely the right of access to justice, which means that they should have the possibility of doing everything pertinent to achieve that objective free from any illegal or arbitrary interference by the authorities.

V. CONCLUSIONS

153. The administration of the prisons in Honduras currently suffers from severe structural deficiencies which have led to its collapse; these deficiencies have been consistently pointed out by all the international human rights agencies having competence in the matter, but to date, no substantial changes have been made. This situation has entailed a very high cost in terms of human lives in recent years, as dramatically evidenced in the Comayagua tragedy, an event whose magnitude is unprecedented in the region.

154. A radical change of attitude toward the prison system is essential, it is fundamental that the Honduran State react forcefully to the challenges facing the prison administration, and truly reform the prisons.¹³⁸

¹³⁸ Along the same lines, the Working Group on Arbitrary Detention noted that this type of change will not be possible *“unless there is a substantial increase in resources and a change in the attitude of the authorities”*. The SPT also noted that the reforms that the prison authorities had introduced as a result of decisions handed down by the courts *“have been by all lights insufficient and, while welcome, have not managed to attack the root of the problems, which means comprehensive reform of the prison centers and of mentalities”*. WGAD, *Implementation of General Assembly Resolution 60/251 of 15 March 2006, Mission to Honduras, A/HRC/4/40/Add.4*, December 1, 2006, para. 78. SPT, Report on the visit to Honduras of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/OP/HND/1, February 10, 2010, para. 186. And, as the Prison Ministry said to the Rapporteurship, *“palliatives and cosmetic changes are of no use unless real changes take place in the individuals who work in and operate the prison system”*.

155. Therefore, while mindful of the measures taken recently, the Inter-American Commission considers it essential that Honduras considers the situation of the prison system as one of its priorities. Thus, the State should adopt comprehensive public policies designed to overcome the current serious structural deficiencies and at last ensure that the prison system is truly designed to meet the objectives of imprisonment, namely, the rehabilitation of criminally convicted persons. The Commission notes that the construction of new jails and the improvements of the existing ones are undoubtedly necessary and positive measures; nonetheless, the attention to the structural shortcomings noted in this report is not limited to these actions, but merit the adoption by the State of genuine public policies much broader in scope.

156. These public policies should have the following four essential characteristics:

(a) *Continuity*: public policies become a matter of the State, and that implementation not be adversely affected by successive changes of government or prison authorities;

(b) *An appropriate legal framework*: there must be an appropriate legal framework, along with implementing regulations;

(c) *Sufficient budget*: budgetary allocations are the true measure of the government's political will. Without a sufficient, significant budget allocation, the ability to implement these policies is extremely limited, as is, to a large extent, the effectiveness of many mechanisms established in the law; and,

(d) *Institutional coordination*: adoption of prison policies should be a commitment that brings together all branches of government behind a comprehensive vision of prison policies that takes account of the consequences or impact that prison reforms and judicial practice may have on the prison system itself.

157. There is a direct relationship between the functioning of the prisons and achieving the goal of citizen security. A properly-functioning prison system is necessary to ensure citizen security and the proper administration of justice.¹³⁹ Otherwise, when the prisons do not receive the attention or resources needed, their role becomes distorted, and instead of providing protection, they

¹³⁹ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 10 and 11; IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc.57, adopted on December 31, 2009, para. 155.

become schools of crime and antisocial behavior that foster re-offending instead of rehabilitation.¹⁴⁰

158. In Honduras, as in other countries of the region, security policies have been characterized by application of a “heavy-handed” criminal policy, based on an eminently repressive approach and characterized, *inter alia*, by the introduction of new crimes; longer sentences; abusive use of preventive detention; and the absence of alternatives to deprivation of liberty. All of this has direct repercussions on the saturation of the prison system. If this logic were to be followed, it would not be politically profitable to allocate resources to the management and improvement of prison facilities.

159. This repressive approach, combined with the State’s abandonment of the prisons, means that in practice, the goals that are sought are not achieved. On the contrary, levels of insecurity increase. Citizen security involves the inter-relation of many factors and conditions, which include the history and structure of the State and society; government policies and programs; observance of economic, social and cultural rights; and the regional and international context. Achieving [citizen security] is not to be simply –and falsely– reduced to a discourse about “heavy hand” or zero tolerance that advocates mass incarceration as the sole response to this complex reality.

160. It is essential that States’ criminal policies not be merely repressive, but should also be preventive in nature, with policies and programs for crime prevention. Of particular importance are programs designed to improve the prison system, and specially, programs designed to promote work and education in the prisons as appropriate means of prisoner reintegration into society. Regarding minors in conflict with the law, the IACHR underscores that the juvenile justice system has among its fundamental aims, to promote the reintegration of juveniles into society and family by providing them with the necessary opportunities and means to assume a constructive role in the society.¹⁴¹

161. The Inter-American Commission will continue to monitor the situation of persons deprived of liberty in Honduras through its Rapporteurship on the Rights of Persons Deprived of Liberty in the Americas. In this regard, the IACHR

¹⁴⁰ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 11; IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111. Doc. 21 rev., adopted on April 6, 2001, Ch. VIII, paras. 68 and 69.

¹⁴¹ Article 40 of the Convention on the Rights of the Child; see also: IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 78, adopted on July 13, 2011, paras. 30 y 34; IACHR, Report No. 62/02, Case 12.285, Merits, Michael Domingues, United States, October 22, 2002, para. 83; I/A Court H.R., *The “Street Children” v. Guatemala Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 194

expects to keep collaborating with the United Nations human rights agencies with competence in the matter of persons deprived of liberty.¹⁴² In particular the Commission will be assessing the measures adopted to implement the following recommendations:

VI. RECOMMENDATIONS

162. In light of the analysis and the conclusions set forth in this report, the IACHR recommends to the State that it:

1. Conduct the process of transition established by the new Law on the National Penitentiary System effectively and in full transparency; particularly with regard to the appointment and work of the Transition's Special Commission, and the regulation of the law.
2. Adopt comprehensive public policies on the management of prisons that include the four points indicated in the conclusions of this report: continuity, an appropriate legal framework, sufficient budget and institutional coordination.
3. Provide the prison administration with an appropriate budget that is in tune with the real needs of prison management and effective implementation of penitentiary legislation.
4. Firmly support without delay the measures necessary to retake internal control of all prison facilities, such that it is the State that exercises internal security over the prisons as well as all of the functions inherent in prison administration-- matters that may not be delegated to the prisoners themselves. In this regard, the IACHR strongly calls upon the State to eradicate once and for all the practice of ceding disciplinary powers to the prisoners themselves, particularly the possibility of applying sanctions.
5. Take appropriate legislative, administrative and other measures necessary to reduce the level of overcrowding in the national

¹⁴² On the cooperation and joint work between the organs of the Inter-American System and those of the Universal System of Human Rights, see: IACHR, Press Release No. 124/11 (Washington, November 30, 2011): *International Mechanisms Against Torture Agree To Elaborate Joint Report in Light of High Level of Non-Compliance with their Recommendations*; and IACHR, Press Release No. 22/11 (Washington, March 17, 2011): *International Protection Mechanisms Join to Address Grave Problem of Torture and Overcrowding in Correctional Facilities in the Region*. Documents available at: http://www.oas.org/en/iachr/media_center/PReleases/2011/022.asp.

prison system, and ensure a more equitable distribution of space in prisons.

6. Adopt the necessary measures, in accordance with the standards of the Inter-American System,¹⁴³ to ensure that persons deprived of liberty are held in decent conditions that are in accordance with the principle of humane treatment. In particular, take concrete steps in the immediate and medium term to prevent and eradicate overcrowding.
7. Provide law enforcement personnel in the prisons with the equipment they need to use different levels of force, including the use of non-lethal weapons and equipment. These personnel and agents should also be provided with the necessary personal protection equipment, and, in short, with the tools and training needed to meet the goal of proper use of non-lethal force. Appropriate independent mechanisms should also be set up to supervise combined operations by State security forces that are conducted in the prisons in order to confiscate illicit items.
8. Conduct a prompt, diligent and impartial investigation of the events that took place in the Comayagua Prison on February 14, 2012; provide appropriate medical and psychological care to surviving prisoners and to the families of those who lost their lives in the fire; and to provide adequate reparation to the victims and their relatives. In accordance with section (IV)(B)(3) of the present report.
9. Take such steps as may be necessary, based on good technical criteria, to bring the facilities at the Comayagua Prison in line with the needs of the actual prison population, and the safety standards set by the Fire Department.
10. Request the Fire Department to periodically inspect and deliver assessments on the appropriateness of the fire safety and prevention measures taken by the Secretariat for Security in the Comayagua Prison following the fire of February 14, 2012. The Fire Department's opinion should also refer to the National Police emergency response protocols. Likewise, request the Fire

¹⁴³ See on this matter, IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*.

Department to conduct periodic inspections to the rest of the prisons nationwide, including the juvenile facilities.

11. Through the Secretariat for Security, take steps to ensure that the Fire Department has effective access to all action protocols and procedures used by the police in the prisons.
12. Hire the staff required to provide all prisons with the interdisciplinary technical teams that are needed to address the treatment of prisoners. This means that each prison facility must have *medical, psychological and educational services* (teachers or technical instructors, psychiatrists, psychologists and social workers) with sufficient, suitable staff.
13. Increase the number of *Jueces de Ejecucion* as necessary to cover those prisons to which none is yet assigned, namely, the Prisons of Olanchito, Puerto Lempira, Marcala, Nacaome and Ocotepeque
14. Hire the personnel needed to ensure that each and every Supervising Court [*de Ejecucion de la Pena y Medidas de Seguridad*] has a complete complement of interdisciplinary technical staff.¹⁴⁴
15. Ensure the effective segregation of male and female prisoners, particularly in the San Pedro Sula and the El Progreso Prisons. And, take the necessary measures to ensure that, except in exceptional circumstances, the accused persons are segregated from convicted persons.
16. Conclude the ratification process of the Inter-American Convention to Prevent and Punish Torture.¹⁴⁵

¹⁴⁴ The interdisciplinary technical teams conduct psychological and socioeconomic studies on persons deprived of liberty, and present their opinions to the *Jueces de Ejecucion*, whom uses the studies as support materials in their decisions on requests for parole, commutation of sentence, and supervision of community work. The technical teams also perform a broad range of social and humanitarian work in the prisons, ranging from social studies training of prisoners and prison staff, to finding help for people in special circumstances, such as those suffering from illnesses of various kinds; terminal illnesses, dependence on drugs or alcohol; and other help for prisons as institutions. Information contained in the *Diagnostico de los Juzgados de Ejecucion Penal*, supplied by the Coordinator of the Supervising Judges during the visit of the Rapporteurship.

¹⁴⁵ Honduras has been a signatory of this treaty since 1986, yet to date, after more than 25 years, it has not completed the process of ratifying it. In this respect, at the hearing held in October 2008, the then-Representative of Honduras before the OAS, Ambassador Roberto Ramos Bustos, noted that the ratification of the Inter-American Convention to Prevent and Punish Torture was anticipated for the first days of the following year (2009). The audio of this hearing is available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=9>. According to the State's observations

17. Provide the National Mechanism for Prevention of Torture (CONAPREV) with the resources, means and institutional support that it may need to carry on its work as an institution created in compliance with an international treaty.

163. The Inter-American Commission also urges Honduras to comply with the agreement signed with the representatives of the victims in the case of *Pacheco Teruel et al.*, and calls on the State to comply with the recommendations made by the Subcommittee against Torture in its country report, which was transmitted to the State in January 2010. The report contains a set of more than eighty-five specific recommendations that address many of the structural defects addressed in the present report. Those recommendations refer, *inter alia*, to matters such as: mechanisms for the prevention of torture; judicial control of the legality of detentions; protection of the lives and safety of persons deprived of liberty who are in police custody; monitoring of prisons; provision of medical services to persons deprived of liberty; incarceration conditions in general; prison management; prison regulations; prisoners' family relationships; and the use of force by police in the prisons.¹⁴⁶

...continuation

on the draft of this report, the National Congress approved the Inter-American Convention to Prevent and Punish Torture by Decree No. 41-2009 of March 17, 2009, but its publication is still pending. In this respect, the IACHR observes that in addition to that step, is also pending the deposit of the instrument of ratification with the General Secretariat of the OAS.

¹⁴⁶ SPT, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras*, CAT/OP/HND/1, February 10, 2010, paras. 266-320.