

# INVASIVE BODY SEARCHES OF FAMILY MEMBERS WHO VISIT PRISONS IS A VIOLATION OF HUMAN RIGHTS AND A WIDESPREAD PRACTICE THROUGHOUT THE AMERICAS

“This practice of strip searching family members of those deprived of liberty is totally incompatible with best practices, humanitarian treatment, and the dignity of the human being. In this day, considering the technological advances we have, it is inconceivable that we continue to practice these invasive body searches”

Inter-American Commission on Human Rights<sup>1</sup>

## Introduction

In November 2012, representatives of Brazilian civil society raised the issue of invasive body searches<sup>2</sup> in a hearing at the Inter-American Commission on Human Rights (IACHR) on prison conditions in Brazil, and Commissioner Rodrigo Escobar Gil responded, emphatically stating that the practice is contrary to human rights and dignity. In 2015, diverse civil society organizations filed a regional petition at the IACHR for a thematic hearing to address the same issue of body searches of family members visiting prisons in all of Latin America. While numerous countries participated in preparatory conversations, only three countries provided written and oral testimony. Commissioners expressed indignation that this practice continues, and at the same time, requested more information about what was happening across the region.<sup>3</sup> Additionally, the commissioners present, speaking in the name of the Human Rights Commission, stated a strong commitment to address this issue, and asked the petitioners for follow-up information to demonstrate the breadth of the practice.

In 2008, the IACHR approved a resolution of Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, which asserted that intrusive vaginal or anal searches shall be prohibited by law.<sup>4</sup> However, prisoners across the

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<sup>1</sup> Inter-American Commission on Human Rights, *the Situation of People Deprived of Liberty in Brazil*, Organization of American States, 146 Period of Sessions (Hearings) (Nov. 1, 2012). Commissioner Rodrigo Escobar Gil, Rapporteur for People Deprived of Liberty for the Inter-American Commission on Human Rights, responding to testimony presented.

<http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=129>

<sup>2</sup> The practice is often referred to as “requisa” in Spanish, and “revista vexatória” in Portuguese. Loyola University Chicago School of Law students Isabel Zubillaga (JD, 2017) and Heidi Cerneka (JD, 2017) compiled this report. For more information, contact Heidi Cerneka at [hcerneka@gmail.com](mailto:hcerneka@gmail.com).

<sup>3</sup> Inter-American Commission on Human Rights, *Human Rights and Body Searches of Prison Visitors in America*, Organization of American States, 156 Period of Hearing Sessions (Oct. 23, 2015). Commissioner James Cavallaro presided over the session attended by Commissioners Rosa Maria Ortiz, Paulo Vanucchi, and Executive Secretary of the IACHR, Emilio Álvarez Icaza. Commissioner Vanucchi stated, “It is absurd that we can be still talking about this today... after decades of democracy... this is as bad as the abuses during the dictatorships!” He terminated his comments by saying that the dialogue must continue and asking that the petitioners maintain the commission informed on the issue. A video of this hearing is available at <https://www.youtube.com/watch?v=7F2pPC6z2RE>

<sup>4</sup> Inter-American Commission on Human Rights, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Organization of American States, Principle XXI, (approved in the 131<sup>st</sup> regular period of sessions, March, 2008), available at:

Americas undergo strip searches as a “standard practice in guaranteeing security” in the prison facility. Family members that are strip-searched before they are allowed to visit prisoners state that the practice almost always serves to humiliate and control, rather than to guarantee security. Because men constitute the overwhelming majority of prisoners in the world, and because their visitors are most often women and children, this practice affects women and children disproportionately. In his response during the regional hearing at the IACHR, Counselor James Cavallero, president of the session and Relator for People Deprived of Liberty, affirmed that the practice is frequently used to humiliate and to dominate family members.<sup>5</sup> He stated that it is fundamental that the issue be discussed, and he asked for more information from the diverse countries participating.<sup>6</sup>

This report addresses the specific act of subjecting those who visit prisoners to a strip search process in order to have access to their loved one. Women describe the practice in much the same manner, independent of the country in which they live and the national and international regulations:

*“We walk into a box; I take off all my clothes. I have to squat three times, open my private parts for the prison guard, sit on a metallic stool metal detector, and turn around with my arms up and sometimes they make me cough, with force, depending on who is searching. My son watches everything. When I need to open my private parts, I ask him to turn around,” she says. Then it is his turn.*<sup>7</sup>

The report considers the issue in eleven Latin American countries and the United States. This practice is standard in many prisons in Latin America, affecting more than 1.1 million prisoners throughout the region, many of whom have multiple visitors each week.<sup>8</sup> Although it is not a standard practice in the United States, visitor searches do occur. Intrusive searches of prison visitors discourage visits and negatively impact familial and social relationships, which are essential to the reintegration process following an inmate’s release from prison.<sup>9</sup> In Brazil, activists analyzed data obtained from one state government’s official files, and reviewed information from more than one million visitor

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<http://www.cidh.oas.org/pdf%20files/RESOLUCION%201-08%20ESP%20FINAL.pdf>. The report is also available in English at [http://www.cidh.oas.org/pdf%20files/RESOLUTION%201\\_08%20-%20PRINCIPLES%20PPL%20FINAL.pdf](http://www.cidh.oas.org/pdf%20files/RESOLUTION%201_08%20-%20PRINCIPLES%20PPL%20FINAL.pdf).

<sup>5</sup> IAHCR, *Human Rights and Body Searches of Prison Visitors in America*, *supra* note 3 at 25:00.

<sup>6</sup> *Id.*

<sup>7</sup> Andrea Dip & Fernando Gazzaneo, *Intimate Prison Searches: São Paulo’s humiliating genital orifice searches of women and children on inmate visits*, Black Women of Brazil, <https://blackwomenofbrazil.co/2014/09/20/intimate-prison-searches-sao-paulos-humiliating-genital-orifice-searches-of-women-and-children-on-inmate-visits/>, accessed on Jan. 20, 2018.

<sup>8</sup> Some prisoners have many visitors, and others have none. If we consider an average of 2 visits per month, a low estimate, then this practices affects over 2.2 million prison visitors every single month.

<sup>9</sup> Penal Reform International, *Body Searches: Addressing risk factors to prevent torture and ill-treatment*, Penal Reform International and Association for the Prevention of Torture, 2015.

[http://www.apt.ch/content/files\\_res/factsheet-4\\_body-searches-en.pdf](http://www.apt.ch/content/files_res/factsheet-4_body-searches-en.pdf)

strip searches during one year.<sup>10</sup> The data demonstrated that only three in every 10,000 searches yielded any contraband at all.

Obtaining firsthand testimony and data is challenging for activists, journalists, and even well intentioned government investigators for two reasons: 1) because family members are afraid to speak up, and 2) because people are conditioned to think the practice is “normal” and acceptable. Family members do not want to put their visit at risk by complaining about treatment, nor do they want to upset their incarcerated family member by relating the experience. Additionally, people are conditioned to believe that submitting to a search is the price one must pay for having a relative in prison. Furthermore family members and IACHR Commissioners alike state that the searches are not just about security, but are in fact, a means of retaliating against prisoners and their visitors by humiliating and punishing them for having a family member in prison.<sup>11</sup>

The report offers international norms and human rights parameters that apply directly or can apply to prisoners, searches, and visitors to prisons. Additionally, research in 12 American countries demonstrates differing levels of laws and policies in relation to visitors and searches, however, each one of them also reveals that the practice continues independent of legislation or prison policy. Section I identifies international human rights bodies directly involving American nations, as well as norms established by them addressing prison and human rights issues. Section II analyzes available data regarding eleven Latin-American countries and their search practices in relation to family members visiting prisons as well as search policies in the United States. Finally, the appendices make recommendations to non-governmental organizations at country and regional levels regarding possible practices to obtain information and advocate for the abolishment of invasive body searches and offer human rights documents from other regions of the globe.

## I. INTERNATIONAL HUMAN RIGHTS NORMS

Human rights declarations and best practices documents from diverse international human rights bodies such as the United Nations and the Organization of American States offer rules and guidelines related to searches of prisoners and their families, as well as general human rights parameters.<sup>12</sup> Both organizations recognize the importance of security issues in detention facilities, while at the same time, not accepting any practices that humiliate or offend the human dignity of the people involved.

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<sup>10</sup> Instituto Terra, Trabalho e Cidadania – ITTC, Pelo Fim Completo e Imediato da Revista Vexatória no Brasil, May 23, 2017, <http://ittc.org.br/pelo-fim-completo-imediato-revista-vexatoria/>. In the State of São Paulo, approximately 3.5 million visits occur each year, and strip searches are standard procedure. Therefore 3.5 million strip searches occur, and in 2012, only 0.02% of the cases found drugs or cell phones on the visitors, or 700 cases.

<sup>11</sup> Cavallero, *supra* note 2 at 28:00 minutes; Cavallero was IACHR Relator for People Deprived of Liberty and President of the Session.

<sup>12</sup> Appendix II offers related Human Rights Documents from Asia, Africa and Europe.

## The United Nations

The United Nations has taken several steps toward drawing attention to and improving the situation that visitors to prisons in Latin America face, including three documents that specifically address the issue of body searches:

1) *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*” or the “*Bangkok Rules*”<sup>13</sup>

Adopted by the UN General Assembly in 2010, the Bangkok Rules stipulate, among other things, that (i) effective measures must be taken to protect women prisoners’ dignity and respect (ii) alternative screening methods, such as scans, must be developed to replace strip searches and invasive body searches, and (iii) prison staff must be especially professional and sensitive in searching children who enter the facilities.<sup>14</sup>

2) *The UN Standard Minimum Rule for the Treatment of Prisoners (the “Mandela rules”)*

The Mandela Rules, adopted by the UN General Assembly in December of 2015, direct that (i) search and entry procedures for visitors of prisoners shall not be degrading, and (ii) body cavity searches of all visitors should be avoided and (iii) that they should never be applied to children.<sup>15</sup> It furthermore directs that the searches shall be governed by principles at least as protective as those for the prisoners, which in summary direct that intrusive body cavity searches should not be done unless absolutely necessary and should be carried out by a medical professional or at the very least officials trained by medical professionals.<sup>16</sup> Additionally, the principles hold that searches of visitors require their consent, although access to a prison facility may be contingent upon submitting to a search.<sup>17</sup>

3. *The UN (Office on Drugs & Crime) Handbook for Prison Managers and Policymakers on Women & Imprisonment*<sup>18</sup>

The UN Handbook delineates “Good Practices” when conducting body searches of prisoners based on a review of relevant rules/recommendations on searches by the UN Human Rights

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<sup>13</sup> United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, Resolution 2010/16, adopted on Dec. 21, 2010.

[https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175, adopted on Dec. 17, 2015.

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/70/175](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/175)

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook for prison managers and policymakers on Women and Imprisonment*, United Nations, 2008, <https://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf>.

Committee,<sup>19</sup> the European Prison Rules,<sup>20</sup> and the statement on body searches by the World Medical Association.<sup>21</sup>

### **World Medical Association**

The World Medical Association (WMA) is an independent and international organization that partners with the World Health Organization. WMA revised its Statement on Body Searches in 2016, raising questions of physicians' duty to patient rights, informed consent of patients, a fiduciary duty of loyalty to the profession and the patient, and a conflict with the relationship of care that physician might have with a patient. The Association states that physician participation should be in exceptional cases only and never when a cavity search is forced upon the prisoner.<sup>22</sup> The Association also recommends that procedures should never require that a prisoner, and therefore, even more so a visitor, be completely naked at any time, and that searches be done by staff of the same gender as the prisoner.

### **Organization of American States & Inter-American Commission/Court on Human Rights**

#### *1. Inter-American Commission on Human Rights (IACHR)*

The IACHR addresses the question of body searches in various thematic hearings as stated above, but also in a specific case decision against Argentina. The plaintiff and her 13-year old daughter were subjected to vaginal searches as part of routine procedure to enter the prison for a visit. They filed a complaint asking the court to prohibit the State from carrying out this procedure. Although the appeals court held for the plaintiffs, the Argentine Supreme Court overturned the decision. Following this, the case was brought to the IACHR.

The Commission cited an Inter-American Court of Human Rights decision regarding the rights of the press, stating that “public order’ or ‘general welfare’ may under no circumstances be invoked as a means of denying a right guaranteed by the (American) Convention (on Human Rights) or to impair or deprive it of its true content.”<sup>23</sup> Furthermore, the case held that:

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<sup>19</sup> *Id.* at 38, referring to United Nations Human Rights Committee, General Comment on Article 17 of the International Covenant on Civil and Political Rights’ guarantee of the right to privacy. The comment specifically addresses body searches, see HRI/GEN/1/Rev.3, part I.

<sup>20</sup> Council of Europe: Committee of Ministers, *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules*, 11 January 2006, Rec(2006)2, available at <https://www.coe.int/en/web/prison/conventions-recommendations#recommendations-bookmark> .

<sup>21</sup> WMA (World Medical Association), *Statement on Body Searches of Prisoners*, adopted in 1993, revised October 2016. Available at <https://www.wma.net/policies-post/wma-statement-on-body-searches-of-prisoners/>

<sup>22</sup> *Id.*

<sup>23</sup> Inter-American Commission on Human Rights, Organization of American States, *Report No. 38-96, Case 10.506 Argentina*, ¶57, Oct. 15, 1996, <http://www.cidh.org/annualrep/96eng/Argentina11506.htm> ; see also Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 67, quoting from Article 29(a) of the Convention.

68. *The Commission does not question the need for general searches prior to entry into prisons. Vaginal searches or inspections are nevertheless an exceptional and very intrusive type of search. The Commission would like to underline the fact that a visitor or a family member who seeks to exercise his or her rights to family life should not be automatically suspected of committing an illegal act and cannot be considered, on principle, to pose a grave threat to security. Although the measure in question may be exceptionally adopted to guarantee security in certain specific cases, it cannot be maintained that its systematic application to all visitors is a necessary measure in order to ensure public safety.*<sup>24</sup>

The Commission recognized that an occasion may arise requiring a vaginal search but only under extreme circumstances, and only if it meets a four-part test: 1) *absolutely necessary to achieve the security objective in the particular case*; 2) *no existing alternative option*; 3) *determined by judicial order*; and 4) *carried out by an appropriate health professional*.<sup>25</sup>

## 2. *American Convention on Human Rights*

Article 5 of the American Convention on Human Rights guarantees every person the right to have “physical, mental, and moral integrity respected.”<sup>26</sup> Additionally, the Convention prohibits torture, as well as “cruel, inhuman, or degrading punishment or treatment”,<sup>27</sup> and bars a State from extending any punishment to any person other than the person incarcerated.<sup>28</sup> An intrusive or invasive body search of a visitor to an incarcerated prison while possibly not intended as cruel or punishment, *de facto* serves to punish the visitor.

## 3. *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, OAS*

The Organization of American States has clear restrictions on bodily searches of both prisoners and their families, indicating that they should be done in adequate sanitary conditions, by qualified personnel of the same sex, and be compatible with human dignity and human rights.<sup>29</sup> Body searches should use alternative means such as technology or noninvasive procedures whenever possible, and should respect criteria of “necessity, reasonableness and proportionality.”<sup>30</sup> The procedure for any search should be clearly established and available. Most importantly, OAS *Best Practices* asserts that vaginal and anal searches shall be **forbidden** by law.<sup>31</sup> (*emphasis added*).

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<sup>24</sup> *Id.* at ¶68.

<sup>25</sup> *Id.*, at ¶72.

<sup>26</sup> *American Convention on Human Rights “Pact of San Jose, Costa Rica”* (B-32), Art. 5(1), Adopted by General Secretariat, OAS (Organization of American States), OAS, Treaty Series, No. 36, adopted on 11/22/69 and entered into force 07/18/78 in accordance with Art. 74.2 of the Convention. [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm) Note that because it is a treaty, it must be signed and ratified by participating nations to bind that nation.

<sup>27</sup> *Id.* at Art. 5(2).

<sup>28</sup> *Id.* at Art. 5(3).

<sup>29</sup> IACHR Principles and Best Practices, *supra* note 4 at 166.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*



#### 4. *Inter-American Court on Human Rights*

The Inter-American Court of Human Rights held that a particular invasive body cavity search constituted rape in the case of *Miguel Castro-Castro Prison v. Peru*.<sup>32</sup> In the case, the victim was a prisoner who suffered a “finger vaginal ‘inspection’ which the court held was sexual rape, considering “sexual rape” as an act of “vaginal or anal penetration, without the victim’s consent.”<sup>33</sup>

## II. COUNTRY-SPECIFIC INFORMATION ON INVASIVE BODY SEARCHES IN THE AMERICAS

This report highlights twelve American countries. Some countries, such as Mexico, recognize that new techniques must be put in place and have sought to do so. Brazil recognizes that the practice must discontinue, has legislation in diverse states and state court rulings against the abusive practice, but complaints are rampant and the practice is still standard. Other Latin American countries seem to be fully aware of the issue, because of litigation against the State or public campaigns, but they have no specific legislation to guarantee the rights of visitors, and the practice continues. The Inter-American Court held that the practice was a violation of human rights in a specific case against Peru, and the Argentine Federal Appeals Court held for the plaintiffs in another case.<sup>34</sup>

### Argentina

In 2015, the total prison population of Argentina was 72,693, with a per capita prison population of 167 per 100,000 persons.<sup>35</sup>

The official Argentinian protocol on searching visitors and prisoners prohibits searches of body cavities.<sup>36</sup> Argentina’s courts have on several occasions declared vaginal searches unconstitutional,<sup>37</sup> and even thrown out drug convictions based on drugs found in an illegal vaginal search of a visitor. A young woman visiting a boyfriend in prison was suspected of having drugs hidden in a body cavity so officials did a humiliating vaginal search and found marijuana. She was convicted, but six years later the Oral Federal Tribunal of Parana officially pardoned her for the crime because the drugs had been found

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<sup>32</sup> Inter-American Court of Human Rights Case of the *Miguel Castro-Castro Prison v. Peru* Judgment of November 25, 2006 (Merits, Reparations and Costs), [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_160\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf)

<sup>33</sup> *Id.* at ¶ 309.

<sup>34</sup> *Supra* note 23, at ¶¶ 11-12, Although the Supreme Court overturned the decision, allowing the practice to continue.

<sup>35</sup> *World Prison Brief*, Institute for Criminal Policy Research, Argentina, <http://prisonstudies.org/country/argentina>

<sup>36</sup> Ministerio de Justicia y Derechos Humanos, Presidencia de la Nación, *Protocolo de requisita, a familiares y/o visitas a personas privadas de su libertad*, Ley 7.719, published Dec. 30, 2015, <http://www.saij.gob.ar/LPH0007719> .

<sup>37</sup> Juzgado Nacional en lo Criminal de Instrucción N°38, en el marco de la causa n° 69.660/06, <http://redibpdp.ijusticia.org/components.php?name=Articulos&artid=241&idioma=spanish>

through a degrading search that was done without judicial authority.<sup>38</sup> Additionally, another tribunal prohibited naked visual searches or “invasive searches” of prison visitors because these violate the national norms, the Argentinian Constitution, and international conventions to which Argentina adheres.<sup>39</sup>

However, invasive searches of prison visitors in Argentina have been serious and systematic for a long time, and according to Dr. Elias Neuman from the Universidad de Buenos Aires, anal and vaginal searches have become part of the penitentiary tradition.<sup>40</sup> Searches often include a visual vaginal inspection for which the visitor is required to fully undress, and open up her private parts so that female personnel can kneel and look into the body cavities.<sup>41</sup> Sometimes even minors are subject to humiliating searches.<sup>42</sup> Retaliation against visitors who file complaints also occurs.<sup>43</sup> According to a CELS (Centro de Estudios Legales y Sociales) report, the Argentinian government was purchasing body scanners to control the entry of visitors in prisons, however at the time of the report, many prisons were still utilizing old physical, invasive search techniques.<sup>44</sup>

## Belize

In December, 2015, Belize held approximately 1443 people in its national prisons, which signified a per capita rate of 410 per 100,000 persons.<sup>45</sup>

The language in the state document produced by the prison authority vaguely states that all visitors are subject to body searches. It states that “pat-down searches” are regular, but that a strip search process may be carried out on visitors if an officer sees something

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<sup>38</sup> Informe sobre la visita a Honduras del Subcomité para la prevención de la tortura y otros tratos o penas crueles, inhumanos o degradantes, [http://www2.ohchr.org/english/bodies/cat/opcat/docs/honduras\\_visit\\_sp.doc](http://www2.ohchr.org/english/bodies/cat/opcat/docs/honduras_visit_sp.doc)<http://www.diarioelargentino.com.ar/noticias/164612/Requisas-%C3%ADntimas-en-la-c%C3%A1rcel-fallo-judicial-contra-Servicio-Penitenciario>

<sup>39</sup> La Voz, *Prohíben las requisas profundas a visitas de presos federales y provinciales en Córdoba*, Mar. 27, 2015, <http://www.lavoz.com.ar/ciudadanos/prohiben-las-requisas-profundas-visitas-de-presos-federales-y-provinciales-en-cordoba>

<sup>40</sup> Dr. Elías Neuman, *Victimización de mujeres en prisión*, Archivos de Criminología, Criminalística y Seguridad Privada, Year 2, vol. III August-december 2009, [https://www.academia.edu/26997037/Victimizaci%C3%B3n\\_de\\_mujeres\\_en\\_prisi%C3%B3n](https://www.academia.edu/26997037/Victimizaci%C3%B3n_de_mujeres_en_prisi%C3%B3n).

<sup>41</sup> El Argentino, *Requisas íntimas en la cárcel: fallo judicial contra Servicio Penitenciario*, June 25, 2016, <http://www.diarioelargentino.com.ar/noticias/164612/Requisas-%C3%ADntimas-en-la-c%C3%A1rcel-fallo-judicial-contra-Servicio-Penitenciario> See also

<http://www.ppn.gov.ar/sites/default/files/Procedimientos%20de%20Registro%20Personal%20y%20Requisas%20en%20C%C3%A1rceles%20Federales.pdf>

<sup>42</sup> Procuración Penitenciaria de la Nación, *Procedimientos de Registro Personal Y Requisa En Cárceles Federales*, Cuadernos de la Procuración Penitenciaria de la Nación No 11, 2017, <http://www.ppn.gov.ar/sites/default/files/Procedimientos%20de%20Registro%20Personal%20y%20Requisas%20en%20C%C3%A1rceles%20Federales.pdf>. (After a 14 year-old girl was inappropriately touched and forced to lift off her bra, her mother filed a complaint with the penitentiary service and in retaliation, they were prohibited from visiting for 3 months)

<sup>43</sup> *Id.*

<sup>44</sup> CELS Centro de Estudios Legales Y Sociales, *Derechos humanos en Argentina Informe 2012*, 231. <https://www.cels.org.ar/web/wp-content/uploads/2016/06/IA2012.pdf>

<sup>45</sup> *World Prison Brief*, Institute for Criminal Policy Research, Belize, <http://www.prisonstudies.org/country/belize>, last visited 4/25/2017.



irregular or suspects that the person is holding contraband.<sup>46</sup> The Superintendent can deny entrance to anyone refusing to be searched. The Superintendent can also deny admission to anyone considered to be of “loose or immoral character.”<sup>47</sup>

## **Brazil**

In February 2017, Brazil held approximately 651,000 people in its national prisons, which was a per capita rate of 316 per 100,000 persons.<sup>48</sup>

While diverse states and courts prohibit strip searches of visitors through judicial decree or state legislation in Brazil, it is still standard procedure in the majority of the over 1400 detention facilities in the country. According to the Rede Justiça Criminal (Criminal Justice Network), a collaborative effort of diverse human rights organizations in Brazil, at least eleven states have regulations prohibiting or limiting the use of strip searches on visitors.<sup>49</sup>

Brazil has a vigorous civil society campaign to end the standard procedure of requiring all visitors to prisons to submit to strip searches that include exposing their body cavities over mirrors, even being taken to hospitals for x-rays or gynecological exams when prison staff are not satisfied. The Criminal Justice Network has dedicated itself to a campaign to end the searches. In 2014, one organization of the Network, the Instituto Terra, Trabalho e Cidadania- ITTC, found that despite claims that security of prisoners and staff would be compromised without the searches, this was not so. Using data collected after filing a Freedom of Information Act request, ITTC demonstrated that while over 1 million strip searches occur each year just in the state of São Paulo, only 3 of every 10,000 searches actually yield contraband.<sup>50</sup>

The campaign has gained public force as well, with at least half of Brazilian states already having laws in place prohibiting the practice, although most of them continue the practice. In the State of Goiás, the Prison Administration introduced a “humanized search” and no longer requires strip searches. The change has been in effect for 3 years, and no data register any increase in problems in the state prison system.

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<sup>46</sup> Belize Prisons Act, 139, (rev'd 2000), [http://www.oas.org/juridico/spanish/gapeco\\_sp\\_docs\\_blz1.pdf](http://www.oas.org/juridico/spanish/gapeco_sp_docs_blz1.pdf).

<sup>47</sup> Resources from Belize include: Kolbe Foundation, Belize Central Prison Rules, <http://www.kolbe.bz/prison-rules.html>; Antoinette Moore, member of Human Rights Commission of Belize, e-mail testimony 3/3/2017; Belize Prisons Act, 139 (rev'd 2000), [http://www.oas.org/juridico/spanish/gapeco\\_sp\\_docs\\_blz1.pdf](http://www.oas.org/juridico/spanish/gapeco_sp_docs_blz1.pdf); U.S. State Report on Human Rights in Belize, 2010, <https://www.state.gov/j/drl/rls/hrrpt/2010/wha/154494.htm>.

<sup>48</sup> *World Prison Brief*, Institute for Criminal Policy Research, Brazil, <http://www.prisonstudies.org/country/brazil>. Last visited 4/2/2017.

<sup>49</sup> Renata Mariz, Revista íntima vexatória ainda é rotina no sistema prisional do país, Rede Justiça Criminal, Feb. 27, 2017. <http://redejusticacriminal.org/pt/revista-intima-vexatoria-ainda-e-rotina-no-sistema-prisional-do-pais/>

<sup>50</sup> Instituto Terra, Trabalho e Cidadania, *Luta por Direitos: A longa Mobilização pelo Fim da Revista Vexatória no Brasil*, [*Fight for Rights: The Long Mobilization for the End of Invasive Body Searches in Brazil*] (Aug. 28, 2014), <http://ittc.org.br/luta-por-direitos-a-longa-mobilizacao-pelo-fim-da-revista-vexatoria-no-brasil/>, last visited on Jan 26, 2018.

Additionally, the National Council of Criminal and Prison Policy, of the Ministry of Justice of Brazil, has published a resolution recommending an end to the practice.<sup>51</sup> The Council defines the practice as partial or total stripping, the introduction of objects into body cavities to examine individuals, the use of drug-sniffing dogs, and the practice of squats and making women jump to ‘dislodge’ anything hidden in their bodies. Further, a member of the National Council of Justice stated that the practice of “invasive body searches is, simultaneously, a serious violation to restricting punishment to the person sentenced and an attack on the human dignity of the person visiting the prison. For these reasons, it should never have existed.”<sup>52</sup>

Finally, activists have succeeded in winning litigation against the searches. One woman in Sao Paulo State successfully sued for violation of her rights because of a humiliating search, and the Appeals Court held that the search was abusive and violated her honor and her dignity.<sup>53</sup> The highest appellate court in Brazil, the Superior Tribunal of Justice confirmed a decision granting indemnification to another woman who was subject to an excessively invasive search in the State of Acre.<sup>54</sup> Further, in the state of Rio Grande do Sul, a judge absolved a woman of an accusation of drug trafficking, because she attempted to enter a prison with marijuana hidden in her vagina. The drugs were found during the strip search, and the judge held that the illegal search tainted the evidence.<sup>55</sup>

## Chile

In November 2017, the total prison population of Chile was 42,226 with a per capita prison population of 232 per 100,000 persons.<sup>56</sup>

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<sup>51</sup> *Resolução do CNPCP recomenda fim da revista vexatória [CNPCP Resolution Recommends the end of Vexatious Body Searches]*, Pensando o Direito, Sep. 3, 2014. <http://pensando.mj.gov.br/2014/09/03/resolucao-do-cnpcp-determina-fim-da-revista-vexatoria/>

<sup>52</sup> National Council of Justice, *Nove estados já proibiram a revista pessoal vexatória em unidades prisionais [Nine States already prohibit the invasive body searches in prison units]*, (Sep. 16, 2014), <http://www.cnj.jus.br/noticias/cnj/62079-noveestados-ja-proibiramarevista-pessoal-vexatoria-em-unidadesprisionais>, last visited on April 1, 2017. The National Council of Justice is an organ of the judicial branch of the Brazilian Government created in 2004 by a constitutional amendment. See <http://translate.google.com.br/translate?u=http://www.cnj.jus.br/sobre-o-cnj/quem-somos-visitantes-contatos&sl=pt&tl=en&hl=&ie=UTF-8>.

<sup>53</sup> Estado de São terá de indenificar mulher vítima de revista vexatória *[State of São Paulo will have to Indemnify woman victim of invasive body search]*, Pastoral Carcerária, Jan. 14, 2016,

<http://carceraria.org.br/estado-de-sao-paulo-tera-que-indenizar-mulher-vitima-de-revista-vexatoria.html>

<sup>54</sup> Migalhas, STJ- Mulher será indenizada por revista íntima abusiva em visita ao presídio [Superior Tribunal of Justice – Woman will be indemnified for abusive intimate search in visit to prison], Aug. 30, 2008,

[http://www.migalhas.com.br/Quentes/17,MI68027,51045-](http://www.migalhas.com.br/Quentes/17,MI68027,51045-STJ+Mulher+sera+indenizada+por+revista+intima+abusiva+em+visita+a)

[STJ+Mulher+sera+indenizada+por+revista+intima+abusiva+em+visita+a](http://www.migalhas.com.br/Quentes/17,MI68027,51045-STJ+Mulher+sera+indenizada+por+revista+intima+abusiva+em+visita+a) last visited May 3, 2017.

<sup>55</sup> Empório do Direito, *Droga encontrada por revista vexatória contamina a prova e absolve, reconhece Juiz em sentença [drugs found through invasive search contaminate the proof and absolve the defendant, judge holds in sentence]*, empóriododireito, <http://emporiododireito.com.br/droga-encontrada-por-revista-vexatoria-contamina-a-prova-e-absolve-reconhece-juiz-em-sentenca/>, last visited on 5/3/2017.

<sup>56</sup> *World Prison Brief*, Institute for Criminal Policy Research, Chile, <http://www.prisonstudies.org/country/chile>, last visited on Jan. 25, 2018.

In Chile, prison visits are regulated by two laws. The Rules for Prison Establishments identifies the types of visits and the overall structure, including a requirement that any visitor must allow a body search, done in private by an officer of the same sex.<sup>57</sup> Additionally, a document promulgated by the nongovernmental organization Leasur explains the procedures for the body search. Women and men will undergo a strip search, including sitting on an x-ray bench to verify that they are not carrying anything prohibited in their vagina or anus.<sup>58</sup>

In 2006, a published document about incarcerated women in five countries including Chile, cited an unpublished report prepared by Cladem, (Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer).<sup>59</sup> The report details a case in which a woman sought recourse after a prison guard introduced her finger into the visitor's anus as part of the search. While the State defense claimed that the protection of everyone in the prison was more important than one woman's discomfort, an Appeals Court in Santiago held that the practice was a violation and unacceptable under any circumstances.<sup>60</sup> The court stated that searching a person's anus, whether the guard touched the visitor or just used a visual search, should be considered a violation and a serious and moral attack on the person and her mental health. The court further concluded that no exception could ever be acceptable because it contradicts the protection of the human person, and in fact, it would be better for the State to risk the entrance of illicit substances than to violate the physical and mental integrity of a person.<sup>61</sup>

## Costa Rica

In 2016, the total prison population of Costa Rica was 17,440 with a per capita prison population of 352 per 100,000 persons.<sup>62</sup>

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<sup>57</sup> Gendarmeria de Chile & Custodia y Reinserción, *Si Ud. Es Familiar o Amigo de un Interno y Necesita Entrega de Encomiendas, Si necesita información sobre Visitas*, <http://www.gendarmeria.gob.cl/familiar.jsp>, last visited Jan. 20, 2018, *see also* stating that all visitors and their belongings will be searched for security reasons, in the manner established by procedures established by the National Director. This can be done manually, but the use of technology is encouraged. Ministerio de Justicia, Reglamento de Establecimientos Penitenciarios, Artículo 54, May 22, 1998. <https://www.leychile.cl/Navegar?idNorma=123280>.

<sup>58</sup> LEASUR, Litigación Estructural para América del Sur, Información Práctica para Familiares y Amigos de Internos (Presos) en Región Metropolitana, <http://leasur.cl/wp-content/uploads/2017/03/informaci%C3%B3n-familiares-y-amigos-de-ppl.pdf>, last visited Jan. 20, 2018.

<sup>59</sup> Centro por la Justicia y el Derecho Internacional (Cejil), *Mujeres Privadas de Libertad, Informe Regional*, Cejil, 2006, <http://www.pensamientopenal.com.ar/system/files/2014/12/doctrina33397.pdf>.

<sup>60</sup> *Id.* at 15, *see* footnote 70.

<sup>61</sup> *Id.*, citing the actual text in Spanish: “La Corte finalmente acogió el recurso señalando expresamente que ‘ese mismo hecho (la revisión del ano), haya o no introducción anal, debe ser considerado violación o grave ataque a la personalidad y entraña una grave alteración moral que afecta la salud psíquica de quien la padece’ y que ‘en efecto, no puede aceptarse tal técnica de excepción ante alguien que desea visitar un recluso, por peligroso que este último pueda ser; el acto en sí es contrario a los principios esenciales que resguardan a la persona humana, y si existe el peligro que la autoridad carcelaria desea evitar, debe buscar otros medios civilizados para prevenirlo y, si ellos no existen, más vale correr el riesgo que atropellar el derecho de toda persona a su integridad física y psíquica y a la libre disposición de sí misma.” Cf. Cladem Chile, *op. cit.*, p. 10.

<sup>62</sup> World Prison Brief, Institute for Criminal Policy Research, Costa Rica, <http://prisonstudies.org/country/Costa-Rica>.

Costa Rica restricts the use of searches of visitors to over-the-clothing pat-downs, except in very specific instances clearly spelled out in the regulation. According to the Costa Rican Judicial Instructions on searches, searches performed on visitors to prisons may consist of a visual inspection, a pat-down over the clothing, the loosening of certain articles of clothing, and the removal of exterior articles of clothing.<sup>63</sup> The Judicial Instructions establish the limits of “visual inspections”, and define “pat-downs” to mean “the careful patting of the body, with the exception of the genital area.”<sup>64</sup> Furthermore, the Judicial Instructions explicitly declare that the “loosening of certain articles of clothing” may never be understood to permit agents to demand that prisoners undress or reveal their private parts, but instead is a provision that extends only to articles of clothing like shoes, socks, hats, headbands, jewelry, and coats. And if any such loosening of a visitor’s clothing takes place, it must be carried out by an official or agent of the same gender.

An additional safeguard that the Judicial Instructions put into place is that, only in those instances where there is a well-founded suspicion, may a prison official ask a visitor to remove items believed to be hidden in the visitor’s body cavities.<sup>65</sup> Even when such a well-founded suspicion<sup>66</sup> exists, however, the right to remove such items from the visitor’s body belongs only to the visitor and not to the official. If the visitor refuses to comply with this request, then the situation is made known to the judicial police, a public minister, or a competent judge, in order to determine what steps should be taken next. If and only if a judge so orders may there be a more invasive search, which is still subject to the Penal Code of Procedures.

Two cases demonstrate that Costa Rica is working toward remedying its past shortcomings in screening visitors to prisons. In the Maya Case in 2012, a Constitutional Committee ordered that an inmate be compensated for the cruel and degrading treatment to which he was subjected, when he was forced to undergo an anal search without his consent.<sup>67</sup> And in 2015, a Costa Rican Constitutional Court ordered that a prison visitor be paid damages, as a result of her having been subjected to an anal and vaginal inspection,

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<sup>63</sup> Reglamento de Requisa a Personas e Inspección de Bienes en el Sistema Penitenciario Nacional No. 25 882-J, Feb. 20, 1997,

[http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=53963&nValor3=89836&strTipM=TC](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=53963&nValor3=89836&strTipM=TC) .

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* While the federal Regulation regarding strip searches in Costa Rica Argentina Penal Code does not define “well-founded suspicion”, the Penal Code restricts searches of arrested persons to only when there is a serious and substantiated suspicion that he or she is hiding something. *Código Procesal Penal, Art. 188 (Ley N° 7594 del 10 de abril de 1996).*

<sup>67</sup> Carlos Láscarez S., *Golpizas en celda y requisa anal destacan en informe*, La Nación, Mar. 4, 2014, <http://www.nacion.com/sucesos/seguridad/golpizas-en-celda-y-requisa-anal-destacan-en-informe/XJWQ5UVDJFBM5EVZMMAMRIF6IE/story/>

despite the fact that both "a physical inspection" and an x-ray showed there to be no drugs on her person.<sup>68</sup>

## Ecuador

In 2014, the total prison population of Ecuador was 25,902, with a per capita prison population of 162 per 100,000 persons.<sup>69</sup>

In Ecuador, the government has established as official policy that visitors to prisoners must submit to a search before entering. Official rules issued by the Secretary of Justice restrict the items of clothing that a visitor is permitted to wear. They cannot wear jackets, coats, high heels, wedges, boots, belts, and ties.<sup>70</sup> These same rules require that infants being brought into the prison have their diapers changed in the presence of an agent.<sup>71</sup> The State installed scanning machines in 2014, thus eliminating the requirement of removing clothing.<sup>72</sup> Complaints continued, as noted by human rights organizations and visitors themselves. In the prison of Cotopaxi, women continued to be subjected to searches that require them to remove underclothing and to do naked squats, in a room that offered only the privacy of a garbage bag hanging in the place of a door.<sup>73</sup> If the women refused to take off their clothes, they were banned from future visits. If they refused to do squats while naked, they were subjected to an internal cavity physical search by an official wearing a latex glove.<sup>74</sup> Women also denounced that they felt especially humiliated by this process because it frequently occurred in rooms that were equipped with functioning scanning machines that prison officials simply refused to turn on and use.<sup>75</sup>

According to the 2014 Ecuadorian Manual on Human Rights as Applied to Prison Contexts, whenever there is a reasonable suspicion that a visitor intends to bring any prohibited object or substance into the prison, a medic or paramedic may subject the visitor to a body search that includes an inspection of the person's genitalia.<sup>76</sup>

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<sup>68</sup> Rico, *Constitutional Court Condemns Anal and Vaginal Search of Handcuffed Woman*, QCostarica.COM, Sept. 12, 2015, <http://qcostarica.com/constitutional-court-condemns-anal-and-vaginal-search-of-handcuffed-woman/>.

<sup>69</sup> *World Prison Brief*, Institute for Criminal Policy Research, Ecuador <http://prisonstudies.org/country/Ecuador>, last visited 4/20/2017.

<sup>70</sup> Sara Ortiz, *Riguroso control a las visitas es parte del modelo de rehabilitación social*, El Comercio, July 7, 2014, <http://www.elcomercio.com/actualidad/ecuador-visita-carcel-normas-rehabilitacion.html>.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Sara Ortiz, *Más controles a las visitas en los centros de rehabilitación*, El Comercio, <http://www.elcomercio.com/actualidad/seguridad/mas-controles-a-visitas-centros.html>, last visited Jan. 20, 2018.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Ministerio de Justicia, Derechos Humanos y Cultos, *Manual de Derechos Humanos: Aplicados al Contexto Penitenciario*, 2014, <http://www.justicia.gob.ec/wp-content/uploads/2015/08/Manual-de-Derechos-Humanos-Aplicados-al-Contexto-Penitenciario.pdf>.

## El Salvador

In February 2017, El Salvador held approximately 37,570 people in its national prisons, which was a per capita rate of 579 per 100,000 persons.<sup>77</sup>

The official policy for searches of family members recognizes the regular use of searches and states that the prison administration has final discretion on whether a refusal to submit to a body search will result in the denial of a visit.<sup>78</sup> Additionally, under the “General Regulations of the Prison Law,” broad parameters attempt to limit who may be subject to an invasive search:

### *Policy for Search of family members*

*Art. 335 – When the search seeks to verify families that visit inmates, it should take into consideration the following parameters: age of the person, consent for the search and some grounded suspicion that the person is trying to introduce drugs or any other prohibited article into the prison. In every case, the administration has the final discretion on whether to admit a person or not if she/he refuses the search.*<sup>79</sup>

In 2017, the official government website posted news of the purchase of body scanners in an attempt to limit the imposition of invasive searches.<sup>80</sup> No further information was available to verify the implementation of the scanners or their effectiveness in security and in guaranteeing human rights.

A 2010 visit by the Inter-American Commission on Human Rights cited information from diverse sectors denouncing abusive and arbitrary treatment by the military, including degrading treatment to families and prisoners.<sup>81</sup> Among the complaints were those of women visitors who denounced vaginal and anal inspections prior to being allowed to enter the prison, stating that this was a systematic practice exercised on all women visitors, including pregnant women and elderly women. If a person refused to allow the search to happen, she was often denied entrance.<sup>82</sup> The denouncements tell that visitors entering are subject to rigorous body searches involving squatting and jumping up and down while

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<sup>77</sup> *World Prison Brief*, Institute for Criminal Policy Research, El Salvador, <http://www.prisonstudies.org/country/el-salvador>

<sup>78</sup> Decree no 95 from the President of El Salvador, Reglamento General de la Ley Penitenciaria, published Nov. 16, 2000.

<http://www.jurisprudencia.gob.sv/VisorMLX/Documento/Documento.aspx?Data=ENRg5RJBMRrGu2qLI1leMEBtYsLsNxCEmluooSDjHwiPr456+VJ7t+IT8swuMRVKyu7CLMDY5UFalDt1Xp77oH6mG1XTQhbBe5M0NuabHNIzqe/c3uJZqj1/UqvpeTTmOypkqesWmIxsYIksN3c+6FAW1GAOO558WoQgfUIW8EQZVJozKAaKsLA90rljJ36kZg==>, accessed on Jan. 20, 2018.

<sup>79</sup> *Id.*

<sup>80</sup> Government of El Salvador Portal, Cutting Edge Technology Initiated in Prison Units (Tecnología de Punta inicia en Centros Penales), website last updated Mar. 9, 2017. <http://www.dgcp.gob.sv/index.php/novedades/noticias/1599-tecnologia-de-punta-inicia-en-centro-penales>.

<sup>81</sup> Observaciones Preliminares De La Visita De La Relatoría Sobre Los Derechos De Las Personas Privadas De Libertad A El Salvador (Oct., 2010) <http://www.cidh.org/Comunicados/Spanish/2010/104a-10sp.htm>

<sup>82</sup> Observaciones Preliminares De La Visita De La Relatoría Sobre Los Derechos De Las Personas Privadas De Libertad A El Salvador (Oct., 2010) <http://www.cidh.org/Comunicados/Spanish/2010/104a-10sp.htm>, accessed on March 19, 2017.



naked. In one specific prison, Mariona prison, visitors stated that the military guarding the prison subjected them to two consecutive bodily searches, one at the first entrance and another only a few dozen meters further.

## Honduras

In 2016, the total prison population of Honduras was 17,017, with a per capita prison population of 198 per 100,000 persons.<sup>83</sup>

In a published report of the UN Subcommittee for the Prevention of Torture (SPT) after a visit to Honduras, the committee found that some women visitors of prisoners complained of being subject to intimate searches by male personnel.<sup>84</sup> Immediately following, the SPT recommended that the State of Honduras take the steps necessary to guarantee the right of every person deprived of liberty to receive visits and maintain contact with the outside world, and that any measures which tends to discourage visits should be avoided.<sup>85</sup>

## Mexico

In July 2016, Mexico held approximately 233,470 people in its national prisons, which was a per capita rate of 196 per 100,000 persons.<sup>86</sup>

Mexico recently revised its Penal Code, passing a new national law in 2016 that strictly forbids strip-searching of visitors, using language that parallels international human rights documents. Article 61 of the law states that all searches must obey the principles of necessity, reasonability and proportionality, without discrimination. They must be carried out under dignified conditions, as little as possible intruding on people's intimacy, integrity, liberty, rights and their belongings. Searches should employ a visual inspection, using non-invasive detectors, and a pat-search on top of clothing. Body searches should only be used when the non-intrusive search perceives possible objects or prohibited items underneath clothing, or when there is suspicion and a person refuses to demonstrate the item. Even on these occasions, a more thorough search can never include full nudity or inspection of vaginal and/or rectal body cavities.

When these searches occur, conditions should be adequate and sanitary, the officer should be of the same sex as the person being searched, and should act respecting the

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<sup>83</sup> *World Prison Brief*, Institute for Criminal Policy Research, Honduras  
<http://prisonstudies.org/country/Honduras>

<sup>84</sup> Informe sobre la visita a Honduras del Subcomite para la prevencion de la tortura, y otros tratos o penas crueles, inhumanos o degradinges, pg. 50 ¶246.  
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=4ef0bdd02> , last visited Jan. 19, 2018.

<sup>85</sup> *Id.*

<sup>86</sup> *World Prison Brief*, Institute for Criminal Policy Research, Mexico,  
<http://www.prisonstudies.org/country/mexico> . Last visited 4/2/2017.

person's dignity and human rights. The person being searched can solicit the presence of someone she trusts or a lawyer.<sup>87</sup>

No information was available to verify the impact and the implementation of this new law. However, in 2010, the UN Subcommittee for the Prevention of Torture (SPT) had visited Mexico and specifically addressed the issue of strip-searching visitors to prisons after receiving complaints regarding this practice during the visit.<sup>88</sup> The SPT recommended that generalized vaginal searches should not be carried out, and that the State of Mexico take adequate measures to control the security of the prison while guaranteeing dignity and privacy.<sup>89</sup>

## United States of America

The United States, according to the World Prison Brief, had a total prison population of 2,145,100 people at the end of 2015. The rate of incarceration is 666 per 100,000 of the population.<sup>90</sup>

Because the U.S. is a federative nation and the vast majority of inmates are in state facilities, there is no national or overarching regulation regarding the search of visitors. However, different states such as California and New York, have specific regulations and have made efforts to address the indignity of strip-searches. In addition, the Federal Bureau of Prisons has some guidelines for their prison facilities,

Most facilities have very specific and clear regulations about what a visitor can wear, what she/he can bring to the visit and what the procedure is for entering the prison. In the Federal Bureau of Prisons, each visitor must pass through a metal detector. While all prisoners are subject to a search of their person and belongings, pat searches are conducted via a random selection process, or if the metal detector indicates the presence of metal. Visitors can choose to refuse a search and leave the grounds. However, the Bureau of Prisons guidelines states that if a person chooses to leave, that could create a "reasonable suspicion" on the part of prison staff, and then they could require a search anyway.<sup>91</sup> The document does not specify, however, the level of the "required search," whether it would be a pat search or more stringent.

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<sup>87</sup> Ley Nacional de Ejecución Penal, Cámara de Diputados del H. Congreso de la Unión, 33, published in Official Government Journal (Diario Oficial), June 16, 2016.

<http://www.diputados.gob.mx/LeyesBiblio/pdf/LNEP.pdf> .

<sup>88</sup> Subcomité para la Prevención de la Tortura, *Informe Sobre la visita a México del Subcomité para la Prevención de la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes*, Naciones Unidas, May 31, 2010, [http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReportMexico\\_sp.pdf](http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReportMexico_sp.pdf) .

<sup>89</sup> Id. at §267.

<sup>90</sup> *World Prison Brief*, Institute for Criminal Policy Research, United States,

<http://www.prisonstudies.org/country/united-states-america>

<sup>91</sup> U.S. Department of Justice Federal Prison System, *Visiting Regulations*, WAS-5267.09, Apr. 12, 2016.

[https://www.bop.gov/locations/institutions/was/WAS\\_visit\\_hours1.pdf](https://www.bop.gov/locations/institutions/was/WAS_visit_hours1.pdf)

One civil rights case against a Massachusetts state prison won an indemnification for a woman who was strip-searched leaving a prison because of an anonymous tip.<sup>92</sup> She in fact, did not have drugs. While the strip search was technically consensual, she alleged that she submitted to it under extreme pressure from a group of guards, and the court held that consent is irrelevant in such a case.<sup>93</sup> The action resulted in a federal District Court decision ruling that prison guards need reasonable suspicion for a strip search and reasonable suspicion cannot be based only on anonymous tips.<sup>94</sup> The guards must independently corroborate those tips to develop reasonable suspicion.<sup>95</sup> Following this, the Department of Corrections changed its regulations regarding strip searches clarifying that prison officials must have reasonable suspicion, and that anonymous tips can only create reasonable suspicion when corroborated with facts.<sup>96</sup>

The California Department of Corrections and Rehabilitation's information for visitors addresses the penalties for a person who tries to bring drugs, weapons, or any item that is not allowed, into the prison.<sup>97</sup> To guarantee this, all prisoners, including children, and their possessions are searched by use of technology or on top of the clothing before entering. However, any search beyond that initial search of belongings and clearing the metal detector can only occur if there is cause to believe the person is trying to bring in a prohibited item. If that happens, the visitor is given, in writing, the reason for the search and can refuse, but will also lose the opportunity to visit. A prison can only search a visitor without her consent if a warrant is issued or if the visitor is being detained pursuant to arrest.

Additionally, California recently employed the use of ION scanners and drug-detecting dogs in addition to metal detectors and "reasonable suspicion searches."<sup>98</sup> An OpEd written by a prisoner points out that the regulation singles out visitors for a possible strip search if the ION test is positive, while it does not address the consequences of a

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<sup>92</sup> *After our lawsuit challenging the strip search of a prison visitor, the Massachusetts Department of Correction changes its regulations*, Law Offices of Howard Friedman PC, Feb. 20, 2015, <http://www.civil-rights-law.com/blog/2015/2/20/after-our-lawsuit-challenging-the-strip-search-of-a-prison-v.html>

<sup>93</sup> *Hernandez v. Montanez*, 36 F. Supp. 3d 202, 213 (D. Mass. 2014), recognizing that a choice between two unacceptable options does not constitute a choice, "Consent is irrelevant to the legal analysis; "a prison visitor confronted with the choice between submitting to a strip-search or foregoing a visit cannot provide a 'legally cognizable consent.'"

<sup>94</sup> *Id.* at 212. Citing *United States v. Dapolito*, 713 F. 3d 141, 147 (1<sup>st</sup> Cir. 2013), the court held that "reasonable suspicion" requires both an objective basis for suspecting an individual as well as a particularized suspicion about that particular individual, grounded in "specific and articulable facts," viewed as a reasonable police officer would view the situation.

<sup>95</sup> *Id.* at 214. holding that officers must have reliable information about the tipster, which is impossible in an anonymous tip, or specific information specifically directed towards the person to be searched.

<sup>96</sup> *Id.* at 3.

<sup>97</sup> California Department of Corrections and Rehabilitation (CDCR), *Visiting A Friend or Loved One in Prison*, 13, <http://www.cdcr.ca.gov/visitors/docs/inmatevisitingguidelines.pdf>, last visited Jan. 19, 2018.

<sup>98</sup> Jeff Beard, Secretary of the California Department of Corrections and Rehabilitation, *Keeping drugs out of prison will stop gang threats to families of inmates*, CDCR News, Oct. 14, 2014, <https://news.cdcr.ca.gov/news-releases/2014/10/14/keeping-drugs-out-of-prison-will-stop-gang-threats-to-families-of-inmates/>.

positive ION test on guards, contractors, or volunteers.<sup>99</sup> The visitor can refuse but will either be allowed a no-contact visit or have to leave the premises. A January, 2016 article on the website of CBS Sacramento stated that the state would no longer strip search any visitor for any reason, resorting to restrictions or bans on visits if the ION test or drug-sniffing dog gave a positive response.<sup>100</sup>

New York also has a state policy for strip-searching of visitors.<sup>101</sup> It states that if a visitor complies with all regulations for entering, but the officer in charge “reasonably believes” that the person needs further “processing” to avoid the entrance of prohibited items, a strip search may be authorized. This only occurs after the officer in charge speaks with his supervisor who evaluates the situation, and may authorize a “consensual” strip search. This can also occur with a child, but the child must have the responsible adult’s consent to submit to a strip search. Written procedure details how this occurs. If the visitor refuses, the visit will be denied. However, the regulations specifically state that a visitor refusing a strip search cannot be a reason to retaliate against the prisoner she/he intended to visit or deny a prisoner future visits. The regulations state that:

1. Guilt is not to be assumed from a visitor’s refusal to submit to a strip search.
2. Future visits may not be denied on the basis of past refusal to a strip search.
3. A visitor’s past refusal to submit to a strip search may not be used as a basis or factor in establishing reasonable suspicion for future strip searches.<sup>102</sup>

## Uruguay

Uruguay, according to the World Prison Brief, had a total prison population 9996 in 2015. The rate of incarceration is 291 per 100,000 of the population, and only 2.8% of that population is composed of non-Uruguayans.<sup>103</sup>

In 2006, an interdisciplinary group of governmental and nongovernmental participants published a document regarding the Situation of Women Deprived of Liberty in Uruguay.<sup>104</sup> The document refers to the practice of searches on visitors being carried out by guards of the same sex, and using “body searches,” but it does not go into detail to describe exactly what this entails. In relation to the search of visitors, it is carried out by feminine guards for the women and masculine guards for the men. The body search is external and

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<sup>99</sup> Kenneth Hartman, *Strip Searches Will Keep Helpful Visitors, not Drugs, Out of Prisons*. LA Times (Apr 6, 2015). <http://www.latimes.com/opinion/op-ed/la-oe-hartman-prison-strip-search-visitors-20150406-story.html> .

<sup>100</sup> Associated Press, *Visitor Strip searches No Longer Allowed At California Prisons, But Drug Dogs on High Alert*, CBS Sacramento, Jan. 11, 2016. <http://sacramento.cbslocal.com/2016/01/11/visitor-strip-searches-no-longer-allowed-at-california-prisons-but-drug-dogs-on-high-alert/> .

<sup>101</sup> New York State Department of Corrections and Community Supervision, *Rules & Regulations, Entrance to a Correctional Facility, Visitation, and Disciplinary Rules*, §200.2. . [http://www.doccs.ny.gov/RulesRegs/20120328\\_CCS-24-11-00005.html](http://www.doccs.ny.gov/RulesRegs/20120328_CCS-24-11-00005.html)

<sup>102</sup> Id. at §200.2(f)(4-6).

<sup>103</sup> *World Prison Brief*, Institute for Criminal Policy Research, Uruguay, <http://www.prisonstudies.org/country/uruguay>

<sup>104</sup> Report from an interdisciplinary governmental group, *Situacion de mujeres privadas de libertad en el Uruguay, INFORME sobre las condiciones de reclusión (information about the prison conditions)*, 2006. [http://www.inmujeres.gub.uy/innovaportal/file/19658/1/5\\_informe\\_reclusas.pdf](http://www.inmujeres.gub.uy/innovaportal/file/19658/1/5_informe_reclusas.pdf), last visited Jan. 19, 2018.

physical, because the state does not have technology that can serve this purpose.<sup>105</sup> Extensive research failed to uncover a national policy regarding procedures for prison visits or reference to any changes in procedures.

In an article published in 2016, Gabriel Pereyra describes how visitors to Uruguayan prisons are required to submit to a strip search before visiting their family member, including at times, squatting and coughing to prove that women are not holding anything in their body cavities.<sup>106</sup> One woman stated, “It is inhumane. You must get naked like God brought you into the world, climb up on a stool, and open your body when they search you, as if you were going to the gynecologist.”<sup>107</sup> Pereyra states that the State claims that 170 people were caught in one year trying to enter a prison with drugs hidden in their bodies. Family members claim that most of the contraband in the prisons enters through the prison guards.<sup>108</sup> In one prison, that is lauded as “less harsh”, the inmates discuss their horror of the search of family members, which would suggest that they undergo a strip search.<sup>109</sup>

Additionally, various news sources refer to the UN report published after Manfred Nowak, UN Relator for Human Rights, visited Uruguay. His report said that the “liberal” system of family visits is undermined because the visitors, including children, are submitted to invasive body searches, including body cavities, violating their basic human dignity.<sup>110</sup>

## Venezuela

In 2015, the total prison population of Venezuela was 49,664, with a per capita prison population of 159 per 100,000 persons.<sup>111</sup>

The recently promulgated Organic Penitentiary Code of the country, effective December 2015, establishes in article 96 that the personal search will be obligatory for anyone entering a penitentiary premises without exception to officials, but that it shall be done preferably using newer technological methods with a minimum level of invasion on persons and objects.<sup>112</sup> The Law also mandates that the searches must be done with respect

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<sup>105</sup> *Id.* at 24.

<sup>106</sup> Gabriel Pereyra, *The Others Pay for the Prison System (Los Otros que Pagan el Sistema Carcelario)*, April 25, 2016, <http://www.observador.com.uy/los-otros-que-pagan-el-sistema-carcelario-n900867>. Last visited 4/1/17.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Sol Amaya, *Punto de Rieles, la cárcel uruguaya que funciona como un pueblo (Punto de Rieles, the uruguayan jail that functions like a town)*, *La Nación* Jun. 1, 2015. <http://www.lanacion.com.ar/1795177-punta-de-rieles-la-carcel-pueblo>. last visited 4/1/17.

<sup>110</sup> United Nations Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Uruguay, ¶51, A/HRC/13/39/Add.2, Dec. 21, 2009, *see also* (<https://periodicoanarquia.wordpress.com/2009/09/29/algunos-datos-sobre-las-carceles-en-uruguay/>; <http://postaportenia.blogspot.com/2010/07/informe-nowak-sobre-prisiones-en.html>).

<sup>111</sup> World Prison Brief, <http://prisonstudies.org/country/venezuela>, last visited 4/17/2017.

<sup>112</sup> Carlos Alberto Nieto Palma, *Visitas de mujeres en las cárceles*, *Derechos Humanos en el Mundo*, Feb. 12, 2016, <http://amnistia.ning.com/profiles/blogs/visitas-de-mujeres-en-las-carceles?context=tag-c%C3%A1rceles+de+venezuela>.



to the dignity of the persons and to their human rights.<sup>113</sup> This law nonetheless falls short of the OAS *Best Practices*, which mandate that vaginal and anal searches be prohibited by law.

When visiting their loved ones at Venezuelan prisons, women visitors have to use their own fingers to open up their genitalia and expose their pelvis over a mirror.<sup>114</sup> Many visitors, including those to political prisoners, are also required to jump & squat while naked, some of them while being filmed.<sup>115</sup> In some prisons, all visitors, both personal and official such as the Venezuelan Penitentiary Observatory (OVP), are subjected to visual searches of their private parts and are searched with mirrors and flashlights. Visitors are also threatened with not being able to visit anymore and with transferring their family member to a different prison if they report the violations to the OVP.<sup>116</sup> Recently 570 inmates of a prison in Venezuela went on a hunger strike as an effort to draw attention and protest the violations and excessive searches to which their family members are subjected during visits.<sup>117</sup>

## CONCLUSION

Of the twelve American countries researched, each had some form of search that would be considered excessive for those visiting incarcerated family and friends. Mexico has passed a national law to regulate searches, although it is fundamental that human rights organizations verify whether it has been effectively implanted. El Salvador has introduced new policy including the use of body scanners to reduce the humiliation of searches. Some Brazilian states have prohibited strip searches and introduced other methods that seem to be working. A bill to prohibit invasive body searches has been stalled in the Brazilian congress for years. Argentina's courts have declared vaginal searches unconstitutional. Venezuela has a new law that mandates that searches be done with respect to the dignity of the persons and to their human rights, and preferably using more advanced technological methods to diminish the intrusiveness of searches. Costa Rica has very detailed judicial instructions on searches of visitors that are very protective of this group. In Ecuador, there have been some improvements now that scanning machines have

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<sup>113</sup> *Id.*

<sup>114</sup> Daniel Romero Nava, *Conoce el vía crucis de visitar a un recluso en la cárcel Fénix de Lara*, Panorama.com.ve, Feb. 4, 2015, <http://www.panorama.com.ve/opinion/Conoce-el-via-crucis-de-visitar-a-un-recluso-en-la-carcel-Fenix-de-Lara-20150129-0099.html>.

<sup>115</sup> *Esposa de López denuncia trato humillante em visitas a cárcel*, Diario Las Américas, Oct. 31, 2015, <https://www.diariolasamericas.com/esposa-lopez-denuncia-trato-humillante-visitas-carcel-n3431333>.

<sup>116</sup> Observatorio Venezolano de Prisiones, *Informe sobre la situación de privados de libertad en Venezuela con motivo de la revisión dl cuarto informe de la República Bolivariana de Venezuela ante el Comité de Derechos Humanos de la ONU*, Apr. 2015, [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VEN/INT\\_CCPR\\_CSS\\_VEN\\_20347\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VEN/INT_CCPR_CSS_VEN_20347_S.pdf)

<sup>117</sup> Mas de 500 presos en penal El Dorado iniciaron huelga de hambre, Mayerline Machado, 05/16/2014, <http://www.2001.com.ve/con-la-gente/mas-de-500-presos-en-penal-el-dorado-iniciaron-huelga-de-hambre.html>



been installed at some prisons, eliminating the requirement that visitors remove clothes and underclothes as part of pre-entrance inspections.

Some countries have considered body scanners, ION scanners and drug-sniffing dogs. Government officials believe that body scanners can be used to more effectively, and less intrusively, search visitors entering prison facilities, although some NGOs have expressed concern about subjecting people to weekly scans, especially pregnant women or people with compromised health. Additionally, families and organizations claim that ION scanners produce an unacceptable ratio of false positives, thus subjecting more people than appropriate to further searches. Finally, the use of drug-sniffing dogs would need to be accompanied by a strong publicity campaign to counteract the entrenched fear of dogs when handled by police and authorities.

The number of prison policies, government and international declarations, and even laws enacted to address, regulate, or ban invasive searches of family members make it clear both that the practice is pervasive and that it must be addressed. Security must be guaranteed in another manner.

## APPENDICES

- I. Recommendations for organizations in the Americas seeking to address this issue and network at local and regional levels.
- II. Information on human rights and prison documents in Africa, Asia, and Europe that could apply to the issue of invasive body searches.

### APPENDIX I

#### **RECOMMENDATIONS FOR FOLLOW-UP AND FURTHER DEVELOPMENT OF THE ISSUE AT THE LEVEL OF THE AMERICAS**

- What to do in local country contexts
  - Collect denouncements and case stories from people who have been most directly affected by the issue (visitors and incarcerated persons)
  - Mobilize at local and national levels to connect with families that undergo visitor searches as well as other entities organizing against the issue, and to draw public attention to the issue of strip searches.
    - Use social media and written and audio press, write articles, ask family members who have been subject to searches to write blogs, start an “end invasive body searches” Facebook group or hashtag, share your creative ideas and actions.<sup>118</sup>
    - Using strategic litigation, file civil suits for damages for those who have undergone searches and court orders to stop the searches from happening. This may serve to assert pressure to enforce a law that already exists or demonstrate the need for a law.
    - Propose legislation or administrative policies to prohibit the use of invasive body searches such as those that already exist in Mexico and in certain Brazilian states.
- International actions
  - Connect with other American organizations such as prison observatories, academic institutions, human rights organizations, and other prison or human rights or women’s advocates to build a broad-based case at the Regional level, demonstrating that this is a serious and widespread issue. This is a human rights issue, a women’s issue, and a justice issue and needs to be addressed in all of these fields.
  - Connect with regional human rights organizations such as the Association for the Prevention of Torture, Amnesty International, Human Rights Watch, Center for Justice and International Law to garner support, international pressure and to better articulate and gain access to the UN and OEA, benefitting from the vast experience of international human rights organizations.

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<sup>118</sup> See examples of campaigns via the following links: [www.fimdarevistavexatoria.org.br](http://www.fimdarevistavexatoria.org.br) (in Portuguese), or [the Institute for Land, Work and Citizenship at http://itc.org.br/?s=revista+vexat%C3%B3ria](http://www.instituto.org.br) (also in Portuguese, but has a website translator function).

- If they are not working with this issue, then propose or recommend that they get involved, share this report or write your own report.
- Inter-American Commission on Human Rights of the Organization of American States (IACHR)
  - The Human Rights Commission has two sessions of hearings, and organizations can petition for a hearing on a specific theme and present testimony. Raise body searches of prison visitors as a thematic hearing from your country, or
  - Organize with other countries in the region to bring this issue as a region-wide human rights concern.
  - Use this information and what you have collected locally to widen the impact of the movement to eradicate strip searches of visitors to prisons.
- The UN has a periodic review process that reviews the human rights record of all UN Member States. When a State's review is scheduled, the State produces a report of its own human rights activities, and organizations and civil society entities can offer "shadow reports" as another perspective on the country's human rights compliance. Use firsthand testimony to prepare a report and raise the issue of invasive body searches for the periodic review of the UNCHR.<sup>119</sup>

## **APPENDIX II**

### **International Human Rights Resources**

### **Asia, Africa and Europe**

While overall, I did not find anything specific related to searching of visitors to people in prison, I found some data on searching inmates, and some broader information on human rights and prisons, as well as the right of a prisoner to have contact with the outside world.

One helpful resource was the website of the International Justice Resource Center (IJRC) (<http://www.ijrcenter.org>) because it identifies international bodies and documents from all over the world.

### **AFRICA**

#### *overview*

The most important document in Africa is the *Charter on Human and People's Rights*. Article 7, §2 states that "Punishment is personal and can be imposed only on the offender." In Latin America, this phrase has been used to defend against invasive or strip searches of visitors because the punishment of the prisoner is being extended to his or her family.

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<sup>119</sup> See United Nations Human Rights Council and Universal Periodic Review. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

Africa has multiple documents that prohibit torture, inhumane treatment, cruel and degrading punishment, and degradation. All of these could be applied to strip-searches, especially as a technique for humiliating prisoners, or for family members of prisoners.

The *Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention* specifically address procedures for searches. While they do not prohibit strip searches of prisoners, they do require that they only be conducted in private, only by medical personnel and always recorded in some official format whenever they occur.

## **AFRICA in depth with specific documents:**

### ***BANJUL CHARTER***

#### Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

#### Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

#### Article 7

2. .... Punishment is personal and can be imposed only on the offender.

#### Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.

### ***GUIDELINES ON THE CONDITIONS OF ARREST, POLICE CUSTODY AND PRE-TRIAL DETENTION IN AFRICA***

African Commission on Human and Peoples' Rights adopted by the African Commission on Human and Peoples' Rights in Luanda, Angola in 2014.

#### 1. Arrest

##### 3. Procedures guarantees for arrest

d. Searches must be carried out in accordance with the law, and in a manner consistent with the inherent dignity of the person and the right to privacy. Officials conducting a search shall:

- i. For all types of searches, including pat-down searches, strip searches and internal body searches, be of the same gender as the suspect.
- ii. Inform suspects of the reason for the search prior to the conduct of the search.

- iii. Make a written record of the search, which is accessible by the person searched, his or her lawyer or other legal service provider, family members, and, if the person searched is in custody, any other authority or organisation with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of his or her liberty.
  - iv. Provide a receipt for any items confiscated during the search.
  - v. Ensure that strip searches and internal body searches are only conducted in private.
  - vi. Ensure that internal body searches are only conducted by a medical professional and only upon informed consent or by a court order. (p. 9)
6. Conditions of Detention in Police Custody and Pre-Trial Detention
24. Physical Conditions: Conditions of detention... shall guarantee the right of detainees in police custody and pre-trial detention to be treated with respect for their inherent dignity, and to be protected from torture and other cruel, inhumane or degrading treatment or punishment.
7. Vulnerable Populations
32. Women
- b. Safeguards for arrest and detention
    - i. only be searched by female law enforcement officials, and in a manner that accords with women's or girls' dignity.

### ***OUAGADOUGOU DECLARATION***

This document recommends that prison authorities encourage civil society groups to visit the prisons and work with prisoners. This specific recommendation includes improving the environment so that physical contact is possible and providing facilities for conjugal visits.

### ***ROBBEN ISLAND GUIDELINES*** – 2002 (Feb 12-14)

The document opens with the following African commitments:

- Article 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation;
- Articles 3 and 4 of the Constitutive Act of the African Union wherein States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

**Noting** the commitment of African States to ensure better promotion and respect of human rights on the continent as reaffirmed in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa;

C.5 (p. 06)

5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.

10. Notions such as “necessity”, “national emergency”, “public order”, and “order public” shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.

#### **Specific resources related to Africa:**

- AFRICAN COMMISSION ON HUMAN AND PEOPLE’S RIGHTS  
<http://www.achpr.org/search/>
- Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (1996)  
<http://www.achpr.org/mechanisms/prisons-and-conditions-of-detention/>

#### **specific documents:**

- Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa
- African Charter on Human and People’s Rights
- Guidelines on the conditions of Arrest, Police Custody and Pre-trial Detention in Africa
- Robbin Island Guidelines
- Kampala Declaration on Prison Conditions in Africa (1996)
- Arusha Declaration on Good Prison Practice (Arush Tanzania, 1999)
- Ouagadougou Declaration
- African Prisons Project (nongovernmental organization)
- (proposed) African Charter on Prisoners’ Rights

## **EUROPE**

### *overview*

In Europe, the principal judicial and quasi-judicial organs responsible for defining and overseeing States’ compliance with their regional human rights obligations are the European Court of Human Rights and European Committee of Social Rights, both created under the auspices of the [Council of Europe](#). In addition, the Council of Europe Commissioner for Human Rights serves as an independent monitor, highlighting issues of concern in the region. Europe has both European Council documents as well as case law referring to visits and/or searches of prisoners.

In 2003, the European Parliament made recommendations to the Council on *The Rights of Prisoners in the European Union*. While the recommendations did not specifically address searches, they reiterated the importance of visiting rights for relatives, families and third parties, including the right to an emotional and sex life, for which suitable arrangements should be made, as well as sitting rooms that are supportive of family visits especially related to incarcerated parents and their children.

Additionally, in 2006, the *European Prison Rules* were developed and they specifically addressed the importance of “Contact with the outside world” (see rule 24). Again, this section addressed communication, contact visits, the necessity of maintaining



family relationships in as normal a manner as possible, and even financial assistance to make this happen.<sup>120</sup>

*EUROPE in depth with specific documents:*

**EUROPEAN PRISON RULES**

The Prison rules also spoke to searching and controls within prisons, but specifically in relation to prisoners. Clearly, the assumption is that if these are the limits for prisoners, the limits for searching of family members cannot be more invasive, and mostly likely, are less so. Rule 54 addresses searching of prisoners and their visitors, clearly stating that while searches may be necessary, they should never be humiliating. Physical searches of a prisoner's body should not be performed by prison staff but by a medical practitioner of the same gender as the prisoner.<sup>121</sup> The Rules also include a "Comments" section following the

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<sup>120</sup> Contact with the outside world

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

<sup>121</sup> Searching and controls

54.1 There shall be detailed procedures which staff have to follow when searching:

a all places where prisoners live, work and congregate;

b prisoners;

c visitors and their possessions; and

d staff.

54.2 The situations in which such searches are necessary and their nature shall be defined by national law.

54.3 Staff shall be trained to carry out these searches in such a way as to detect and prevent any attempt to escape or to hide contraband, while at the same time respecting the dignity of those being searched and their personal possessions.

54.4 Persons being searched shall not be humiliated by the searching process.

54.5 Persons shall only be searched by staff of the same gender.

54.6 There shall be no internal physical searches of prisoners' bodies by prison staff.

54.7 An intimate examination related to a search may be conducted by a medical practitioner only.

54.8 Prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this.

54.9 The obligation to protect security and safety shall be balanced against the privacy of visitors.

body of the rules, and the comments elaborate more specifically the limits of searches on both inmates and their visitors.<sup>122</sup> Prisoners should never be required to be completely naked for a search, suggesting that the strip search, when absolutely necessary, be done in parts. Intrusive searches, inserting something into a prisoner's body cavities are prohibited, and if suspicion exists that a prisoner has hidden something in his/her body, the prison should keep the prisoner under observation and wait it out. The comments recognize that a search of a visitor could be necessary for security reasons at some point, although they do not specify a strip search. Any search of a visitor should be sensitive to their needs, respecting the dignity of the person, and not done in a public space.<sup>123</sup>

Finally, the Comments on Rule 54 of the *European Prison Rules* state that prison authorities should never search a prisoner's body cavities. Grounds for suspicion should be resolved by isolating the prisoner and observing him closely. However, they do state that if an internal search is done, it must be by medical personnel.

The European Court also has two cases deciding that strip searches in those situations amounted to violations of Articles 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In addition, the "Comments" section of the European Prison Rules offers relevant guidance: *Searching and controls*

Rule 54 This rule lays down that in each prison there should be a clearly understood set of procedures which describe in detail the circumstances in which searches should be carried out, the methods to be used and their frequency. These procedures must be designed to prevent escape and also to protect the dignity of prisoners and their visitors.

Procedures for regularly searching living accommodation such as cells and dormitories should be provided to make sure that security features, including doors and locks, windows and grilles, have not been tampered with. Depending on the security category of the prisoner, his personal property should also be subject to searches from time to time. Staff who are to carry out searches need to be specially trained to achieve a balance between ensuring that they can detect and prevent any escape attempt or secretion of contraband goods while at the same time respecting the dignity of prisoners and respect for their personal possessions. When a prisoner's personal living space or possessions are being searched, he should normally be present.

Individual prisoners, particularly those subject to medium or maximum security restrictions, will also have to be personally searched on a regular basis to make sure that they are not carrying items which can be used in escape attempts, or to injure other people or themselves, or which are not allowed, such as illegal drugs. The intensity of such

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<sup>122</sup> The "Comments" section to rule 54 in its entirety is listed at the end of this document.

<sup>123</sup> EUROPEAN PRISON RULES, 75-76 (2006) ,

<http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202015/EUROPEAN%20PRISON%20RULES.pdf>

searches will vary according to circumstances. For example, when prisoners are moving in large numbers from their place of work back to their living accommodation it is normal to subject them to “rub-down” searches. Because of the intrusive nature of such searches, special attention should be paid to respecting the dignity of the person when carrying them out. Personal searches should not be conducted unnecessarily and should never be used as a form of punishment.

On other occasions, especially if there is reason to believe that an individual prisoner has something secreted about his person or when he is designated as a high-risk prisoner, it will be necessary to carry out what is known as a “strip search”. This involves requiring prisoners to remove all clothing and to show that they have nothing hidden about their person. The rule lists the considerations to be covered by the procedures dealing with personal searches of prisoners. The European Court of Human Rights has found a violation of Article 3 of the European Convention on Human Rights in requiring a prisoner to strip naked in the presence of women (*Valasinas v. Lithuania*, No. 44558/98, judgment of 24/07/2001) or in proceeding with certain body searches, because of the frequency and method used (*Van der Ven v. the Netherlands*, No. 50901/99, judgment of 04/02/2003). Prisoners should never be required to be completely naked for the purpose of a search. Prison staff should never carry out internal body searches of a prisoner, for example, by inserting a finger or any instrument into a prisoner’s body cavities, on any grounds. If there are grounds for suspecting that a prisoner may have hidden drugs or any other item that is forbidden in his body, arrangements should be made to keep him or her under close supervision until such time as he expels any item he may have in his body. If internal body searches are carried out by a medical practitioner, close attention should be paid to the World Medical Association Statement on Body Searches of Prisoners (October 1993). Rule 54.6 does not preclude the possibility of using modern technology to scan a prisoner’s body. There should be clearly defined procedures for making sure that visitors to prisoners do not attempt to breach reasonable security requirements, for example, by bringing into the prison articles that are not allowed. These procedures may include the right to search visitors in person while taking into consideration that visitors are not themselves prisoners and that the obligation to protect the security of the prison has to be balanced against the right of visitors to their personal privacy. The procedures for searching women and children need to be sensitive to their needs, for example, by ensuring that a sufficient proportion of staff carrying out searches is female. Personal searches should not be carried out in public view. (pp. 75-76)

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

**ARTICLE 3** Prohibition of torture No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 8 Right to respect for private and family life 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. A

## CASE OF VIOLATION OF ARTICLE 3 OF CONVENTION

### *Valasinas v. Lithuania*

[http://hudoc.echr.coe.int/eng#{"itemid":\["001-59608"\]}](http://hudoc.echr.coe.int/eng#{)

*Strip search in front of guard of the opposite sex unnecessarily amounted to degrading treatment and violated Article 3 of the Convention.*

117. The Court considers that, while strip-searches may be necessary on occasions to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner. Obliging the applicant to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands showed a clear lack of respect for the applicant, and diminished in effect his human dignity. It must have left him with feelings of anguish and inferiority capable of humiliating and debasing him. The Court concludes, therefore, that the search of 7 May 1998 amounted to degrading treatment within the meaning of Article 3 of the Convention.

118. Accordingly, there has been a violation of Article 3 in this respect.

### *Van Der Ven V. The Netherlands*

[http://hudoc.echr.coe.int/eng#{"appno":\["50901/99"\],"itemid":\["001-60915"\]}](http://hudoc.echr.coe.int/eng#{)

The Court found that the consistent use of strip searches was premeditated use of technique for degradation and humiliation, and as such was a violation of Article 3 and Article 8 of the Convention.

### *Regulations*

– all contacts with the outside world are screened; all correspondence and telephone calls (twice a week for ten minutes) are screened except for those with privileged contacts; detainees must be separated from their visitors (one visit a week for one hour) by a transparent partition (“closed” visits); members of their immediate families, spouses and partners may visit once a month without such a partition (“open” visits), although physical contact is restricted to a handshake on arrival and departure; visitors must submit to a search of their clothes (frisking) before an “open” visit;

– cells are periodically (in practice, weekly) subjected to a more thorough search; at the same time or immediately afterwards the detainees are frisked and strip-searched; the strip-search, which involves an external viewing of the body’s orifices and crevices, including an anal inspection, is carried out in a closed room and, whenever possible, by a person of the detainee’s own gender;

– frisking and strip-searching also take place

- on arrival in and release from the EBI;
  - before and after “open” visits; and
  - after visits to the clinic, the dentist’s surgery or the hairdresser’s
- the EBI governor, or in urgent cases an EBI officer or employee, may decide that the detainee must be subjected to an internal body search if this is considered necessary to prevent any threats to order or safety within the prison, or to protect the detainee’s own health; an internal body search is usually carried out by a doctor but he may also instruct a nurse to carry out the search. (pp. 9-10)

**Court’s Assessment:**

48. Treatment has been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also “degrading” because it was such as to arouse in the victims feeling of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX). The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

60. The Court has previously found that strip-searches may be necessary on occasion to ensure prison security or to prevent disorder or crime (see *Valašinas v. Lithuania*, no. 44558/98, § 117, ECHR 2001-VIII; *Iwańczuk v. Poland*, no. 25196/94, § 59, 15 November 2001; and *McFeeley and Others*, cited above, §§ 60-61). In *Valašinas* and *Iwańczuk* one occasion of strip-search was at issue, whereas in *McFeeley and Others* so-called “close body” searches, including anal inspections, were carried out at intervals of seven to ten days, before and after visits and before prisoners were transferred to a new wing of the Maze Prison in Northern Ireland, where dangerous objects had in the past been found concealed in the recta of protesting prisoners.

61. In the present case, the Court is struck by the fact that the applicant was subjected to the weekly strip-search in addition to all the other strict security measures within the EBI. In view of the fact that the domestic authorities, through the reports drawn up by the Psychological Department of their Penitentiary Selection Centre, were well aware that the applicant was experiencing serious difficulties coping with the regime, and bearing in mind that at no time during the applicant’s stay in the EBI did it appear that anything untoward was found in the course of a strip-search, the Court is of the view that the systematic strip-searching of the applicant required more justification than has been put forward by the Government in the present case.

**FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that there has been a violation of Article 3 of the Convention as regards the applicant's body search on 7 May 1998;
3. *Holds* that there has been a violation of Article 8 of the Convention;

Articles 6 and 7 of the **TREATY ON EUROPEAN UNION, THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**, in particular Article 4 thereof,  
– having regard to the Council of Europe instruments dealing with human rights and the prohibition of torture and inhuman or degrading punishment or treatment, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3), the protocols to that Convention and the case-law of the European Court of Human Rights, the 1987 European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, which established the level, Resolution (73)5 on standard minimum rules for the treatment of prisoners, Recommendation R(87)3 on European prison rules, the other recommendations adopted by the Committee of Ministers<sup>1</sup> and the recommendations adopted by the Parliamentary Assembly, Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the CPT's reports,

#### **EUROPE Documents:**

- **P5\_TA(2004)0142** *The rights of prisoners in the European Union*; European Parliament recommendation to the Council on the rights of prisoners in the European Union (2003/2188(INI)),  
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P5-TA-2004-0142+0+DOC+PDF+V0//EN>
- *EUROPEAN PRISON RULES* (2006),  
<http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202015/EUROPEAN%20PRISON%20RULES.pdf>

#### **ASIA**

There are two specific human rights bodies in Asia. The Association of Southeast Asian nations and the League of Arab States. Each has a human rights declaration that prohibits torture, cruel, inhuman or degrading treatment. The Arab Charter further secures the right to dignity and respect for the security of his person and private life.

#### **ASIA in depth with specific documents**

## **ASEAN HUMAN RIGHTS DECLARATION**

The Association of Southeast Asian Nations has ten member states: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam

### ***GENERAL PRINCIPLES***

1. All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity. (4)
12. Every person has the right to personal liberty and security. No abduction or any other form of deprivation of liberty (6)
14. No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment

## **Asean (Association of Southeast Asian Nations) Human Rights Declaration (AHRD) and the PHNOM PENH STATEMENT ON THE ADOPTION OF THE ASEAN HUMAN RIGHTS DECLARATION (Nov. 18, 2012)**

The document is highly criticized because it has many back doors that could allow for human rights abuses to continue.

[http://www.asean.org/storage/images/ASEAN\\_RTK\\_2014/6\\_AHRD\\_Booklet.pdf](http://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf)

## **MIDDLE EAST AND NORTH AFRICA**

Arab Human Rights Committee  
Arab Charter on Human Rights

**League of Arab States, ARAB CHARTER ON HUMAN RIGHTS, May 22, 2004, *entered into force* March 15, 2008.**

### **ARAB HUMAN RIGHTS COMMITTEE**

As of February 2015, there were 14 [States parties](#) to the Arab Charter: Algeria, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Palestine, Qatar, Saudi Arabia, Sudan, Syria, the United Arab Emirates, and Yemen

#### **Article 8**

1. No one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment. (\*152)

#### **Article 16**

The accused shall be presumed innocent until proven guilty at a lawful trial. During the investigation and the trial, the accused shall be entitled to the following minimum guarantees:



8. To have the security of his person and his private life respected in all circumstances. (\*154)

Article 20

1. Persons sentenced to a penalty of deprivation of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (\*155)

Translation by Dr. Mohammed Amin Al-Midani, Mathilde Cabanettes, Revised by & Professor Susan M. Akram, *Arab Charter on Human Rights 2004*, 24 B.U. Int'l L.J. 147, 155 (2006)

Further UN Documents:

- Art. 55 of the United Nations Charter, calling upon States to promote universal respect for and observance of human rights and fundamental freedoms;
- Art. 5 of the UDHR, Art. 7 of the ICCPR stipulating that no one shall be subjected to torture, inhuman or degrading treatment or punishment;
- Art. 2 (1) and 16 (1) of the UNCAT calling upon each State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction;