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# Panel 2: Protecting Vulnerable Groups through Detention Visits

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## PANEL 2: PROTECTING VULNERABLE GROUPS THROUGH DETENTION VISITS

### Opening Remarks from Hernan Vales, Moderator\*

Good Morning, and welcome to the second panel for today's conference. This panel is called "Protecting Vulnerable Groups Through Detention Visits" and we have an excellent lineup of speakers.

To my left we have Haritini Dipla, professor of international law at the University of Athens in Greece. Professor Dipla's main field of interest is human rights, both in the UN and European contexts. Also, since 2006 she has been a member of the European Committee for the Prevention of Torture, of which she is currently the Second Vice-President. Before acquiring this position she was a member of the Greek National Commission for Human Rights.

Also to my left, we have Mrs. Catherine Dupe Atoki. Mrs. Atoki is a private practice lawyer in Nigeria. She previously participated as a member of the Presidential Committee's review of laws that, for example, were considered to be discriminatory against women. She has a wealth of expertise in that field. Mrs. Atoki was also a member of the National Human Rights Council of Nigeria, and is currently a member of the African Union Commission on Human and People's Rights, where she is a Chairperson on the Committee for the Prevention of Torture as well as the Special Rapporteur on Prisons and Places of Detention in Africa.

To my right we have Pamela Goldberg, acting Senior Protection Officer at the UN High Commission on Refugees (UNHCR) since 2007. Her areas of expertise include gender and human rights issues, as well as issues concerning children in the context of refugee and asylum law. Before joining UNHCR, she



served on the faculty of City University of New York School of Law for a number of years.

Finally we have Ms. Allison Parker. Ms. Parker is an attorney and director of the U.S. Program of Human Rights Watch. She specializes in immigrant's rights and on youth offenders serving life without parole sentences in U.S. prisons. She has also been part of UNHCR.

As you see, we have a wealth of expertise, particularly with respect to the vulnerable groups of women, juveniles, migrants, and asylum-seekers. I am sure it will be a very interesting panel. Without further ado, I'd like to give the floor to Professor Dipla to begin her presentation. Thank you.

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## Remarks of Haritini Dipla\*

First, I would like to thank the American University Washington College of Law and the Association for the Prevention of Torture for organizing this important event and for inviting the European Committee for the Prevention of Torture to participate.

Persons deprived of liberty are dependent upon the agents of state authorities and often have limited or no possibilities to claim the full enjoyment of their rights. Visits by external independent bodies of closed places are extremely important to protect detainees from torture or other ill treatment. The necessity for such visits is reflected in several international instruments relating to the treatment and detention conditions of persons deprived of liberty.

The European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>1</sup> (CPT) is an international treaty based monitoring body acting on the European level. It operates through periodic and *ad hoc* or follow-up visits to places of detention where persons are deprived of their liberty by decision of a public authority. The CPT can speak in private with detainees and has free and full access to all places of detention and documents. Following its visits, it makes recommendations to states with a view toward strengthening their protection from torture or inhuman or degrading treatment. The CPT carries out its visits in all the Members States of the Council of Europe, which currently includes 47 states. It has twenty years of operating experience, 300 visits, 180 periodic, 120 *ad hoc*, and 250 published reports.

The CPT is both a monitoring and a standard setting body. Our visits are our main task, but our findings allow us to elaborate and develop standards aimed at diminishing ill treatment, improving detention conditions, and enhancing the protection of vulnerable persons.

Until recently, the CPT was the only monitoring body in Europe. Now, as a result of the entry into force of the UN Optional Protocol for the Prevention of Torture<sup>2</sup> (OPCAT), the United Nations Sub-Committee for the Prevention of Torture<sup>3</sup> (SPT) can also operate in European States that have become parties to this instrument. The two bodies should collaborate in order to avoid duplications and achieve better synergies for the benefit of the persons deprived of their liberties.



### VISITING VULNERABLE GROUPS

We are speaking here today about vulnerable groups. In a sense, all prisoners and other persons deprived of their liberty may be considered a vulnerable group. They are deprived of their liberty and live within a confined space for a period of their lives or sometimes for their entire lives. Within this general group, other vulnerable groups exist with specific special needs, such as women, aged persons, juveniles, persons belonging to ethnic minorities, persons with disabilities, and so on.

In our visits we encounter all of these vulnerable groups. Sometimes we find them where we expect them — in special facilities or in separate wings in larger facilities — and sometimes where we do not expect them. Vulnerable persons have specific rights that they rarely fully enjoy. During the CPT's visits, we always dedicate a part of our time to such vulnerable categories of persons. When deciding on the composition of our delegations, we take particular care to assure not only a gender equilibrium but also participation of medical members and members with experience with the special group we are going to visit.

We never omit to visit women held in special facilities or in special wings in men's prisons. Women constitute a special and vulnerable group within prisons and other detention facilities because of their sex. They have specific needs, and although one could perceive differences between states, common trends

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such as mental disorders, drug or alcohol addiction, gender related health care needs, and problems relating to motherhood have emerged in our visits. In its “10th General Report on the CPT’s Activities,” the CPT recommended a number of standards that should apply to women deprived of their liberty, including separate accommodation from men, mixed gender staffing, equal access to activities, ante natal and post natal care for mothers and children, and proper provision for hygiene and health issues.<sup>4</sup>

### VISITING DETAINED JUVENILES

Let me now discuss the core of my work — visits to detained juveniles. We all agree that the vulnerability of juvenile offenders in detention is increased by their youth. Most of them are deprived of their liberty for petty crimes and are first-time offenders. In its “9th General Report on the CPT’s Activities,” the CPT underlined the importance it attaches to the prevention of ill treatment of juveniles and presented a series of standards and safeguards in this respect.<sup>5</sup> We believe that the cardinal principle in juvenile detention is that they should only be deprived of their liberty as a last resort and for the shortest possible period of time. In support of this position, we look to Article 37 of the UN Convention of the Rights of the Child<sup>6</sup>, and Rules 13 and 19 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”).<sup>7</sup> Also, according to Rule 52.1 of the Council of Europe Rules for Juvenile Offenders (RJO), “as juveniles deprived of their liberty are highly vulnerable, the authorities shall protect their physical and mental integrity and foster their well being.”<sup>8</sup>

Juveniles should not be held in institutions for adults. Instead, they should be held in institutions especially designed for them in accordance with Rule 59.1 of the RJO, with specialized staff of both sexes as provided under Rule 128.3 of the RJO.<sup>9</sup> They should also be offered regimes tailored to their needs. In the exceptional cases where juveniles must be placed in adult establishments, they should be accommodated separately, unless it would be in their best interest not to do so. Examples of such a scenario could be when parents are incarcerated with their children or when only one juvenile is present and he is totally isolated from the adult population. In cases where juveniles are detained with adult populations, efforts should be made to prevent total isolation of the juvenile, but they should be under strict supervision of the staff whenever interacting with the general population. In such cases they should be entitled to special treatment concerning activities and education.

During our visits to juvenile detention facilities we undertake a number of measures beyond interviewing the juveniles in order to find out whether they are treated with respect and humanity. We address the staff, including detention officers, educators, teachers, and psychologists, in order to assess whether they carry out their responsibilities in a manner that satisfies the obligation of the state to assure the security, physical and mental health, and development of the juveniles. We visit the juveniles’ living spaces and the communal rooms to see

whether the material conditions are positive, personalized, well lit, and spacious. In addition, we are very interested in ensuring that young girls have access to sanitary and washing facilities and provision of hygiene items, so we check this during our visits as well.

A CPT delegation to a juvenile establishment also has a priority to review the daily regime and the activities offered to the juveniles. Detention is detrimental for every prisoner, and even more so for juveniles. Purposeful activities are extremely important for them. Regime activities should be aimed at education, personal and social development, vocational training, rehabilitation, and preparation for release.<sup>10</sup> We inquire if there is a full program of education, sports, vocational training, recreation and of course physical exercise of at least two hours each day. In this regard, if there are also girls in the institution, they should enjoy the same regime without discrimination based on their sex. Sometimes we find that their training and vocational program is limited to sewing, cooking or to handicrafts, but this is a violation of Article 26.4 of Beijing Rules prohibiting discriminatory treatment of detained juvenile girls.

We also seek to ensure that the juveniles have access to health care. Health care for persons of young age should be conceived with a preventive character, including a requirement for examination upon admission, adequate medical facilities, and appropriate equipment. Our medical doctors assess if the above standards are satisfied and, if necessary, forward appropriate recommendations to the state’s authorities.

During our visits, we also investigate the juveniles’ contact with the outside world and any disciplinary measures that are used in the facility. Special higher standards apply to juveniles regarding their rights to have contacts with the outside world. They should generally be allowed to receive longer and open visits from their families, friends, and other persons and representatives of reputable outside organizations. They should also have the opportunity to visit their homes and family. As for disciplinary measures, juveniles must not be subjected to any corporal punishment, solitary or closed confinement, or any other measure that could be detrimental to the physical and mental health or well-being. Furthermore, the use of restraints or force should be used only in exceptional situations where a juvenile poses an imminent threat of injury to him or herself or others and then, only as a last resort. Staff should be properly trained to handle these kinds of situations, and those acting in violation of the applicable standards should be punished appropriately.

Another critical area that we review is the complaints and inspection procedures in the establishment, as those are a basic safeguard against ill treatment. We inquire if avenues of complaints are open to the juveniles, both within and outside of the institution. We also ask if the juveniles can have confidential access to an appropriate independent authority. Another safeguard for these procedures is the existence of regular visits to all juvenile establishments by an independent body, such as a

visiting committee or a judge with the mandate to receive and take action on complaints and inspect the material conditions in which the juveniles live.

We also visit juveniles in remand prisons. In its General Comment No. 10, the Committee on the Rights of the Child (CRC) has noted that in many countries, juveniles languish in pretrial detention facilities for months or even years. The CRC recommends the use of alternatives to detention in remand prisons in order to reduce the use of pretrial detention, especially for children and juveniles.<sup>11</sup> In such situations, we assess whether the juveniles enjoy the rights of remand prisoners plus the additional rights to which they are entitled as juveniles, as I have discussed.

Last, we also meet juveniles detained in police stations. In such situations we ask for enhanced safeguards against ill treatment. The risk of ill treatment is at its maximum during the very first moments of the deprivation of liberty by the police, so during our visits we examine the length of they stay with the police and whether the legal safeguards against ill treatment have been applied from the first moment of the deprivation of liberty. This includes ensuring proper notification of the deprivation of liberty to a third person — such as a parent, legal guardian, or social service — the right to a lawyer, and access to a doctor. Juveniles are also not to be interviewed or asked to sign any statement without the presence of a lawyer or other legal counsel. All of these rights must be protected from the first moment of detention.

### **VISITING PRE-TRIAL DETAINEES**

An increasingly large part of the prison population in Europe consists of persons remanded by a judicial authority in custody in special establishments or prisons prior to trial, conviction, or sentencing. Pre-trial detention should be imposed in order to serve the proper administration of justice and security. It should only be imposed when other measures are considered insufficient and then, it should be accompanied by sufficient safeguards against abuse, such as periodical reviews and reasonable maximum detention periods. The rule should be that a person who is not convicted should not be deprived of his liberty and that pretrial detention should remain the exception.

Nevertheless, in many countries, pre trial detention is used as a form of punishment, in the name of a populist conception of how justice should be done. Such detentions are in violation of the principle of the presumption of innocence and personal liberty and often lack necessary safeguards against the risk of detention in inhuman or degrading conditions.

It is worth considering whether remand prisoners can be regarded as a vulnerable group. They are certainly in a vulnerable position because, although their guilt is not established and no sentence is imposed to them, they are deprived not only of their liberty, but also of fundamental rights enjoyed by sentenced prisoners. In many contexts, they are submitted to

restricted regimes amounting to total isolation. In principle, they are a minority in relation to the sentenced prisoners. In some countries, however, they are gradually becoming a majority. One of the most common consequences of the excessive use of pretrial detention is overcrowding. In such a situation conditions of detention might easily be qualified as inhuman and degrading.<sup>12</sup>

When we visit pre-trial detainees, our interviews and assessment focus on a number of critical questions. First, we determine the length of the pre-trial detainee's detention. We often meet persons in pretrial detention who complain that their hearings are being continuously postponed and that they have no opportunity to contest judicial decisions or the duration of their detention. We also try to make sure that the pre-trial detainees are being afforded all of the rights of regular prisoners. The international standards provide that pretrial prisoners should enjoy all the protection provided for the general prison population in addition to some rights compatible with their legal status. The presumption of innocence, for example, requires that they should be held separately from the sentenced prisoners and enjoy some privacy. Rule 96 of the European Prison Rules provides that pre-trial detainees should be accommodated in single cells, unless they may benefit from sharing accommodation with other untried prisoners or a court has made a specific order to accommodate them in another manner — possibly to avoid collusion with other prisoners involved in the same case.<sup>13</sup> The reality is much uglier. We often find them in overcrowded prisons, and sometimes mixed with sentenced persons.

Normally, pre-trial detainees' regimes should not be affected by the possibility that they may be convicted of a criminal offence in the future.<sup>14</sup> Prison authorities should be guided by the rules that apply to all prisoners and should allow pre-trial detainees to participate in various activities accessible to the sentenced population, including work. In reality, when we visit either remand establishments or remand wings of prisons, we sometimes face situations where the vast majority of remand detainees spend at least 23 hours a day locked inside their cells with just one hour outdoor exercise every day. In its Second General Report, the CPT expressed the view that remand prisoners must spend a reasonable part of their day — eight hours or more — outside their cells engaged in meaningful activities.<sup>15</sup> In several visit reports, the CPT has stated that it is unacceptable for any prisoner, remanded or sentenced, to remain locked in a cell for 23 hours.

We also look for cases where remand prisoners are submitted to special restriction regimes, particularly with respect to their rights to have contacts with the outside world, socialize with other inmates, receive newspapers, and watch television. According to Rule 96 of the European Prison Rules, unless there is a specific prohibition for a specified period of time by a judicial authority in an individual case, pretrial detainees should receive visits, be allowed to communicate with family and other persons, just like convicted prisoners. They should also have access to books, newspapers and other news media.

In its reports, the CPT has also stressed that isolation regimes bring greater risks of inhuman and degrading treatment. These regimes should be applied for as short a period of time as possible and reviewed at regular intervals upon an individualized risk assessment.

When visiting pre-trial detainees, we always inquire whether they have had prompt access to information about their right to legal advice and whether the necessary facilities have been provided in order to meet with their lawyer without unreasonable hindrances. We also assess whether there is an independent monitoring of the establishment and if the remand prisoners have access to complaint procedures.<sup>16</sup>

### CONCLUSION

As I end my presentation, I would like to add that the CPT welcomes comments on its views expressed in the substantive sections of its General Reports. The CPT is open to a constructive dialogue with other institutions and civil society on all matters of common interest, including the protection of the rights of vulnerable persons, such as juveniles, women and persons with mental disabilities who are deprived of their liberty. During its long experience of monitoring places where persons with mental disabilities are held, the CPT has developed, through its empirical findings, a set of standards with a view toward enhancing the rights and treatment of such persons.

In its reports, the CPT has always put particular emphasis on safeguards surrounding the initial placement of persons in psychiatric and other establishments on grounds related to their mental health or mental disability. It has also expressed the view that during their hospitalization, patients must enjoy a range of safeguards in relation to such matters as consent to treatment, complaints procedures, and the external, independent supervision of psychiatric establishments. According to the CPT's standards, the admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorizing treatment without his consent.

In order to ensure that the necessary safeguards are in place to prevent treatment that might be considered as inhuman and degrading, the CPT has also addressed in a number of its reports the specific position of patients who are deprived of their legal capacity. The interpretation of the Convention on the Rights of Persons with Disabilities<sup>17</sup> with regard to involuntary placement and treatment and the question of legal capacity is currently the subject of much discussion within the international human rights community. The CPT is following this debate closely, with a view to further developing and enhancing its standards for the protection of the persons concerned in accordance with emerging human rights law. Thank you very much.

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## Remarks of Catherine Dupe Atoki\*

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Good afternoon everyone. I will be presenting on detention visits and vulnerable groups in Africa. I think it wise, that I quickly give an introduction to the African human rights system, so that we are properly in tune with observations that I will make on detention visits in Africa.

Most countries in Africa are signatories to the various international human rights documents, but Africa also has its own instrument on human rights, the African Charter on Human and Peoples' Rights<sup>1</sup> (African Charter), which was adopted in 1981 and is dedicated and particular to situations in Africa. At the moment, arrangements are being made for the celebration of the thirtieth anniversary of the African Charter. The African Charter was established to deal with the rising human rights situations in the region, which began to receive attention shortly after many African nations gained independence. The African Charter establishes various rights that are similar to the rights protected in other human rights instruments. It has also established a



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\*Catherine Dupe Atoki is *Special Rapporteur on Prisons and Conditions of Detention in Africa and Chairperson of the Committee on the Prevention of Torture of the African Commission on Human and Peoples' Rights*.

body to monitor the provisions of the Charter, known as the African Commission on Human and Peoples' Rights (African Commission). The African Commission is composed of eleven commissioners, drawn from all over Africa who are mainly lawyers. These lawyers act part-time as commissioners with the mandate to promote and protect human rights in Africa.

For details on the working mechanisms of the African Commission, I will refer you to the website of the African Commission<sup>2</sup> which will explain how they function. Similar to other regional human rights bodies, the African Commission has devised several working groups and several rapporteurships to deal with various thematic issues. The mandate of the Special Rapporteur on Prisons and Places of Detention in Africa (SRPPDA) was established in 1996 and includes a mandate to visit and monitor prisons all over Africa, recommend legal reforms, and follow up with results of those reforms.<sup>3</sup> Primarily, the mandate was developed to enhance Articles 5 and 6 of the African Charter, which establish a prohibition of torture and guarantee dignity to persons who are detained. The two articles have recently been highlighted and expanded, bolstered by the work of the SRPPDA. I have the dual responsibility of acting as the SRPPDA, as well as acting as a Commissioner and then as the Chairperson of the Committee for the Prevention of Torture of the African Commission. I am engaging in this discussion based on my experience with these two mechanisms, which we know are interrelated. There may not even be much difference between the two roles when it comes to prison visits.

### **VULNERABLE PERSONS DETAINED IN AFRICA**

The main topic of our discussion today is detention visits and vulnerable groups. The first question is, what is the situation of prisons in Africa? Understanding this will help us know what to look for when we visit vulnerable groups in detention centers. The problems in African prisons are universal. In other words, the main issues in African prisons are similar to what you find in other prisons around the world, but there may be some variation in terms of the gravity of the rights violations. The main challenge that African prisons face is overcrowding — not because of a large numbers of convictions, but mainly because of pre-trial detentions. In my native Nigeria, we have about 47,000 inmates and eighty percent of those are pre-trial detainees. The causes of such pre-trial detention practices are varied, but it inevitably impinge on the administration of justice in the country and on legal aid.

In order for us to properly appreciate the challenges faced by vulnerable groups, we need to understand that prison situations are generally inhumane. This is the case in most parts of the world. No prisons are five-star hotels. However, there is the aspiration that prisons can meet certain minimum standards, like not depriving inmates of their dignity. As Professor Haritini Dipla just stated, everybody who is in prison is vulnerable in his or her different contexts.

There are many vulnerable groups in Africa that need specific protections. There are women, and within the category of women there are pregnant women, women with babies, and nursing women. Babies themselves are a vulnerable group; juveniles and children; the mentally ill; persons affected with HIV/AIDS and communicable diseases; the elderly; and the handicapped. By the time you take all these categories into account, there are only a few categories of inmates who are not vulnerable, but if you look further, you will find that they are also vulnerable in some way. Despite the very broad applicability of the term, "vulnerable group," for the purpose of this presentation, I will limit myself to the few that I've highlighted.

### **WOMEN**

The African Charter generally prohibits discrimination against women.<sup>4</sup> However, the Commission realized that there is a huge lacuna in the rights of women in the African Charter, and therefore the Protocol to the African Charter on Human and People's Rights on the Rights of Women (Maputo Protocol) was created in 2005.<sup>5</sup> The Maputo Protocol further elaborates the needs and the rights of women, including the rights of pregnant and nursing women, women's rights to security, the rights of women who are in detention, and the prohibition of sexual violence in both public and private areas. These protections were not included in the African Charter, and thus, the Maputo Protocol is the primary instrument implicated when monitoring the situation of women in prisons in Africa.

In Africa, women constitute between one and six percent of the general prison population. Most of these women are poor and have been incarcerated for very minor offenses. My visit to the prisons in Sudan in 2009 was a heartbreaking experience. Many of the women in prison there had been found guilty of very minor offenses, such as brewing alcohol. Sudanese law prohibits brewing alcohol because the northern part of Sudan is mainly Muslim and prohibits brewing alcohol. Southern Sudanese are mostly Christians, and often do not share the view that alcohol should be illegal. During our visit, we found that women's prisons in Northern Sudan are inhabited mainly by South Sudanese women who brewed alcohol for a living. One of the recommendations that came out of this visit was for the state to review the law on brewing of alcohol and engage women in more productive livelihoods. We find that women, more often than not, are in prison because they are economically handicapped, are not empowered, and have been charged with petty crimes.

We have also noticed that most prisons in Africa are barely able to meet the internationally recognized requirement to keep women separated from men in detention facilities. States are often not able to afford separate facilities, and thus are limited to offering separate cells in the same facility.

## JUVENILES

I will not spend much time on juveniles and children, but I would like to say that Africa is the only continent with a region specific children's rights instrument. The African Charter on the Rights and Welfare of the Child (ACRWC) is designed specifically to address children's needs.<sup>6</sup> The ACRWC is a Protocol to the African Charter, and has elaborate provisions focusing on children, including their welfare during incarceration. The ACRWA specifically addresses infants of incarcerated women. Most women in prisons are mothers, and their babies, through no fault of their own, became inmates because they had to go to jail with their mothers. We have the difficult challenge of deciding to separate the mother and the child in order to prevent the child from being imprisoned, or the alternative of keeping the child with the mother while in prison. I have visited prisons in Tunisia and I would say that it has exhibited some best practices by providing *crèche*, or day care centers, for babies — thus establishing a conducive environment for children and for babies within the prisons.

## INDIVIDUALS WITH HIV/AIDS AND THE MENTALLY ILL

We do not have statistics as of yet on prisoners with HIV and AIDS, but the African Commission is well aware of the need to give particular attention to this group. In 2010, it established a working group on the protection of the rights of people living with HIV and AIDS. We heard details on approaches to mentally ill detainees earlier this morning, so I will not go into that group.

## CONCLUSION

The work of the Special Rapporteur on Prisons is challenging. There is only one Special Rapporteur on Prisons to cover 53 African states. The Special Rapporteur has duties as a part-time member of the Commission. Funds are not readily available for the Special Rapporteur's work and state parties do not readily give authorizations, thus I might not be able to visit the prison for six months. Still, there is progress in African prisons, and, I daresay the essence of visits to prisons is to ensure that the rights that are guaranteed are respected. If we are able to overcome the various challenges that we have across the board and to engage the prisons regularly, we will be on our way to preventing torture, and other cruel, inhuman, and degrading treatment and punishment in prisons worldwide. I thank you.

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## Remarks of Pamela Goldberg\*

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Good afternoon. I want to start by expressing the sincere regret of our regional representative, Vincent Cochetel, for his absence. He had hoped to be here today, but he was called away on an emergency. On his behalf, as well as my own, I want to thank the Washington College of Law and the Association for the Prevention of Torture (APT) for inviting UNHCR to participate on this panel. This is an especially propitious time because this is a year of commemorations for UNHCR. In December 2010, UNHCR celebrated its sixtieth anniversary, and 2011 marks the sixtieth anniversary of the 1951 Convention Relating to the Status of Refugees and also the fiftieth anniversary of the Convention for the Reduction of Statelessness. Both of these instruments are relevant to populations of concern to UNHCR, and, in connection with that concern, we are hosting,

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co-hosting, and participating in events to commemorate these anniversaries. This process will culminate in a ministerial meeting in Geneva in December of 2011. That meeting will focus on pledges that we are encouraging states around the world to make regarding their commitment to upholding their obligations under the Convention and Protocol Relating to the Status of Refugees (Convention and Protocol).<sup>1</sup> We hope some of those pledges will address concerns regarding the detention of asylum-seekers. Thus, at the end of my remarks, I am going to share with you some of the pledges that we are asking the U.S. to consider making as part of the commemorative year.

Before I launch into my comments, I want to mention — with a mix of optimism and dismay — that the Inter-American Commission on Human Rights (Inter-American Commission) just issued a 155-page report entitled, “Report on Immigration in the United States: Detention, and Due Process.”<sup>2</sup> In glancing through the table of contents, I see that the Inter-American Commission touched on many issues also of concern to UNHCR in the US context. I haven’t had a chance to carefully read the report prior to this morning, so I won’t be able to comment very much on it, but I hope to draw on a few of their remarks regarding release from detention as I go through my comments.

Today, I have three discussion points that I am going to share with you, but I hope you take from my presentation a two-fold message. First, it is essential to monitor both the circumstances and conditions of detention of asylum-seekers. UNHCR plays a pivotal role in doing this kind of monitoring. Second, the importance of this monitoring is to ensure that the rights of detained asylum-seekers are respected and that they are not impeded from having access to all the protection that they need as refugees and asylum-seekers.

In order to convey why I think these two points are so important, I am going to talk with you about three things. First, I am going to give you a quick overview of the role and responsibility of UNHCR generally, but with a focus on the U.S. because this is where my expertise lies. Then, I am going to briefly discuss some of the guiding principles and standards on which UNHCR relies in monitoring the detention conditions and circumstances of asylum-seekers. Finally, I am going to give you a few examples in the U.S. context — both where we feel we are making progress and where we see ongoing needs.

In that context I will try to draw on this important Inter-American Commission report, as well as our own experience at UNHCR in doing this monitoring. I will conclude by bringing us back to the issue of pledges in the context of the U.S. and the commemorative year.

### **OVERVIEW OF THE ROLE AND RESPONSIBILITY OF THE UNHCR**

UNHCR is mandated by the United Nations General Assembly to ensure and monitor the protection and rights of refugees and asylum seekers around the world. Our mandate is

broad and includes other persons of concern, such as internally displaced persons — whom I won’t be addressing today — and stateless individuals. It may come as a surprise to some of you, but there are stateless individuals in the U.S. Virtually all of my comments apply to stateless individuals as well, but my focus will be on asylum-seekers.

A key aspect of UNHCR’s role is to supervise the manner in which states comply with their obligations under the Refugee Convention and the 1967 Protocol relating to the Status of Refugees. Signatories to the Convention or Protocol have the obligation to cooperate with UNHCR in that effort. Many states have ratified both the Convention and the Protocol; some have ratified only one of the two. The United States is bound by the Convention because it ratified the Protocol, which incorporates by reference all the substantive provisions of the Convention. So if I talk loosely and refer to the U.S. responsibilities “under its Convention obligations,” I mean most literally through the Protocol.

UNHCR has a number of methods for overseeing a state’s compliance and consistency with its Convention or Protocol obligations. One such method is monitoring the circumstances under which a state determines that detention of asylum-seekers is warranted and the bases for such confinement, and second, monitoring the detention conditions of asylum-seekers. In the U.S. context, we undertake missions to detention facilities around the country to assess both the reasons for confinement, when and how decisions are made to release asylum seekers from detention, and the conditions of detention. We have ongoing relations with our governmental partners in a variety of departments and agencies to facilitate this work. We also rely significantly on information and concerns shared with us by our NGO partners.

When addressing the issue of detained asylum-seekers, the U.S. Government agency with which we deal the most is the Department of Homeland Security (DHS) and the sub-agency, Immigration and Customs Enforcement (ICE). We also deal with the Department of Health and Human Services, through its Office of Refugee Resettlement. This agency has the responsibility for the detention of minors — that is children under the age of eighteen who are seeking asylum and for related issues.

### **THE UNHCR’S GUIDING PRINCIPLES**

First and foremost, UNHCR adheres to the principle that the detention of asylum seekers is inherently undesirable. In the latter part of the 1980s and the early 1990s, UNHCR noticed an increasing trend around the world in the detention of asylum-seekers. This motivated us to develop a more comprehensive position regarding the detention of asylum-seekers, including when such detention would be appropriate, and what kinds of minimum conditions should be met. UNHCR issued its Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers in early 1999, and subsequently released a paper that elaborates on these issues.<sup>3</sup> These

two documents lay out our principles on detention of asylum-seekers, which incorporate international standards and norms. I believe both of these documents have been shared with all of the conference participants, but if for any reason you do not have them, you can go to our website<sup>4</sup> and find them all there.

Why is monitoring detention so important for asylum-seekers in particular? You may recall that the Special Rapporteur on Prisons and Conditions of Detention in Africa (Special Rapporteur), Catherine Dupe Atoki said in her remarks that all people in detention are vulnerable, but some people are more vulnerable than others. I would like to add that asylum-seekers fall within this “more vulnerable than others” category. This is because most asylum-seekers have fled their country as a result of direct harm, threat of harm, or harm to family members. These harms may include threats to life and freedom, as well as witnessing the death of family members. Asylum-seekers generally are already highly traumatized from the experiences that motivated them to seek asylum in another state. While some people cope with trauma better than others, in general, we are starting with a vulnerable population.

Asylum seekers are often unable to flee with any kind of documentation and sometimes arrive with nothing more than the clothing on their backs. Not only are they traumatized before they leave, but also they often are traumatized while they are in flight seeking safety elsewhere. They are easy targets on the road for opposing factions, nefarious smugglers, traffickers, or even common criminals. This range of difficulties, including the stress and trauma of not knowing where your next meal may come from, is of primary concern to UNHCR. In addition, as both Professor Haritini Dipla and Special Rapporteur Atoki mentioned, within that population there are certainly those who are more vulnerable than others including children, pregnant women, women who experienced sexual violence, victims of torture, and other highly traumatized individuals.

Based on all of these issues, our first-and-foremost principle is that detention of asylum-seekers is inherently undesirable. There are a few very clearly delineated exceptions to this principle. First, asylum-seekers may be detained to *verify identity*, but they should not automatically be detained just because they do not have documentation. There must be an actual concern regarding the asylum-seeker’s identity. Second, detention may be used *as a screening mechanism to determine whether the person has a viable claim for asylum*. This screening is not meant to be an in-depth assessment of the claim, but a *prima facie* screening for eligibility. Third, *in cases where an individual has deliberately destroyed documents, presented false documents, or come with no documents in order to mislead the state* where they are seeking protection, the asylum-seeker may be detained. Finally, detention may be allowed *when it is necessary to protect national security or public order*. If any of these conditions exist and the asylum-seeker is detained, there must be procedural safeguards for him or her. Key among the safeguards is that each determination that detention is necessary must be an individualized assessment.

I want to highlight a few of the other safeguards. First, the asylum-seekers must be informed of the reasons for their detention. They must be allowed access to legal counsel and other groups that might assist them. They should have the right to challenge their detention, both in terms of a prompt mandatory review as well as periodic review. Periodic reviews should not occur only at their request — they should be automatic. Finally, their detention should not impede their ability to present their claim for protection. Sadly, in many cases, it does.

On the topic of conditions of detention for asylum-seekers, I will just say that many of the concerns raised by Professor Dipla and Special Rapporteur Atoki apply equally to asylum-seekers. In particular, asylum-seekers should not be mixed with criminal populations and children should never be detained unless there is absolutely no other recourse. If after an individualized assessment a determination is made that detention of an asylum seeker is warranted, such detention should be the least restrictive manner possible and for the shortest period of time possible — and this is especially important for detention of children.

There are a variety of alternatives to detention that states can and should employ. Key among these is developing community-based networks that provide access to legal, social, and medical services for asylum-seekers while they pursue their claims for protection. UNHCR is working very actively on this model of detention alternative with non-governmental organization partners and governments, both globally and in the United States. I want to encourage you to look at the conclusions of the UNHCR Detention of Asylum-Seekers and Refugees paper<sup>5</sup>, which nicely bullets the key aspects of conditions and circumstances for detaining asylum-seekers.

## THE US CONTEXT

Finally, I’d like to share with you two last points. First, the issue of releasing or, as it’s referred to in the U.S. context, paroling arriving asylum-seekers from detention — a concern also addressed in the Inter-American Commission report.<sup>6</sup> UNHCR, along with our non-government partners, played a critical role in helping to shape, frame, and draft the recently promulgated guidelines regarding the circumstances under which parole should be granted to arriving asylum-seekers. These guidelines went into effect in January of 2010, and we have just completed monitoring their implementation. During this monitoring phase, we visited a number of facilities around the country, looking specifically at when and whether arriving asylum-seekers were released from detention. The Inter-American Commission report makes some very good points about problems with the new parole guidelines. One of the key pledge requests we raised in the proposed pledges UNHCR has submitted to the U.S. government to consider making during this Commemorative Year of the Refugee Convention, is that the U.S. Government ensure these new parole guidelines are implemented with the presumption that all asylum-seekers should be released rather than detained. We hope that one day this presumption of release — or non-detention — of all asylum seekers will be the norm.

As I have mentioned, UNHCR has shared with our U.S. Government counterparts a number of proposed pledges for the U.S. Government to consider advancing during this commemorative year process. The document containing those pledges will be posted on our website along with information on the events

that we are hosting or co-hosting throughout the year.<sup>7</sup> We are hopeful the U.S. Government will adopt at least some of these pledges over the course of this Commemorative year. With that hopeful note, I thank you all for your time.

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## Remarks of Alison Parker\*

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### INTRODUCTION

Thank you very much. I want to thank the Washington College of Law for the honor of speaking to you today. It's a particular honor to be at this conference with so many experts on detention from the U.S. and around the world.

There are three things that I would like to do in my remarks today. The first is to discuss why, from the perspective of Human Rights Watch (HRW) and my work on human rights issues in the U.S., prison visits are so essential to protecting human rights. Second, I would like to give you a quick snapshot of the U.S. incarcerated population. Finally, I will spend the bulk of my time talking specifically about the methodology that HRW and others use in our efforts to visit detainees and document the situations they face. I want to focus on this third issue because I think the purpose of this conference is to enhance such visits. While the laws and standards are, of course, important, the nuts and bolts of how we conduct our visits are what make those laws a reality.

### WHY PRISON VISITS ARE ESSENTIAL

On my first point, why are prison visits so important to protecting human rights in the U.S.? We have a very large incarcerated population in this country, so it is essential that these people be visited. Secondly, the incarcerated population is a hidden population, as many people have called it, but it bears repeating. It is important that we understand who these people are and what their circumstances are. Lastly, many of these people are vulnerable. Of course, this is the topic of our panel and many of my fellow panelists have talked about this, but vulnerability is another reason why it is very important that



we visit people in the custody of the state and we understand the circumstances under which they are being detained.

### THE INCARCERATED POPULATION IN THE U.S.

In some ways, we have a snapshot of the incarcerated population in the U.S. precisely because of prison visits. These visits allow us to better understand the situation of people who are being deprived of their liberty in the U.S. One piece of the picture we're able to paint comes from research done by HRW, governmental institutions, other organizations around the world, and incarcerated people themselves.

So what is the snapshot? I'll just offer a few facts and figures coming from our research at HRW and the research of a few other organizations. The U.S. has the highest per capita incarcerated population in the world. We have 748 inmates for every 100,000 residents. One in 10 black males aged 25-29 were in prison or jail in 2009. We also tend to incarcerate people in the U.S. for a very long time. This does — I'm not going to say distinguish — separate us from the rest of the world.

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*\*Alison Parker is the Director of the US Program for Human Rights Watch (HRW). She has conducted visits to detainees in state and federal prisons and in immigration detention centers in the United States, and in Rwanda, Kenya, Uganda, Guinea, and Pakistan. Previously, she served as HRW's acting director of refugee policy. Ms. Parker is a graduate of Columbia Law School and Columbia's School of International and Public Affairs. She has authored several reports and written articles for The American Prospect and Columbia Law Review. Ms. Parker previously worked with the United Nations High Commissioner for Refugees and the law firm of Cleary Gottlieb Steen and Hamilton.*

As you may have heard when I was introduced, one population I have focused on is juveniles who are sentenced to life without the possibility of parole. Life without parole for juveniles is a very long sentence. To be clear, it is a sentence to die in prison. There is never a chance of release. When I say juveniles, I mean people who are below the age of eighteen when they committed their crimes. In the U.S. there are 2,500 such prisoners. There are no such prisoners anywhere else in the world.

On any given evening in 2009, there were 10,000 juveniles incarcerated in adult facilities in the U.S. It has been my experience in talking with colleagues familiar with criminal justice practices in the rest of the world that they are surprised by how many juveniles are treated as if they were adults in the United States. I'm not just talking about people who are 17.9 years old. I'm also talking about thirteen-year-olds. I want to emphasize that these are children who are brought to adult court, tried as adults, convicted as adults, and incarcerated in adult facilities. Again, on any given night in 2009, there were 10,000 such juveniles in adult prisons and jails in the U.S.

Last, highlighting what my colleague Pamela Goldberg has talked about with respect to asylum-seekers, but broadening that to the incarceration of non-citizens, there were approximately 400,000 people detained in immigration facilities throughout the U.S. in 2009 (the most recent year for which we have statistics). Recent HRW research has indicated that fifteen percent of these people are persons with mental disabilities. These are very large numbers.

## METHODOLOGY

The incarcerated population in the U.S. is a very large, hidden population, which makes our methodology when conducting prison visits very important. Also, it is probably evident from the statistics I shared that there are many ways in which this population is vulnerable. To further illustrate the importance of methods, I want to share with you two accounts taken from prisoners by researchers and let you reflect a little bit on them. The first account was taken by a researcher who wrote the following notes during a visit:

Prisoner X is 22 years old. He is a Caucasian man convicted of armed robbery and interviewed in a maximum-security prison. He is being held in solitary confinement and has been rotated in and out of solitary for the past several years due to threats he allegedly made against guards and physical altercations between him and guards.

In solitary confinement, he spends a great deal of time exercising in his cell. He was subdued in demeanor when I interviewed him and described his cell as being very small, about ten feet by ten feet, with little natural light, the food being "just tolerable." When asked about the conditions in this individual's

cell, a prison guard told me, "the cells measure about eight feet by 12 feet, in fact, not ten by ten. There is a small slit window near the ceiling, and the prisoners are afforded one hour of exercise per day in the courtyard."

Another account, taken by a different researcher read as follows:

I interviewed a male prisoner. His age is 22 years old. He was convicted at the age of fourteen in adult court and entered adult prison when he was fifteen years old. I interviewed him in a maximum-security prison. When he entered prison, he weighed 115 pounds and was five feet tall. His first placement in solitary confinement came just weeks after he entered prison. He explained that he had been repeatedly called "fresh meat" by other adult prisoners, implying that he would soon fall victim to rape.

He explained to me that he felt his only recourse was to pick a fight with a guard in order to obtain protection inside prison. When asked if he knew that this prisoner entered prison while still a child, a prison guard said, "It doesn't matter to me how old he is, if the state says he is convicted in adult court and needs to go to adult prison, then he's just like everyone else when he comes here."

What's my point in reading you these two accounts? Well, if you haven't figured out already, they are actually the same prisoner. These are two researchers who went and interviewed the same prisoner and came out with very different findings. This is not to say that either one is inaccurate, but simply to point out the obvious fact that the methodology we use very much defines what we find in detention visits.

I want to close by giving you a list of some of the things that I think are important to make detention visits effective, and ultimately achieve our goal of protecting the rights of people in prisons and detention centers throughout the country and the world. First, it is very useful to ask open-ended questions when interviewing a prisoner. It is also essential to speak in a private place away from correctional officers who may overhear the conversation. Asking prisoners why they respond in certain ways to your questions is also critical. The second researcher I mentioned previously likely asked the prisoner why he was in solitary confinement and got a completely different understanding of why the prisoner was there than the first researcher, who perhaps didn't ask that question. As is probably obvious from my comments about juveniles in adult facilities in the U.S., I believe it's essential to ask the age of the person at the time of the offense.

It is also very important for our work in the U.S., and this applies across the world, to crosscheck what we gather from

prisoners. This is because it is very important that our findings are accurate, for obvious reasons. One of the ways to crosscheck is to speak to correctional officers themselves, and with prison experts. We have talked with experts in mental health, physical health, prison architecture, child development, correctional security classifications, as well as psychiatrists, psychologists, counselors, substance abuse experts, and bio-statisticians. All of this information helps corroborate what we may be learning from prisoners themselves, making our findings that much more credible.

It is also essential to try to speak with detainees about the totality of their experience in prison. The totality is more than what happened most recently, but includes what the facility was like when the prisoner first entered and what it is like now. As I hope was illustrated in the two accounts that I mentioned previously, it is also important to ask the detainees what they were like when they first entered the facility, both physically and mentally. This requires getting the prisoners to talk about who they were then and to understand who they are now, but it gives us a much fuller picture of individual detainees.

A few other important points that might be of interest include asking people to draw maps of the facility that they're in, or simply asking them to draw anything. This has been a way for people — not just children, but anyone — to talk about things or to share things that are very difficult to disclose in a verbal one-on-one conversation. Then again, it is always challenging to protect the individual who is sharing such information from

possible reprisals, so it is critical to think about what may happen to that prisoner once the visit ends.

Lastly, I think there are important things to be gained from talking to former inmates from a particular facility, who may be able to speak more freely. Unfortunately, I think we forget about family members and other people who regularly visit prisoners, who can give us a real insight into what is happening with detainees. That said, it has been my experience that — given the very long sentences that people serve in the United States — for some prisoners those family relationships have dissolved or are quite strained. That's another reason why our work at HRW is important. So often, I find that I'm the first person the particular detainee has talked to in years. This only underscores how important detainee visits are.

## CONCLUSION

I want to wrap up by saying that prison visits are fundamental to protecting the human rights of prisoners. We must remember that the way we conduct our visits and the issues that we look for during those visits are essential in improving conditions of confinement. The knowledge we gain from visits is also critical for changing sentencing policies, which is a major issue in the U.S. because of harsh sentences like life without parole for juveniles. We have to meet these prisoners directly, because in order to address vulnerability, we must talk about something more than food and the size of cells. We need to understand who the prisoner or detainee is in order to improve conditions that are specific to his particular “vulnerabilities.” Thank you very much.



## ENDNOTES: Panel 2: Protecting Vulnerable Groups Through Detention Visits

### Remarks of Haritini Dipla

- <sup>1</sup> The CPT's website is available here: <http://www.cpt.coe.int/en/about.htm>
- <sup>2</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, G.A. Res 57/199, U.N. Doc A/RES/57/19
- <sup>3</sup> More information on the SPT can be found at the website of the UN High Commissioner for Human Rights: <http://www2.ohchr.org/english/bodies/cat/opcat/>.
- <sup>4</sup> *10<sup>th</sup> General Report on the CPT's Activities*, European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (August 18, 2000) available at <http://www.cpt.coe.int/en/annual/rep-10.htm>.
- <sup>5</sup> *9<sup>th</sup> General Report on the CPT's Activities*, European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (August 30, 1999) available at <http://www.cpt.coe.int/en/annual/rep-09.htm>.
- <sup>6</sup> Convention on the Rights of the Child, Nov. 20, 1989, U.N. Doc. A/RES/44/25, available at <http://www2.ohchr.org/english/law/crc.htm>.
- <sup>7</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Nov. 29, 1985, U.N. Doc. A/RES/40/33, available at <http://www2.ohchr.org/english/law/crc.htm>.
- <sup>8</sup> European Rules for Juvenile Offenders, Recommendation CM/Rec (2008) 11, Council of Europe, available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1367113&Site=CM>.
- <sup>9</sup> *Id.*
- <sup>10</sup> Rule 77 of European Rules for Juvenile Offenders subject to sanctions or measures
- <sup>11</sup> CRC General Comment 10 on the Convention on the Rights of the Child, available at <http://www2.ohchr.org/english/bodies/crc/comments.htm>.
- <sup>12</sup> See the CPT's 2nd General report (1992).
- <sup>13</sup> Rule 96 of the European Prison Rules
- <sup>14</sup> Rule 95.1 of the European Prison Rules
- <sup>15</sup> See CPT's 2nd General report (1992).
- <sup>16</sup> See Rules 93.1 of the European Prison Rules; see also rule 44 of the Recommendation of 26 September 2006 of the Committee of Ministers of the Council of Europe on the Use of Remand.
- <sup>17</sup> Convention on the Rights of Persons with Disabilities, available at <http://www.un.org/disabilities/default.asp?id=259>

### Remarks of Catherine Dupe Atoki

- <sup>1</sup> African Charter on Human and People's Rights 1520 U.N.T.S. (1981) available at [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html).
- <sup>2</sup> The African Commission on Human and People's Rights is available at [http://www.achpr.org/english/\\_info/news\\_en.html](http://www.achpr.org/english/_info/news_en.html).
- <sup>3</sup> The mandate for the Special Rapporteur on Prisons and Places of Detention in Africa can be found on the website of the African Commission on Human and People's Rights at [http://www.achpr.org/english/\\_info/prison\\_mand.html](http://www.achpr.org/english/_info/prison_mand.html).
- <sup>4</sup> African Charter on Human and People's Rights, art. 18, 1520 U.N.T.S. (1981) available at [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html).
- <sup>5</sup> Protocol to the African Charter on Human and People's Rights on the Rights of Women (Maputo Protocol), July 11, 2003, available at [http://www.achpr.org/english/\\_info/women\\_en.html](http://www.achpr.org/english/_info/women_en.html).
- <sup>6</sup> African Charter on the Rights and Welfare of the Child, July 11, 1990, CAB/LEG/24.9/49 (1990), available at [http://www.achpr.org/english/state\\_reports/\\_info/child\\_en.html](http://www.achpr.org/english/state_reports/_info/child_en.html).

### Remarks by Pamela Goldberg

- <sup>1</sup> Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, available at <http://www.unhcr.org/3b66c2aa10.html>; Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967, available at <http://www2.ohchr.org/english/law/protocolrefugees.htm>.
- <sup>2</sup> See Inter-American Commission on Human Rights, Report on Immigration in the United States: Detention and Due Process. OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, available at <http://cidh.org/countryrep/USImmigration/TOC.htm>.
- <sup>3</sup> See UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (February 1999), available at <http://www.unhcr.org/au/pdfs/detentionguidelines.pdf>; see also UNHCR, Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice, EC/49/SC/CRP.13 (4 June 1999), available at <http://www.unhcr.org/refworld/docid/47fdaf33b5.html>.
- <sup>4</sup> See <http://www.unhcr.org>; see also <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>.
- <sup>5</sup> Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice, UN High Commissioner on Refugees, UN Doc. EC/49/SC/CRP.13, June 4, 1999, available at <http://www.unhcr.org/refworld/pdfid/47fdaf33b5.pdf>.
- <sup>6</sup> See Inter-American Commission on Human Rights, Report on Immigration in the United States: Detention and Due Process. OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010.
- <sup>7</sup> [http://www.unhcrwashington.org/files/row\\_pledges.pdf](http://www.unhcrwashington.org/files/row_pledges.pdf).