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

(Approved by the Commission during its 131st regular period of sessions, held from March 3-14, 2008)

The Inter-American Commission on Human Rights,

CONSIDERING the value of human dignity and the fundamental rights and freedoms recognized by the inter-American system and by the other systems for international protection of human rights;

RECOGNIZING the fundamental right of all persons deprived of liberty to humane treatment, and to have their dignity, as well as their life, and their physical, mental, and moral integrity respected and ensured;

UNDERSCORING the importance of due legal process and its fundamental principles and guarantees for the effective protection of the rights of persons deprived of liberty, given their particular situation of vulnerability;

BEARING IN MIND that punishments consisting of deprivation of liberty shall have as an essential aim the reform, social readaptation and personal rehabilitation of those convicted; the reintegration into society and family life; as well as the protection of both the victims and society.

RECALLING that the Member States of the Organization of American States have committed to respecting and ensuring the rights of all persons deprived of liberty subject to their jurisdiction;

DULY TAKING INTO ACCOUNT the principles and provisions enshrined in the following international instruments: American Convention on Human Rights; Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights; Inter-American Convention to Prevent and Punish Torture; Inter-American Convention on Forced Disappearance of Persons; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities; American Declaration of the Rights and Duties of Man; International Covenant on Civil and Political Rights; International Covenant on Economic, Social, and Cultural Rights; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women; International Convention for the Protection of All Persons from Enforced Disappearance; International Convention on the Protection of All Migrant Workers and Members of their Families; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of Persons with Disabilities; Convention relating to the Status of Refugees; Convention Number 169 concerning Indigenous and Tribal Peoples in

Independent Countries; Geneva Conventions of 12 August 1949, and their Additional Protocols of 1977; Universal Declaration of Human Rights; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Basic Principles for the Treatment of Prisoners; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care; Standard Minimum Rules for the Treatment of Prisoners; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); United Nations Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); and in other international human rights instruments applicable in the Americas;

REAFFIRMING the decisions and the jurisprudence of the Inter-American System of Human Rights;

OBSERVING WITH CONCERN the critical situation of violence, overcrowding, and inhumane living conditions in several places of deprivation of liberty in the Americas; as well as the particular situation of vulnerability of persons with mental disabilities deprived of liberty in psychiatric hospitals and prisons; and the serious risks to children, women, and seniors confined to other public and private institutions, migrants, refugee or asylum seekers, stateless and undocumented persons, and persons deprived of liberty in the context of armed conflicts;

WITH A VIEW TO offering input to the process of drafting an Inter-American Declaration on the rights, duties, and care of persons under any form of detention or imprisonment by the Permanent Council, following the mandate requested through Resolution AG/RES 2283 (XXXVII-0/07);

ADOPTS the following PRINCIPLES AND BEST PRACTICES ON THE PROTECTION OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS (OEA/Ser/L/V/II.131 doc. 26)

PRINCIPLES AND BEST PRACTICES ON THE PROTECTION OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS

General Provision

For the purposes of the present document, "deprivation of liberty" means:

"Any form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under *de facto* control of a judicial, administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses. This category of persons includes not only those deprived of their liberty because of crimes or infringements or non compliance with the law, whether they are accused or convicted, but also those persons who are under the custody and supervision of certain institutions, such as: psychiatric hospitals and other establishments for persons with physical, mental, or sensory disabilities; institutions for children and the elderly; centers for migrants, refugees, asylum or refugee status seekers, stateless and undocumented persons; and any other similar institution the purpose of which is to deprive persons of their liberty."

Given the breadth of the aforementioned concept, the following principles and best practices shall be invoked, according to each case, depending on whether the persons are deprived of liberty as a result of the perpetration of crimes or violations of the law, or for humanitarian and protective reasons.

GENERAL PRINCIPLES

Principle I

Humane treatment

All persons subject to the jurisdiction of any Member State of the Organization of

American States shall be treated humanely, with unconditional respect for their inherent dignity, fundamental rights and guarantees, and strictly in accordance with international human rights instruments.

In particular, and taking into account the special position of the States as guarantors regarding persons deprived of liberty, their life and personal integrity shall be respected and ensured, and they shall be afforded minimum conditions compatible with their dignity.

They shall be protected from any kind of threats and acts of torture, execution, forced disappearance, cruel, inhuman, or degrading treatment or punishment, sexual violence, corporal punishment, collective punishment, forced intervention or coercive treatment, from any method intended to obliterate their personality or to diminish their physical or mental capacities.

Circumstances such as war, states of exception, emergency situations, internal political instability, or other national or international emergencies may not be invoked in order to evade the obligations imposed by international law to respect and ensure the right to humane treatment of all persons deprived of liberty.

Principle II

Equality and non-discrimination

- Every person deprived of liberty shall be equal before the law and be entitled to equal protection of the law and the tribunals. They shall also have the right to maintain their guarantees and exercise their fundamental rights, except for those rights which exercise is temporarily limited or restricted by law and for reasons inherent to their condition as persons deprived of liberty.

Under no circumstances shall persons deprived of liberty be discriminated against for reasons of race, ethnic origin, nationality, color, sex, age, language, religion, political or other opinion, national or social origin, economic status, birth, physical, mental, or sensory disability, gender, sexual orientation, or any other social condition. Therefore, any distinction, exclusion, or restriction that is either designed to or has the effect of undermining or impeding the recognition, enjoyment, or exercise of the internationally recognized rights of persons deprived of liberty, shall be prohibited.

Measures designed exclusively to protect the rights of women, particularly the rights of pregnant women and nursing mothers; of children; of the elderly; of those who are sick or suffering from infections such as HIV-AIDS; of persons with a physical, mental, or sensory disability; as well as of indigenous peoples, afro-descendants, and minorities shall not be considered discriminatory. These measures shall be applied in accordance with the law and international human rights law, and shall always be subject to review by a judge or other competent, independent, and impartial authority.

Persons deprived of liberty in the context of an armed conflict shall be afforded special protection and attention in conformity with the special juridical regimen established by the norms of international humanitarian law, complemented by the norms of international human rights law.

The measures and sanctions imposed on persons deprived of liberty shall be applied impartially, based on objective criteria.

Principle III

Personal liberty

1. Basic principle

- Every person shall have the right to personal liberty and to be protected against any illegal or arbitrary deprivation of liberty. The law shall prohibit, in all circumstances,

incommunicado detention of persons and secret deprivation of liberty since they constitute cruel and inhuman treatment. Persons shall only be deprived of liberty in officially recognized places of deprivation of liberty.

As a general rule, the deprivation of liberty of persons shall be applied for the minimum necessary period.

Deprivation of liberty of children shall be applied as a measure of last resort and for the minimum necessary period, and shall be limited to strictly exceptional cases.

In imposing penalties laid down by general law on members of indigenous peoples preference shall be given to methods of punishment other than confinement in prison, in conformity with their customs or customary laws, where these are compatible with the legal system in force.

2. Exceptional use of preventive deprivation of liberty

- The law shall ensure that personal liberty is the general rule in judicial and administrative procedures, and that preventive deprivation of liberty is applied as an exception, in accordance with international human rights instruments.

In the context of criminal proceedings, there shall be sufficient evidentiary elements that associate the accused with the facts of the case, in order to justify an order of preventive deprivation of liberty. The foregoing is a demand or a condition *sine qua non* for imposing any precautionary measure; nevertheless, after a certain lapse of time it no longer suffices.

Preventive deprivation of liberty is a precautionary measure, not a punitive one, which shall additionally comply with the principles of legality, the presumption of innocence, need, and proportionality, to the extent strictly necessary in a democratic society. It shall only be applied within the strictly necessary limits to ensure that the person will not impede the efficient development of the investigations nor will evade justice, provided that the competent authority examines the facts and demonstrates that the aforesaid requirements have been met in the concrete case.

3. Special measures for persons with mental disabilities

- The health systems of the Member States of the Organization of American States shall apply in conformity with the law a series of measures in favor of persons with mental disabilities, with a view to gradually de-institutionalizing these people, and organizing alternative service models that facilitate the achievement of objectives that are compatible with an integrated, continuing, preventative, participatory, and community-based psychiatric care and health system, and in this way avoid unnecessary deprivation of liberty in hospitals or other institutions. The deprivation of liberty of a person in a psychiatric hospital or other similar institution shall be applied as a measure of last resort, and solely when there is serious likelihood of immediate or imminent harm to that person or to others. The mere existence of a disability shall in no case justify a deprivation of liberty.

4. Alternative or substitute measures for deprivation of liberty

- The Member States of the Organization of American States shall establish by law a series of alternative or substitute measures for deprivation of liberty, duly taking into account the international human rights standards on the topic.

When applying alternative or substitute measures for deprivation of liberty, Member States shall promote the participation of society and the family in such a way as to complement the intervention by the State, and shall also provide the necessary and appropriate resources to ensure their availability and effectiveness.

Principle IV

Principle of legality

- No one shall be deprived of his or her physical liberty except for the reasons and under the conditions established beforehand by domestic law, and in accordance with the provisions of international human rights law. Orders of deprivation of liberty shall be duly reasoned and issued by the competent authority.

The judicial or administrative orders and resolutions that are capable of affecting, limiting, or restricting the rights and guarantees of persons deprived of liberty, shall conform to domestic and international law. Administrative authorities may neither alter the rights and guarantees enshrined in international law, nor limit nor restrict them any further than expressly allowed.

Principle V

Due process of law

Every person deprived of liberty shall, at all times and in all circumstances, have the right to the protection of and regular access to competent, independent, and impartial judges and tribunals, previously established by law.

Persons deprived of liberty shall have the right to be promptly informed in a language they understand of the reasons for their deprivation of liberty and of the charges against them, as well as to be informed of their rights and guarantees; to have access to a translator or interpreter during the proceedings; and to communicate with their family. They shall have the right to a hearing and a trial, with due guarantees and within a reasonable time, by a judge, authority or official who is legally authorized to exercise judicial functions, or to be released without prejudice to the continuation of the proceedings; to appeal the judgment to a higher judge or court; and to not be subjected to a new trial for the same cause, if they have been acquitted by a nonappealable judgment in conformity with due process of law and international human rights law.

Three criteria shall be taken into consideration when determining if a judicial proceeding complied with the reasonable time requirement: the complexity of the case; the conduct of the applicant; and the conduct of the relevant authorities.

All persons deprived of liberty shall have the right to a defense and to legal counsel, named by themselves, their family, or provided by the State; they shall have the right to communicate privately with their counsel, without interference or censorship, without delays or unjustified time limits, from the time of their capture or arrest and necessarily before their first declaration before the competent authority.

All persons deprived of liberty shall have the right, exercised by themselves or by others, to present a simple, prompt, and effective recourse before the competent, independent, and impartial authorities, against acts or omissions that violate or threaten to violate their human rights. In particular, persons deprived of liberty shall have the right to lodge complaints or claims about acts of torture, prison violence, corporal punishment, cruel, inhuman, or degrading treatment or punishment, as well as concerning prison or internment conditions, the lack of appropriate medical or psychological care, and of adequate food.

Persons deprived of liberty shall not be compelled to be a witness against themselves or to plead guilty. Statements obtained through torture or cruel, inhuman, or degrading treatment shall not be admissible as evidence in a legal proceeding except in a legal action against a person or persons accused of having committed such acts, and only as evidence that those statements were obtained through such means.

If found guilty, the punishments or sanctions that were applicable at the time of the commission of the crime or legal infraction shall be applied, unless subsequent law establishes a lesser punishment or sanction, in which case the law that is most favorable to the person shall be applied.

Death penalty sentences shall meet the principles, restrictions, and prohibitions

established in international human rights law. In all circumstances, they shall have the right to request commutation of punishment.

Persons deprived of liberty in a Member State of the Organization of American States of which they are not nationals, shall be informed, without delay, and in any case before they make any statement to the competent authorities, of their right to consular or diplomatic assistance, and to request that consular or diplomatic authorities be notified of their deprivation of liberty immediately. Furthermore, they shall have the right to communicate with their diplomatic and consular authorities freely and in private.

Principle VI

Judicial control and supervision of punishments

Competent, independent, and impartial judges and tribunals shall be in charge of the periodic control of legality of acts of the public administration that affect, or could affect the rights, guarantees, or benefits to which persons deprived of liberty are entitled, as well as the periodic control of conditions of deprivation of liberty and supervision of the execution of, or compliance with, punishments.

Member States of the Organization of American States shall ensure the necessary resources to permit the establishment and effectiveness of judicial bodies of control and supervision of punishments, and shall provide the necessary resources for them to function adequately.

Principle VII

Petition and response

Persons deprived of liberty shall have the right of individual and collective petition and the right to a response before judicial, administrative, or other authorities. This right may be exercised by third parties or organizations, in accordance with the law.

This right comprises, amongst others, the right to lodge petitions, claims, or complaints before the competent authorities, and to receive a prompt response within a reasonable time. It also comprises the right to opportunistly request and receive information concerning their procedural status and the remaining time of deprivation of liberty, if applicable.

Persons deprived of liberty shall also have the right to lodge communications, petitions or complaints with the national human rights institutions; with the Inter-American Commission on Human Rights; and with the other competent international bodies, in conformity with the requirements established by domestic law and international law.

PRINCIPLES RELATED TO THE CONDITIONS OF DEPRIVATION OF LIBERTY

Principle VIII

Rights and restrictions

Persons deprived of liberty shall enjoy the same rights recognized to every other person by domestic law and international human rights law, except for those rights which exercise is temporarily limited or restricted by law and for reasons inherent to their condition as persons deprived of liberty.

Principle IX

Admission, registration, medical examination and transfers

1. Admission

The authorities responsible for places of deprivation of liberty shall refuse the admission of any person, unless this is authorized by a commitment order or an order of deprivation of liberty issued by a judicial, administrative, medical or other competent authority, in accordance with the requirements set out by law.

Upon admission, the persons deprived of their liberty shall be informed clearly and in a language they understand, either in writing, verbally, or by other means, of their rights, duties, and prohibitions in their place of deprivation of liberty.

2. Registration

The personal data of persons admitted to places of deprivation of liberty shall be recorded into an official register, which shall be made available to the person deprived of liberty, his or her representative, and the competent authorities. The register shall include, as a minimum the following information:

- a. Personal information including, at least, the following: name, age, sex, nationality, address and name of parents, family members, legal representatives or defense counsel if applicable, or other relevant data of the persons deprived of liberty;
- b. Information concerning the personal integrity and the state of health of the persons deprived of liberty;
- c. Reason or grounds for the deprivation of liberty;
- d. The authority that ordered or authorized the deprivation of liberty;
- e. The authority that conducted the person deprived of liberty to the institution;
- f. The authority legally responsible for supervising the deprivation of liberty;
- g. Time and date of admission and release;
- h. Time and date of transfers to another place and the destination;
- i. Identity of the authority who ordered the transfer and of the one who is responsible for it;
- j. Inventory of personal effects; and
- k. Signature of the persons deprived of liberty, or where this is impossible, an explanation about the reasons thereof.

3. Medical examination

All persons deprived of liberty shall be entitled to an impartial and confidential medical or psychological examination, carried out by idoneous medical personnel immediately following their admission to the place of imprisonment or commitment, in order to verify their state of physical or mental health and the existence of any mental or physical injury or damage; to ensure the diagnosis and treatment of any relevant health problem; or to investigate complaints of possible ill-treatment or torture.

The medical or psychological information shall be entered into the respective official register, and when necessary taking into account the gravity of the findings, it shall be immediately transmitted to the competent authority.

4. Transfers

The transfers of persons deprived of liberty shall be authorized and supervised by the competent authorities, who shall, in all circumstances, respect the dignity and fundamental rights of persons deprived of liberty, and shall take into account the need of persons to be deprived of liberty in places near their family, community, their defense counsel or legal representative, and the tribunal or other State body that may be in charge of their case.

The transfers shall not be carried out in order to punish, repress, or discriminate against persons deprived of liberty, their families or representatives; nor shall they be conducted under conditions that cause physical or mental suffering, are humiliating or facilitate public exhibition.

Principle X

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Health

Persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being, including amongst other aspects, adequate medical, psychiatric, and dental care; permanent availability of suitable and impartial medical personnel; access to free and appropriate treatment and medication; implementation of programs for health education and promotion, immunization, prevention and treatment of infectious, endemic, and other diseases; and special measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, such as: the elderly, women, children, persons with disabilities, people living with HIV-AIDS, tuberculosis, and persons with terminal diseases. Treatment shall be based on scientific principles and apply the best practices.

The provision of health services shall, in all circumstances, respect the following principles: medical confidentiality; patient autonomy; and informed consent to medical treatment in the physician-patient relationship.

The State shall ensure that the health services provided in places of deprivation of liberty operate in close coordination with the public health system so that public health policies and practices are also applied in places of deprivation of liberty.

Women and girls deprived of liberty shall be entitled to access to specialized medical care that corresponds to their physical and biological characteristics, and adequately meets their reproductive health needs. In particular, they shall have access to gynecological and pediatric care, before, during, and after giving birth, which shall not take place, as far as possible, inside the place of deprivation of liberty, but at hospitals or appropriate institutions. If a child is born in a place of deprivation of liberty, this fact shall not be mentioned in the birth certificate.

In women's or girls' institutions there shall be special accommodation, as well as adequate personnel and resources for pre-natal and post-natal care and treatment of women and girls.

Where children of parents deprived of their liberty are allowed to remain in the place of deprivation of liberty, the necessary provisions shall be made for a nursery staffed by qualified persons, and with the appropriate educational, pediatric, and nutritional services, in order to protect the best interest of the child.

Principle XI

Food and drinking water

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1. Food

Persons deprived of liberty shall have the right to food in such a quantity, quality, and hygienic condition so as to ensure adequate and sufficient nutrition, with due consideration to their cultural and religious concerns, as well as to any special needs or diet determined by medical criteria. Such food shall be provided at regular intervals, and its suspension or restriction as a disciplinary measure shall be prohibited by law.

2. Drinking water

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

Principle XII

Accommodation, hygiene, and clothing

1. Accommodation

Persons deprived of liberty shall have adequate floor space, daily exposure to natural light, appropriate ventilation and heating, according to the climatic conditions of their place of deprivation of liberty. They shall be provided with a separate bed, suitable bed clothing, and all other conditions that are indispensable for nocturnal rest. The installations shall take into account the special needs of the sick, persons with disabilities, children, pregnant women or breastfeeding mothers, and the elderly, amongst others.

2. Hygiene

Persons deprived of liberty shall have access to clean and sufficient sanitary installations that ensure their privacy and dignity. They shall also have access to basic personal hygiene products and water for bathing or shower, according to the climatic conditions.

Women and girls deprived of their liberty shall regularly be provided with those articles that are indispensable to the specific sanitary needs of their sex.

3. Clothing

The clothing to be used by persons deprived of liberty shall be sufficient and adequate to the climatic conditions, with due consideration to their cultural and religious identity. Such clothing shall never be degrading or humiliating.

Principle XIII

Education and cultural activities

Persons deprived of liberty shall have the right to education, which shall be accessible to all, without any discrimination, with due consideration to cultural diversity and special needs.

Primary or basic education shall be free for persons deprived of liberty, particularly for children, and for adults who have not received or completed the whole cycle of primary instruction.

Member States of the Organization of American States shall promote, progressively and to the maximum of their available resources, secondary, technical, vocational, and higher education in places of deprivation of liberty, and shall make them accessible to all, on the basis of individual capacity and skills.

Member States shall ensure that educational services provided in places of deprivation of liberty operate in close coordination and integration with the public education system; and shall promote cooperation with society through the participation of civil associations, non-governmental organizations, and private educational institutions.

Places of deprivation of liberty shall have libraries with sufficient books, newspapers, and educational magazines, with the appropriate equipment and technology, according to available resources.

Persons deprived of liberty shall have the right to take part in cultural, sporting, and social activities, and shall have opportunities for healthy and constructive recreation. Member States shall encourage the participation of the family, the community, and non-governmental organizations in these activities, in order to promote the reform, social readaptation, and rehabilitation of persons deprived of liberty.

Principle XIV

Work

All persons deprived of liberty shall have the right to work, to have effective opportunities of work, and to receive a fair and equitable remuneration, in accordance with their physical and mental capacities, in order to promote the reform, rehabilitation and social readaptation of convicted persons, to stimulate and encourage the culture of work, and to combat idleness in places of deprivation of liberty. Such labor shall never be of an afflictive nature.

Member States of the Organization of American States shall apply all protective national and international standards applicable to child labor, particularly in order to prevent exploitative labor practices and to ensure the best interest of the child.

Member States shall promote, progressively and to the maximum of their available resources, vocational orientation and the development of projects of technical or professional training in places of deprivation of liberty. They shall also ensure the implementation of permanent, sufficient and suitable labor workshops while promoting the participation and the cooperation with society and private enterprises.

Principle XV

Freedom of conscience and religion

Persons deprived of liberty shall have the right to freedom of conscience and of religion, including the right to profess, manifest, practice, maintain or change their religion, in line with their beliefs; the right to participate in religious and spiritual activities and to practice traditional rites; as well as the right to receive visits from religious or spiritual representatives.

Religious and spiritual diversity and plurality shall be recognized in places of deprivation of liberty, subject to the limitations that are strictly necessary to protect the rights of others or public health or morals, and maintain public order, internal security, and discipline in places of deprivation of liberty, as well as subject to other limitations permitted by law and international human rights law.

Principle XVI

Freedom of expression, association and reunion

Persons deprived of liberty shall have the right to freedom of expression in their own language, association, and peaceful assembly, subject to the limitations that are strictly necessary in a democratic society to protect the rights of others or public health or morals, and maintain public order, internal security, and discipline in places of deprivation of liberty, as well as subject to other limitations permitted by law and international human rights law.

Principle XVII

Measures against overcrowding

The competent authority shall determine the maximum capacity of each place of deprivation of liberty according to international standards related to living conditions. Such information, as well as the actual ratio of occupation of each institution or center shall be public, accessible and regularly updated. The law shall establish the procedures through which persons deprived of liberty, their legal representatives or non-governmental organizations can individually or collectively dispute the data regarding the maximum capacity or the occupation ratio. In these procedures, the participation of independent experts shall be permitted.

The occupation of an institution over its maximum capacity shall be prohibited by law. In cases where such overcrowding results in human rights violations, it shall be considered cruel, inhuman or degrading treatment or punishment. The law shall establish remedies intended to immediately address any situation of overcrowding. The competent judicial authorities shall adopt adequate measures in the absence of an effective legal regulation.

Once overcrowding is observed, States shall investigate the reasons for such situation

and determine the corresponding individual responsibilities of the authorities who authorized that situation. Moreover, States shall adopt measures to prevent the repetition of such situations. In both cases, the law shall establish the procedures through which persons deprived of liberty, their legal representatives or non-governmental organizations can participate in those procedures.

Principle XVIII

Contact with the outside world

Persons deprived of liberty shall have the right to receive and dispatch correspondence, subject to such limitations as are consistent with international law; and to maintain direct and personal contact through regular visits with members of their family, legal representatives, especially their parents, sons and daughters, and their respective partners.

They shall have the right to be informed about the news of the outside world through means of communication, or any other form of contact with the outside, in accordance with the law.

Principle XIX

Separation of categories

The 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, age, the reason for their deprivation of liberty, the need to protect the life and integrity of persons deprived of liberty or personnel, special needs of attention, or other circumstances relating to internal security.

In particular, arrangements shall be made to separate men and women; children and adults; the elderly; accused and convicted; persons deprived of liberty for civil reasons and those deprived of liberty on criminal charges. In cases of deprivation of liberty of asylum or refugee status seekers, and in other similar cases, children shall not be separated from their parents. Asylum or refugee status seekers and persons deprived of liberty due to migration issues shall not be deprived of liberty in institutions designed to hold persons deprived of liberty on criminal charges.

Under no circumstances shall the separation of persons deprived of liberty based on categories be used to justify discrimination, the use of torture, cruel, inhuman, or degrading treatment or punishment, or the imposition of harsher or less adequate conditions on a particular group. The same criteria shall be observed during transfers of persons deprived of liberty.

PRINCIPLES RELATED TO THE SYSTEMS OF DEPRIVATION OF LIBERTY

Principle XX

Personnel of places of deprivation of liberty

The personnel responsible for the direction, custody, care, transfer, discipline and surveillance of persons deprived of liberty shall at all time and under any circumstances respect the human rights of persons deprived of liberty and of their families.

The personnel shall be carefully selected, taking into account their ethical and moral integrity, sensitivity to cultural diversity and to gender issues, professional capacity, personal suitability for the work, and sense of responsibility.

The personnel shall comprise suitable employees and officers, of both sexes, preferably with civil service and civilian status. As a general rule, members of the Police or Armed forces shall be prohibited from exercising direct custody of persons deprived of liberty, unless it is a

police or military institution.

Places of deprivation of liberty for women, or the women's sections in mixed institutions shall be under the direction of female personnel. The custody and surveillance of women deprived of liberty shall be performed exclusively by female personnel, although staff with other capacities or skills, such as doctors, teachers, or administrative personnel may be male.

Sufficient and qualified personnel shall be available to ensure security, surveillance, and custody, as well as to attend to medical, psychological, educational, labor, and other needs.

The personnel of places of deprivation of liberty shall be provided with the necessary resources and equipment so as to allow them to perform their duties in suitable conditions, including fair and equitable remuneration, decent living conditions, and appropriate basic services.

The personnel of places of deprivation of liberty shall receive initial instruction and periodic specialized training, with an emphasis on the social nature of their work. Such instruction and training shall include, at least, education on human rights; on the rights, duties, and prohibitions in the exercise of their functions; and on national and international principles and rules regarding the use of force, firearms, and physical restraint. For these purposes, the Member States of the Organization of American States shall promote the creation and operation of specialized education and training programs with the participation and cooperation of social institutions and private enterprises.

Principle XXI

Bodily searches, inspection of installations and other measures

Whenever bodily searches, inspections of installations and organizational measures of places of deprivation of liberty are permitted by law, they shall comply with criteria of necessity, reasonableness and proportionality.

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

Intrusive vaginal or anal searches shall be forbidden by law.

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

Principle XXII

Disciplinary regime

1. Disciplinary sanctions

Disciplinary sanctions, and the disciplinary procedures adopted in places of deprivation of liberty shall be subject to judicial review and be previously established by law and shall not contravene the norms of international human rights law.

2. Due process of law

The imposition of disciplinary sanctions or measures and the supervision of their execution shall be the responsibility of competent authorities who shall act in all circumstances in accordance with the principles of due process of law, respecting the human rights and basic

guarantees of persons deprived of liberty as enshrined in international human rights law.

3. Measures of solitary confinement

The law shall prohibit solitary confinement in punishment cells.

It shall be strictly forbidden to impose solitary confinement to pregnant women; mothers who are living with their children in the place of deprivation of liberty; and children deprived of liberty.

Solitary confinement shall only be permitted as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution's internal security, and to protect fundamental rights, such as the right to life and integrity of persons deprived of liberty or the personnel.

In all cases, the disposition of solitary confinement shall be authorized by the competent authority and shall be subject to judicial control, since its prolonged, inappropriate or unnecessary use would amount to acts of torture, or cruel, inhuman, or degrading treatment or punishment.

In cases of involuntary seclusion of persons with mental disabilities it shall be ensured that the measure is authorized by a competent physician; carried out in accordance with officially approved procedures; recorded in the patient's individual medical record; and immediately notified to their family or legal representatives. Persons with mental disabilities who are secluded shall be under the care and supervision of qualified medical personnel.

4. Prohibition of collective sanctions

The imposition of collective punishments shall be prohibited by law.

5. Disciplinary competence

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.

Principle XXIII

Measures to combat violence and emergency situations

1. Preventive measures

In accordance with international human rights law, appropriate and effective measures shall be adopted to prevent violence amongst persons deprived of liberty, or between persons deprived of liberty and the personnel.

In order to achieve that, the following measures shall be taken, amongst others:

- a. Separate the different categories of persons deprived of liberty in conformity with the criteria set down in the present document;
- b. Provide periodic and appropriate instruction and training for the personnel;
- c. Increase the number of personnel in charge of internal security and surveillance, and set up continuous internal surveillance patterns;
- d. Effectively prevent the presence of weapons, drugs, alcohol, and other substances and objects forbidden by law, by means of regular searches and inspections, and by using technological and other appropriate methods, including searches to personnel;
- e. Set up early warning mechanisms to prevent crises or emergencies;
- f. Promote mediation and the peaceful resolution of internal conflicts;
- g. Prevent and combat all types of abuse of authority and corruption;

- h. Eradicate impunity by investigating and punishing all acts of violence and corruption in accordance with the law.

2. Criteria for the use of force and weapons

The personnel of places of deprivation of liberty shall not use force and other coercive means, save exceptionally and proportionally, in serious, urgent and necessary cases as a last resort after having previously exhausted all other options, and for the time and to the extent strictly necessary in order to ensure security, internal order, the protection of the fundamental rights of persons deprived of liberty, the personnel, or the visitors.

The personnel shall be forbidden to use firearms or other lethal weapons inside places of deprivation of liberty, except when strictly unavoidable in order to protect the lives of persons.

In all circumstances, the use of force and of firearms, or any other means used to counteract violence or emergencies, shall be subject to the supervision of the competent authority.

3. Investigation and punishment

Member States of the Organization of American States shall carry out serious, exhaustive, impartial, and prompt investigations in relation to all acts of violence or situations of emergency that have occurred in places of deprivation of liberty, with a view to uncovering the causes, identifying those responsible, and imposing the corresponding punishments on them.

States shall take appropriate measures and make every effort possible to prevent the recurrence of acts of violence or situations of emergency in places of deprivation of liberty.

Principle XXIV

Institutional Inspections

In accordance with national legislation and international law, regular visits and inspections of places of deprivation of liberty shall be conducted by national and international institutions and organizations, in order to ascertain, at any time and under any circumstance, the conditions of deprivation of liberty and the respect for human rights.

As a minimum, such inspections shall be carried out with full access to places of deprivation of liberty and their installations, access to the information and documentation relating to the institution and the persons deprived of liberty therein; and the possibility of conducting private and confidential interviews with persons deprived of liberty and personnel.

The mandate of the Inter-American Commission on Human Rights and its Rapporteurships, in particular the Rapporteurship on the Rights of Persons Deprived of Liberty, shall be respected in all circumstances, so that they may verify the respect for the dignity and the fundamental rights and guarantees of persons deprived of liberty in Member States of the Organization of American States.

These provisions shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Principle XXV

Interpretation

In order to fully respect and ensure the fundamental rights and freedoms enshrined in the Inter-American system, Member States of the Organization of American States shall utilize

extensive interpretation to human rights norms, so as to apply the most favorable clause to persons deprived of liberty.

Nothing in the present document shall be interpreted as precluding, suspending or restricting the rights and guarantees of persons deprived of liberty recognized by virtue of domestic or international law, under the pretext that they are recognized to a lesser extent or are not provided for herein.

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