

**PREVENTABLE TRAGEDY IN PANAMA—UNNECESSARY DEATHS
AND RIGHTS VIOLATIONS IN JUVENILE DETENTION CENTERS**

**REPORT SUBMITTED TO THE U.N. COMMITTEE ON THE RIGHTS OF THE CHILD
FOR ITS 57TH SESSION BY:**

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ALIANZA CIUDADANA PRO JUSTICIA
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MAY, 2011

**TRAGEDIA PREVENIBLE EN PANAMÁ--MUERTES INNECESARIAS Y VIOLACIONES DE DERECHOS
EN CENTROS JUVENILES DE DETENCIÓN**

**INFORME PRESENTADO AL COMITÉ DE LOS DERECHOS DEL NIÑO DE LAS NACIONES UNIDAS
PARA SU SESIÓN 57 POR:**

**CLÍNICA INTERNACIONAL DE DERECHOS HUMANOS DE LA UNIVERSIDAD DE HARVARD
ALIANZA CIUDADANA PRO JUSTICIA
ASAMBLEA CIUDADANA DE PANAMÁ**

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REVIEW OF THE STATE OF PANAMA
GENEVA, JUNE 2011**

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EXECUTIVE SUMMARY

This report, based on investigation of the juvenile detention centers, assesses the extent to which Panama has violated the rights of juveniles in the Convention on the Rights of the Child (the “Convention”) and other related international instruments. At Panama’s previous appearance before the Committee on the Rights of the Child (“CRC”) in 2004, the CRC made observations and recommendations concerning violations in the juvenile justice system.¹ The concluding observations included recommendations to Panama about separating detainees by age and needs, ensuring access to social services, adequately responding to cases and complaints of mistreatment by law enforcement agents, ensuring contact with families, providing regular medical examinations, and creating a recovery and social rehabilitation system. As this report documents, Panama’s rights violations in these areas have continued or increased since 2004.²

The report documents grave civil rights violations, especially in the fire that occurred at the Centro de Cumplimiento de Tocumen (“Tocumen”) on January 9, 2011 and resulted in the burning deaths of five juveniles. The police, guards, and detention center officials involved demonstrated disregard for the lives of these juveniles, used excessive force and failed to allow the children to exit the building once it became clear that their lives were threatened by the fire. The lack of a system to prevent incidents such as this one is unacceptable, especially given that a similar burning death had already taken place in another cell in the same detention center less than two years before the January 2011 incident, in November 2009. Panamanian officials must ensure that those responsible are investigated, prosecuted, and adequately sanctioned for this behavior, as the CRC reminded the State in its 2004 Concluding Observations.³ Furthermore, physical violence and continued abuse from the guards, as well as horrendous living conditions, especially in the maximum security cells, constitute cruel, inhuman, and degrading treatment. The juvenile detention centers also fail to ensure freedom of expression and give due weight to the voice of the juveniles in clear violation of the Convention and the CRC’s previous recommendations to Panama.⁴ Panamanian authorities must take urgent measures to respond to these grave conditions.

Additionally, the report notes that the juvenile detention centers unduly restrict family visits, denying detainees the right to maintain contact with their families. The centers also have failed to provide detainees with adequate physical or mental health services, and have failed to provide specialized care for detainees with disabilities. Authorities have failed to provide juveniles adequate educational or vocational training while in detention, thus impairing their ability to assume productive roles in society upon their release. Detention center officials have also impermissibly restricted recreation and work activities for detainees.

The juvenile justice system has also failed to comply with the Convention and other international instruments by creating a structure marked by harsh penalties and minimal protections. Moreover, the current conditions of confinement in the Panamanian juvenile

¹ Committee on the Rights of the Child, Concluding observations: Panama [“Panama Concluding Observations”], ¶¶ 60-62, CRC/C/15/Add.233 (June 30, 2004).

² *Ibid.* ¶ 62.

³ *Ibid.* ¶ 62(b).

⁴ *Ibid.* ¶ 60.

detention system are manifestly inadequate to protect the health, welfare, and dignity of juvenile detainees. Detention centers fail to separate detainees by age and gravity of the crime, are grossly overcrowded, and continue to deny detainees access to adequate food, water, and sanitary facilities.

The report concludes that Panama has disregarded its obligations under the Convention and related international instruments by failing to protect the rights of juvenile detainees and subjecting them to cruel, inhuman, and degrading treatment. Building additional infrastructure, such as the new center due to open in July 2011, will not solve the severe rights violations present in the current system. Panama must reform both its laws and practice to ensure compliance with international law.

METHODOLOGY

The information in this report is based on visits to juvenile detention centers, interviews with children and adolescents in detention, meetings with detention center agents, other authorities and stakeholders, as well as research into a range of sources, including information provided by governmental sources, official documents and responses to our inquiries, reports from Panamanian human rights organizations and media accounts. On January 27, 2011, a group of representatives from Panamanian NGOs visited the Centro de Cumplimiento de Tocumen (“Tocumen”) and the Centro de Custodia de Arco Iris (“Arco Iris”) in Panama City and produced a short report on the conditions at these centers. The results of that investigation provided essential background and guidance for the research undertaken to produce this report. Between March 30 and April 2, 2011, a team of researchers from the International Human Rights Clinic at Harvard Law School (“the Harvard team”) visited four juvenile detention centers: Tocumen on two occasions, Arco Iris once, the Feminine Residence (“Residencia Femenina”) in Panama City once, and Centro de Cumplimiento Basilio Lakas (“Basilio Lakas”) in Colón, Panama, once. These visits ranged from several hours to a full day. The Harvard Clinic research is part of a project on detention conditions in Panama that has led to the publication of an extensive, book-length report on adult prisons submitted to U.N. and OAS human rights bodies.⁵ At the time of the Harvard team’s visits, these four detention centers together housed 268 juvenile detainees, approximately 82% of the total population of the juvenile detention system.⁶ During the course of the four days of visits to detention centers, researchers of the Harvard team spoke individually and in small groups with some 75 detainees. During our research in Panama, researchers also met with the directors and staff of the centers, the director of the Institute of Interdisciplinary Studies (Instituto de Estudios Interdisciplinarios, “I.E.I.,” the government entity in charge of the juvenile detention system) of the Ministry of Government, the National Ombudsman (Defensoría del Pueblo), three juvenile court judges, and several civil society partner organizations.

⁵ Harvard International Human Rights Clinic, *Del Portón Para Aquí Se Acaban los Derechos Humanos: Injusticia y Desigualdad en las Cárceles Panameñas* (2008), available at <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HarvardClinicPanamaprison.pdf>.

⁶ Instituto de Estudios Interdisciplinarios (Institute of Interdisciplinary Studies), Información General I.E.I. y Centros, received Apr. 25, 2011.

IMPLEMENTATION OF THE CONVENTION

This report generally follows the guidelines created by the U.N. Committee on the Rights of the Child (“CRC” or the “Committee”). Because the report focuses on conditions in the Panamanian juvenile detention system, violations of specific articles of the Convention will be discussed only insofar as they affect primarily those incarcerated in the juvenile detention system. The discussion of Article 40 will encompass general discussion of the juvenile justice system and of the conditions of detention in the juvenile detention system.

1. Civil Rights and Freedoms

1.1 Torture and Cruel, Inhuman or Degrading Treatment of Children

Article 37 of the Convention describes the state’s duty to ensure that children are not subjected to torture or other cruel, inhuman or degrading treatment. This duty is elaborated in the U.N. Committee on the Rights of the Child’s General Comment No. 8, which provides that:

Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever he or she is and whoever the perpetrator is. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation - e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law - clearly prohibits its use in the relevant settings.⁷

Despite this clear proscription, Panamanian authorities routinely subject juveniles in detention centers to treatment that qualifies as cruel, inhuman and degrading treatment. Sometimes, this treatment rises to the level of torture. In one January 2011 incident, described in detail below, police stood by idly while juveniles locked in a cell slowly burned to death. The police agents—who were filmed—laughed while the boys screamed and begged for help; while refusing assistance, one agent told the boys to die. Unfortunately, in part due to the timing of its submission, the State Report does not address the serious human rights issues faced by juvenile detainees.⁸

1.1.1 Deaths at the Centro de Cumplimiento de Tocumen

In January of 2011, five juveniles died as the result of burns sustained in a fire at Tocumen on January 9, 2011. Tocumen had been without water for several weeks prior to the fire. According to our interviews with juveniles who were present on the cell block on the day of the fire, on the morning of January 9, several of the detainees left their cells and entered the hall of the cell block to protest the lack of water, among other complaints about the poor conditions of their detention.⁹ At that time, there were only three guards on duty at Tocumen, and only one

⁷ Committee on the Rights of the Child, General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, ¶ 35, CRC/C/GC/8 (Mar. 2, 2007).

⁸ See Examen de los informes presentados por los Estados partes con arreglo al artículo 44 de la Convención Tercer y cuarto informes periódicos que los Estados Partes debían presentar en 2008: Panamá [“Panama State Report”], CRC/C/PAN3-4 (Jan. 27, 2011).

⁹ Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

guard monitoring the cell block in which the protest occurred, the Pabellón de Menores.¹⁰ Accordingly, detention center officials called in police and fire personnel as reinforcements. Authorities locked the exterior doors of the cell block, and the police threw tear gas canisters and shot pellet guns at the juveniles. It should be noted that these cells, like many others, lack sanitary facilities. Juveniles, therefore, are forced to urinate and defecate into containers in their cells.¹¹ In response to the tear gas and rubber bullets, juveniles threw urine and feces at the guards.¹² State agents fired both rubber bullets and iron pellets, striking the juvenile detainees with both types of munition.¹³

The fire began soon after this confrontation. Because the detainees had called a television station,¹⁴ a reporter was on site at the beginning of the fire, and this reporter recorded disturbing video footage.¹⁵ In the video, a police officer is shown putting tear gas canisters into cell 6 through a hole in the window. Shortly after this, the video demonstrates that smoke and fire are visible in the same window, and one can hear the juveniles as they scream and beg the police officers to release them from their cell. According to a juvenile who was in cell 5, and who was able to observe these events through a hole in the wall between cells 5 and 6, the tear gas canister thrown by the police officer began to smoke and give off sparks.¹⁶ The detainees attempted to smother the gas with a bed cushion, which then caught fire. Because the detainees in cell 6 had not participated in the protest, the door to their cell was still locked, and they could not escape the flames. Throughout these events, the video recording clearly shows police officers standing outside the window, laughing at and mocking the juveniles as they burned and implored the officers to douse them with water. One police officer is heard to say, “*No son machitos? ¡Muéranse!*” (“Aren’t you men? Die!”). According to firemen on the scene, police gave them orders *not* to intervene, and therefore they did not take adequate measures to stop the fire or remove the juveniles from cell 6.¹⁷

After the fire subsided, the police opened the outer doors of the cell block and removed the juveniles who were in the hall. Next, according to juveniles present and with whom we spoke later, police removed the detainees in cell 5.¹⁸ The officers forced these adolescents to remove their clothes and lie facedown on the ground, where the police handcuffed them with

¹⁰ Defensoría del Pueblo, Dirección de Unidades Especializadas, Unidad de Niñez y Adolescencia, Análisis Sobre los Hechos Ocurredos el 9 de Enero de 2011 en el Centro de Cumplimiento Masculino de Tocumen, p. 8 (Jan. 2011).

¹¹ See *infra* section 5.1.2.

¹² Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

¹³ Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with N.F., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

¹⁴ Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011.

¹⁵ As of April 24, 2011, the video was available to be viewed at <http://www.youtube.com/watch?v=MkZkiwEQDJY>. After the fire, there was an attempt to characterize the protest as an escape attempt; however, the fact that the juveniles involved alerted the media makes this explanation of events far-fetched at best.

¹⁶ Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011.

¹⁷ Video, Violencia y Sadismo en la Policía Nacional, <http://www.youtube.com/watch?v=MkZkiwEQDJY>; “Vice de Gobierno: Policías no permitieron entrar a bomberos”, TVN Noticias (Jan. 10, 2011), available at http://www.tvn-2.com/noticias/noticias_detalle.asp?id_news=44903.

¹⁸ Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

plastic ties.¹⁹ Only after all of the other detainees had left the cell block did the state agents remove the juveniles in cell 6, those directly exposed to the fire, from their cell. According to juveniles who were present, six of the seven juveniles who had been in cell 6 were able to leave the cell block under their own power, while one needed to be carried; one detainee interviewed by the Harvard team described seeing the skin falling off the juveniles who had been in cell 6.²⁰ The juveniles also reported that police officers beat and kicked them after leaving the cell block and during their transfer to the maximum security cells; the video shows an officer beating one of the juveniles with a police baton.²¹ Authorities took those who had not been burned to a maximum security cell block at Arco Iris.²²

The failure on the part of the police, guards, and firemen to intervene or to provide even minimal aid places the responsibility for the deaths of these young men squarely on the Panamanian government, as well as on the individuals involved. The U.N. Rules for the Protection of Juveniles Deprived of their Liberty (“U.N. Rules”) require effective fire alarm and evacuation procedures, which were clearly lacking or at least not followed on January 9, 2011.²³ But beyond this, state inaction when faced with the preventable severe pain and suffering endured by the juveniles—both those who burnt to death and those who were forced to witness it—constitutes torture under international law.²⁴ It also constitutes intentional or reckless homicide.

This was not the first time that a detainee burned to death in Tocumen. On November 7, 2009, a bed cushion caught fire in cell block 1-A of Tocumen.²⁵ According to reports, the fire was started by detainees in the neighboring cell.²⁶ Two detainees were burned in the fire; one of these detainees died of his burns.²⁷ Our research team interviewed a detainee who observed the fire from a nearby cell. According to this adolescent, twenty minutes passed between the start of the fire and when the guards intervened, despite the pleas of the detainees to the guards to open the doors.²⁸ This detainee also reported seeing skin falling from the face and chest of the burned inmate, whose shirt had been burned into his skin. The failure of the Panamanian government to make the changes required to protect the lives of the detainees at Tocumen and throughout the juvenile detention system after it was placed on notice of the risk of fire by the death of a

¹⁹ Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

²⁰ Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

²¹ Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with J.D., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Video, <http://www.youtube.com/watch?v=MkZkiwEQDJY>.

²² The conditions of the maximum security area in which these juveniles were held are described *infra* section 1.1.2.

²³ U.N. Rules for the Protection of Juveniles Deprived of their Liberty [“U.N. Rules”], ¶ 33, G.A. Res 45/113, (Dec. 14, 1990), http://www2.ohchr.org/english/law/res45_113.htm.

²⁴ The U.N. Convention Against Torture defines torture as, in part, “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as...punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” U.N. Convention Against Torture Art. 1.1 <http://www.hrweb.org/legal/cat.html>.

²⁵ “Dos heridos en centro de cumplimiento tras incendio”, La Prensa (Nov. 7, 2009).

²⁶ Sala, William, “Incendio en el CCT deja a dos reos con quemaduras”, La Prensa (Nov. 8, 2009).

²⁷ Interview with Viodelca Alvarado, senior staff member, Centro de Cumplimiento de Tocumen, Mar. 30, 2011.

²⁸ Interview with L.E., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

detainee in 2009 places into stark relief the government's responsibility for the fire on January 9, 2011 and the deaths that resulted from it.

The Panamanian government has launched an investigation of this incident, and the director and head of security at Tocumen have been temporarily removed from their posts pending the outcome of this investigation. To date, there have been no prosecutions, and the national prosecutor's office did not respond to a letter from the Harvard team inquiring about the status of the case.²⁹ Panama should ensure the prompt investigation, prosecution, and appropriate sanction for those responsible for this incident in order to comply with the CRC's previous recommendations and the Vienna Guidelines for Action on Children in the Criminal Justice System ["Vienna Guidelines"].³⁰

Members of the Citizens' Assembly (La Asamblea Ciudadana) who have been in touch with the survivors have also been monitoring the government's response to the survivors of the incident. While they have seen some governmental efforts, there has not been sufficient celerity given the gravity of the injuries and the clear state responsibility. Panamanian Civil Society has thus called on the state to provide adequate compensation to the victims and their families.³¹

Recommendations:

- Fully investigate the incidents that occurred at Tocumen on January 9, 2011 and November 7, 2009 and initiate and conclude prosecutions where appropriate.
- Provide trauma counseling for the survivors of the January 9 fire.
- Institute effective fire alarm and evacuation procedures, and ensure that these procedures are complied with throughout the juvenile detention system.
- Ensure that detention centers are adequately staffed at all times to reduce the need for police intervention in the event of a disturbance.
- Institute strict controls on or prohibit the use of tear gas canisters in juvenile detention facilities, and ensure that police and guards comply with these controls by instituting disciplinary proceedings in cases of non-compliance.

²⁹ Letter to the Procurador General de la Nación (Attorney General), José Ayú Prado, sent Apr. 14, 2011. The Harvard team received a response that addressed only our questions about a separate issue, and did not mention the January incident, despite follow-up with the Prosecutor's office by telephone. Letter from Greta Marchosky de Turner, Sub-Secretary General, Procuraduría General de la Nación, May 6, 2011.

³⁰ Panama Concluding Observations, *supra* note 1, ¶ 62(b) ("Investigate, prosecute and punish any case of mistreatment committed by law enforcement personnel, including prison guards, and establish an independent, child-sensitive and accessible system for dealing with complaints from children"); Vienna Guidelines for Action on Children in the Criminal Justice System ["Vienna Guidelines"], Economic and Social Council Resolution 1997/30 of 21 July 1997, <http://www2.ohchr.org/english/law/system.htm>, ¶ 25.

³¹ The Citizens' Assembly has recommended that a total of \$3 million be made available to provide for the indemnification and other needs of the survivors, such as psychological help for the families of the victims and the affected juveniles.

1.1.2 Cruel, Inhuman and Degrading Treatment of Juvenile Detainees

Detention center authorities have regularly subjected juveniles in the Panamanian juvenile detention system to cruel, inhuman and degrading treatment.³² Authorities have routinely beaten and used tear gas on juvenile detainees, and some youths in detention reported that guards and police had shot them with rubber bullets (*perdigones*) and threatened them with rifles. The current director of the Centro de Custodia Arco Iris (“Arco Iris”), Analida Arango, told our researchers that prior to her tenure, it had been standard policy to inflict physical punishment for infractions such as fighting.³³ The head of security for the center explained that the policy involved guards hitting detainees on the buttocks with a paddle and then sending them to the punishment cell.³⁴

The Harvard team received multiple reports from detainees that they had been beaten by guards or by police.³⁵ One detainee reported that guards had beaten detainees for turning up the volume on a communal television set.³⁶ Several detainees reported an incident a few weeks prior to our visit, in March 2011, during which several detainees were beaten for pleading with the guards to give them water.³⁷ The guards shouted obscenities at the detainees for making noise and refused to bring them water, and one juvenile threw a container of urine at the guard.³⁸ In response, as many as five guards entered the cell and beat the detainee, continuing to do so even after they had him handcuffed.³⁹

The Harvard team also received reports from detainees that state authorities had shot them with rubber bullets (*perdigones*) or threatened them with rifles. It has been widely documented that state authorities had shot the survivors of the January 9 fire with rubber bullets.⁴⁰ This fact was confirmed by survivors in interviews with the Harvard team.⁴¹ This was

³² The Committee has roundly condemned the use of force or physical restraint on juvenile detainees in cases which do not involve the imminent threat of injury to the detainee or others. Committee on the Rights of the Child, General Comment No. 10: Children’s rights in juvenile justice, ¶ 89, CRC/C/GC/10 (Apr. 27, 2007) (“Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately... disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment...”).

³³ Interview with Analida Arango, Director of Centro de Custodia Arco Iris, Mar. 31, 2011.

³⁴ Interview with Analida Arango, Director of Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with Chief of Security at Centro de Custodia Arco Iris, Mar. 31, 2011.

³⁵ Interview with V.O., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011 (describing being beaten and kicked while lying handcuffed on the ground); Interview with W.B., Centro de Custodia Arco Iris, Mar. 31, 2011.

³⁶ Interview with N.G., Centro de Custodia Arco Iris, Mar. 31, 2011.

³⁷ Interview with P.N. and M.M., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011; Interview with S.I., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

³⁸ Interview with P.N. and M.M., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011; Interview with S.I., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

³⁹ Interview with P.N. and M.M., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011; Interview with S.I., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

⁴⁰ See, e.g., Mendoza, Eduardo, and Palm, Monica, “‘Nos quemamos...!’ La tragedia del Penal”, La Prensa (Jan. 11, 2011), available at <http://mensual.prensa.com/mensual/contenido/2011/01/11/hoy/panorama/2464056.asp>; “Hubo

not the first incident in which state agents shot detainees with *perdigones*. One detainee described an incident that took place in June 2010 in which guards beat him, sprayed him with tear gas, and shot him with *perdigones* after a friend of his attacked another detainee in the gymnasium.⁴² Another detainee described a separate incident in which guards beat him and threatened him with rifles.⁴³ On or around February 28, 2011, the detainee allegedly attempted to escape. The detainee reported that guards and police punched, kicked, and beat him with police batons.⁴⁴ He also reported that a policeman threatened him with a rifle, but that the policeman did not shoot him because the center's director was observing the incident. The wounds inflicted by state authorities during this incident were severe enough to require three stitches.

Guards and police have also routinely used tear gas on juveniles. In addition to the incidents described above, many other detainees reported that guards had used tear gas in the cell blocks.⁴⁵ The guards' use of tear gas is especially problematic given the crowded conditions and poor ventilation in the detention centers.

In addition to these punitive measures, detention center authorities have sent detainees who commit infractions to maximum security cells. These cells are located at Arco Iris, but may house detainees from Tocumen as well. Authorities took the survivors of the January 9 fire at Tocumen to these maximum security cells after the incident. The conditions under which authorities held the survivors in maximum security were sufficiently grave to constitute cruel, inhuman and degrading treatment.⁴⁶ The maximum security cells are located in a cell block that is separated from the rest of Arco Iris by a wall. The cell block consists of eight small, individual cells measuring approximately seven feet by eleven feet, as well as a larger room. Each cell contained a shower and a toilet. Detention center authorities held the 37 survivors in the maximum security cells for 22-28 days, with each cell holding between three and five people. During this time, according to the juveniles, authorities did not allow survivors to leave their cells except for ten minutes of visits once a week. Authorities did not allow family members to bring personal items for the survivors, with the exception of personal hygiene items such as soap and toilet paper. Authorities provided running water in the cells only intermittently; often the water was turned on a day before the arrival of a visitor so that the survivors could bathe. This extreme level of overcrowding and the failure on the part of detention center authorities to allow the juveniles to leave the cells, combined with their failure to provide meaningful psychological support services to deal with the traumatic events they had experienced, were both inappropriate

perdigones el día del fuego", La Prensa (Jan. 14, 2011), *available at*

<http://mensual.prensa.com/mensual/contenido/2011/01/14/hoy/panorama/2467431.asp>.

⁴¹ Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with E.Z., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁴² Interview with X.Y., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁴³ Interview with D.A., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁴⁴ Another detainee who observed the event estimated that five policemen and three guards were involved in the beating. Interview with X.Y., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁴⁵ Interview with R.P and J.M., Centro de Custodia Basilio Lakas, Apr. 1, 2011; Interview with W.B., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with L.M., Centro de Cumplimiento de Tocumen, Mar. 31, 2011.

⁴⁶ The facts in this paragraph are drawn from the following interviews, as well as from a visit to the maximum security cells by the Harvard team: Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with E.Z., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

responses to the situation and punitive. Together, these conditions constitute cruel, inhuman, and degrading treatment.⁴⁷

Recommendations:

- Establish clear policies prohibiting the beating or shooting of juvenile detainees with *perdigones*, and implement effective disciplinary measures for those who violate these policies.
- Investigate incidents of cruel, inhuman and degrading treatment of prisoners and institute disciplinary proceedings as appropriate.
- Institute strict controls on or prohibit the use of tear gas canisters in juvenile detention facilities, and ensure that police and guards comply with these controls by instituting disciplinary proceedings in cases of non-compliance.
- Discontinue use of maximum security cells until conditions are appropriate for habitation.

1.2 Respect for the Voice of the Child

Article 12 of the Convention protects the right of the child to freedom of expression on any issue affecting the child, and requires that the voice of the child be given due weight. In addition, the U.N. Rules provide that juveniles should have the right to make requests and complaints to the director of the facility in which they are detained as well as to administrative authorities. Further, CRC General Comment on Children's Rights in Juvenile Justice states that "Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms."⁴⁸ In addition, in its 2004 Concluding Observations on Panama, the Committee specifically noted the need for "an independent, child-sensitive and

⁴⁷ The U.N. Special Rapporteur on torture, Manfred Nowak, has remarked, "Overcrowded and unhygienic prison conditions, together with lack of access to decent food, medicine, fresh air, daylight, and communication with the outside world soon amount to cruel, inhuman or degrading treatment, even in the absence of any physical violence." Manfred Nowak, Fact-Finding on Torture and Ill-Treatment and Conditions of Detention, J. Human Rights Practice (2009) 1 (1): 101, 110. See also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, ¶ 28, A/HRC/13/39 (Feb. 9, 2010) ("In addition, conditions of detention are appalling in the vast majority of countries and must often be qualified as cruel, inhuman or degrading.") This is consistent with the statements of the previous Special Rapporteur, Nigel Rodley, who declared, in response to detention situations similar to those in Panama, that very poor, unsanitary living conditions were "cruel, inhuman and degrading; they [we]re torturous." Special Rapporteur, Mr. Nigel S. Rodley, Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment (Addendum: Visit by the Special Rapporteur to the Russian Federation), ¶ 71, E/CN.4/1995/34/Add.1 (1994). The living conditions leading Mr. Rodley to this conclusion were similarly present in Panamanian juvenile detention centers: cells with a lack of privacy and proper bathrooms, no potable water, lack of daylight, overcrowding, sweltering heat, poor food quality, and insufficient time outside of the cell (only one hour per day for exercise). *Ibid.* ¶¶ 43-45. Similarly, the Inter-American Court found that "an overcrowded cell, poor sanitation, little light and ventilation, as well as inadequate medical treatment, all of which violated his right [to] have his physical, mental and moral integrity respected and constitutes a cruel, inhuman or degrading punishment or treatment." *Caesar v. Trinidad and Tobago*, Judgment of March 11, 2005, Inter-Am Ct. H.R., (Ser. C) No. 123 (2005) ¶ 53(o).

⁴⁸ Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice, ¶ 89, CRC/C/GC/10 (Apr. 27, 2007).

accessible system for dealing with complaints from children.”⁴⁹ However, there is no effective system in place in juvenile detention centers for detained juveniles to make complaints about the conditions of detention or to bring problems to the attention of the directors of the centers.⁵⁰ Indeed, whether the complaints of juvenile detainees are passed on to the director of the center or not appears to depend entirely on whether guards choose to pass on these complaints or whether the director herself visits the cells and attends to complaints directly. Various juvenile detainees remarked to us that they had made complaints about the conditions of their confinement and had never received a response.⁵¹ These juveniles speculated that the guards to whom they had directed their complaints had never passed these complaints along to the director or to any other administrative staff. The Defensoría del Pueblo has attempted to make complaint boxes available to juveniles held in detention centers.⁵² However, these complaint boxes are generally placed near the director’s office, a location that is generally inaccessible for detained juveniles. Further, some juveniles are not aware of their right to use the boxes. Indeed, one detainee told us that she knew about the complaint box, but that she believed it was for the exclusive use of the guards.⁵³ Some detainees who were aware of the existence of this box believed that it was monitored and censored by detention center personnel.⁵⁴ Although the Defensoría del Pueblo and NGOs have occasionally visited detention centers, this oversight has not been sufficient to prevent systematic abuses. Government visits have been less frequent and less effective.⁵⁵

Recommendations:

- Implement a formal complaint and response system in juvenile detention centers.
- Ensure that detained juveniles are informed of their right to make complaints and of the process for making such complaints.
- Institute regular inspections by children’s rights NGOs, the Defensoría del Pueblo, and the Ministry of Government in all centers.

2. *Family Environment and Alternative Care*

2.1 *Family Visitation Rights*

The U.N. Rules for the Protection of Juveniles Deprived of their Liberty prohibit “the restriction or denial of contact with family members...for any purpose.”⁵⁶ In addition, the

⁴⁹ Panama Concluding Observations, *supra* note 1, ¶ 60.

⁵⁰ Panama’s 2009 State Report states that juveniles may make complaints to administrative authorities and to the Defensoría del Pueblo, but does not specify any process for making or responding to these complaints. Panama State Report, *supra* note 8, ¶ 603.

⁵¹ Interview with R.S., Centro de Cumplimiento de Tocumen, Mar. 30, 2011; Interview with P.B., Centro de Cumplimiento de Tocumen, Mar. 30, 2011; Interview with D.A., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁵² Interview with Marina Perez De Cardenas and Sharon Diaz, Defensoría del Pueblo, Mar. 31, 2011.

⁵³ Interview with T.F., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁵⁴ Interview with D.A., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with X.Y., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁵⁵ Informe de la Asamblea Ciudadana Sobre el Estado del Centro de Cumplimiento de Tocumen (Jan. 31, 2011), available at http://cdn.gestorsutil.com/OTRAMERICA_web/450/posts/docs/0179826001297728342.pdf.

⁵⁶ U.N. Rules, *supra* note 23, ¶ 67.

Committee on the Rights of the Child has stated in its General Comment on Children's Rights in Juvenile Justice that "Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits.... Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities."⁵⁷ Despite this prohibition, detention center authorities severely restrict visits by juvenile detainees' families. Visits generally occur only once a week.⁵⁸ Visits are generally scheduled to last for a few hours, but many detainees reported that authorities often cut their visits short.⁵⁹ In one case, a detainee reported that his visit had lasted only 15 minutes because prison authorities had spent so much time searching his visitors.⁶⁰ In addition, detention center authorities generally limit visits to one or two adult members of a given juvenile detainee's family.⁶¹ Occasionally, authorities permit detainees 'family visits,' during which minor members of the detainee's family may visit. However, authorities permit these visits only infrequently and without regularity. Some detainees stated that authorities permit these visits once every three months; others stated that it had been a year or more since the authorities permitted a family visit.⁶² This situation is particularly worrisome in the case of juvenile detainees who are themselves parents. The fact that authorities restrict the right of these detainees to see their children regularly is a serious violation of their family rights. It is also a violation of their children's right to know and be cared for by their parents.⁶³ The prohibition in the U.N. Rules also specifically includes the restriction of contact with family members for disciplinary purposes. Nevertheless, one of the primary disciplinary measures in all centers visited by the Harvard team is a prohibition on family visits. At each center, directors and staff interviewed by the Harvard team stated that authorities punished detainees by taking away family visits.⁶⁴ Several detainees confirmed this.⁶⁵

⁵⁷ Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice ¶87 CRC/C/GC/10 (Apr. 27, 2007). The Committee also noted the importance of regular family visits in its 2004 Concluding Observations on Panama. Panama Concluding Observations, *supra* note 1, ¶ 60.

⁵⁸ Interview with P.B., Centro de Cumplimiento de Tocumen, Mar. 30, 2011; Interview with R.P., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

⁵⁹ Interview with P.B., Centro de Cumplimiento de Tocumen, Mar. 30, 2011; Interview with R.P., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

⁶⁰ Interview with G.M., Centro de Custodia Arco Iris, Mar. 31, 2011.

⁶¹ Interview with N.G., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011.

⁶² Interview with G.M., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with P.B., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011. The situation is better at Basilio Lakas, where detainees appear to receive family visits once a month. Interview with R.P., J.M., Centro de Cumplimiento Basilio Lakas.

⁶³ Convention on the Rights of the Child, art. 7.1.

⁶⁴ Interview with Viodelca Alvarado, senior staff member, Centro de Cumplimiento de Tocumen, Mar. 30, 2011; Interview with Analida Arango, director of Arco Iris, Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with Director of Basilio Lakas, Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

⁶⁵ Interview with D.A., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with R.F., Centro de Cumplimiento de Tocumen, Apr. 2, 2011 (stating that a fellow detainee was currently being punished by having visits taken away for thirty days).

Recommendations:

- Replace restrictions on family visits with other forms of disciplinary measures.
- Institute regular visits that include minor relatives of detainees, with special emphasis on allowing the children of detainees to visit their incarcerated parent.
- Work on reducing delays so that detainees get the full time programmed for the visits.

3. Basic Health and Welfare

3.1 Health Services

The U.N. rules provide very specific guidance with respect to the health services required for juveniles in detention.⁶⁶ In violation of these rules, and the express recommendation of the Committee to “introduce regular medical examination of children by independent medical staff” in 2004,⁶⁷ Panama has continued to deny juveniles access to the medical and psychological services they need.

3.1.1 Medical Attention

The only mention of health services in Panama’s 2008 State Report notes that there are two centers with internal clinics (Tocumen and Arco Iris)⁶⁸ and that the other centers receive medical assistance through the health system in the local town.⁶⁹ However, Panama failed to mention that neither of these two arrangements allow juveniles who have fallen ill to be “examined promptly by a medical officer” as required under the U.N. Rules.⁷⁰

In Tocumen, Arco Iris, and the Residencia Femenina, despite having access to an on-site clinic, there appears to be no standardized system for getting treatment for those who become ill. In Arco Iris, juveniles told the Harvard team that a detainee must put his name on a list multiple times and wait days or weeks before the guards will bring him to see the doctor.⁷¹ Another detainee reported long waiting periods for the clinic in Tocumen as well.⁷² One detainee in the Residencia Femenina remarked that the illness must be serious in order to receive an appointment at the clinic; she reported waiting two weeks, until she finally began crying, to see the doctor.⁷³ Another detainee in Arco Iris stated that his mother brings him medicine when he cannot get enough from the clinic.⁷⁴ Such self-diagnosis and treatment without monitoring by a health professional constitutes a clearly dangerous situation.

⁶⁶ U.N. Rules, *supra* note 23, ¶¶ 49-55.

⁶⁷ Panama Concluding Observations, *supra* note 1, ¶ 62(d).

⁶⁸ Residencia Femenina is located on the same property as Tocumen, and therefore shares many of the personnel and facilities, including the doctor.

⁶⁹ Panama State Report, *supra* note 8, ¶ 601.

⁷⁰ U.N. Rules, *supra* note 23, ¶ 51.

⁷¹ Interview with C.K., Centro de Custodia de Arco Iris, Mar. 31, 2011.

⁷² Interview with L.E., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁷³ Interview with Y.E., Residencia Femenina, Apr. 2, 2011.

⁷⁴ Interview with G.M., Centro de Custodia de Arco Iris, Mar. 31, 2011.

Even in situations of medical emergency, guards have been reluctant to bring juveniles to the clinic. Several juveniles reported an incident in mid-March 2011 during which another detainee had a medical emergency.⁷⁵ The guards ignored the detainees' attempts to call for help until they attempted to force open the door to their cell.⁷⁶

In Basilio Lakas, which does not have an on-site clinic, the director reported many deficiencies with the system that could be mitigated if a doctor worked at the center. She noted that if the center had its own clinic, it could treat the many detainees with less severe illnesses who currently cannot see a doctor due to the transport required to take detainees miles to the nearest health center.⁷⁷ In any emergency situation, the center must call the police to bring the detainees to a doctor, creating a system that is, in her words, "not very efficient."⁷⁸

3.1.2 Psychological and Social Services

The detention centers have failed to provide detainees with access to a full technical team of psychologists and social workers. Psychological and social services at the centers are severely lacking, and fail to provide detainees with the skills necessary for a successful reintegration into society. In Arco Iris, the I.E.I. has initiated a laudable effort to place more emphasis on resocialization and increase the number of technical staff. However, this team has still not been able to provide all necessary services to detainees in need. Some of the detainees who survived the January fire at Tocumen and are now housed in Arco Iris told the Harvard team that they were in great need of a psychologist to talk about the trauma they experienced.⁷⁹ In Tocumen, the administrator remarked that the center needed more psychologists and social workers in order to provide activities and therapy to the detainees.⁸⁰ At Basilio Lakas, detainees reported that they had minimal or no contact with the technical staff for therapy or workshops, aside from occasional drug abuse classes for some of the detainees.⁸¹ At the Residencia Femenina, one juvenile said that she had unsuccessfully requested to see a psychologist or social worker.⁸² She added, "Everyone forgets us."⁸³ Another female detainee commented that "sometimes they do activities with the boys, but never with us."⁸⁴ The lack of psychological and social attention at the Residencia Femenina places Panama in clear violation of the U.N. Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), which state that young female offenders "shall by no means receive less care, protection, assistance, treatment, and training than young male offenders."⁸⁵

⁷⁵ Interview with P.B., L.M. and R.S., Centro de Cumplimiento de Tocumen, Mar. 30, 2011.

⁷⁶ Interview with P.B., L.M. and R.S., Centro de Cumplimiento de Tocumen, Mar. 30, 2011.

⁷⁷ Interview with Vielka Tenis, Director of Basilio Lakas, Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

⁷⁸ Interview with Vielka Tenis, Director of Basilio Lakas, Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

⁷⁹ Interview with W.M., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with E.Z., Centro de Custodia Arco Iris, Mar. 31, 2011.

⁸⁰ Interview with Antonio Israel Perez, Administrator of Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁸¹ Interview with F.T., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011; Interview with N.R., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011; Interview with M.M., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

⁸² Interview with Y.E., Residencia Femenina, Apr. 2, 2011.

⁸³ Interview with Y.E., Residencia Femenina, Apr. 2, 2011.

⁸⁴ Interview with T.F., Residencia Femenina, Apr. 2, 2011.

⁸⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ["Beijing Rules"] ¶ 26.4, G.A. Res 40/33 (Nov. 29, 1985), <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf>.

3.2 Children with Disabilities

According to the U.N. Rules, “[a] juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management.”⁸⁶ The Harvard Team observed several children living in the detention centers who should be receiving treatment for mental illnesses. The Director of Arco Iris informed the Harvard researched that she had decided to place two adolescents in individual cells “for their own protection” because of their mental disorders.⁸⁷ At the time of our visit, neither adolescent was able to leave the cell for activities or recreation, due to the administration’s stated concern about problems that might arise from interaction with other detainees.⁸⁸ In compliance with the U.N. Rules, Panama should arrange for treatment of these adolescents in a specialized institution rather than confining them to a cell all day.

Recommendations:

- Provide more accessible medical care, such as on-site clinics, to centers like Basilio Lakas that lack such facilities.
- Ensure that detainees are able to see medical professionals promptly.
- Employ additional psychologists and social workers who can schedule more appointments and therapy sessions with the detainees to evaluate their mental state and provide support.
- Create additional workshops and classes to provide the adolescents with the social skills necessary for reintegration into society.
- Provide regular access to a psychologist and social worker for the female detainees in Residencia Femenina.
- Provide additional psychological support for the juveniles who have suffered serious trauma, such as those who survived the January fire.
- Transfer the juveniles with mental illnesses to an institution that can better provide for their treatment.

4. Education, Leisure and Cultural Activities

4.1 Education

While children and adolescents are in custody, the government must provide them with the education and training necessary to prepare them for a successful reintegration into society.⁸⁹ Panama has failed to provide juveniles in detention centers with adequate education in violation of this imperative of the Beijing Rules and U.N. Rules.⁹⁰

⁸⁶ U.N. Rules, *supra* note 23, ¶ 53.

⁸⁷ The director told the Harvard team that one of the inmates has a schizoaffective disorder. The other juvenile appears to be undiagnosed, but the director told us that he “is not lucid” and “comes and goes.” Interview with Analida Arango, director of Arco Iris, Centro de Custodia Arco Iris, Mar. 31, 2011.

⁸⁸ Interview with Analida Arango, director of Arco Iris, Centro de Custodia Arco Iris, Mar. 31, 2011.

⁸⁹ Beijing Rules, *supra* note 85, ¶ 26.1.

⁹⁰ Beijing Rules, *supra* note 85, ¶¶ 26.1-26.2; 26.6; U.N. Rules, *supra* note 23, ¶¶ 38-42.

Panamanian juvenile detention centers, in theory, provide education through primary and middle school, up to the ninth grade. However, the classes do not cover all thirteen subjects taught in Panamanian schools; according to the director of the I.E.I., the centers currently seek to teach “basic material” until they are able to secure more rooms and more teachers.⁹¹ In Tocumen, the administration reported that they have only two part-time teachers for 107 juveniles.⁹² Tocumen currently does not have any teachers able to teach most of the basic subjects: Spanish, Math, Natural Sciences, and English.⁹³ Some detainees reported having classes in only one subject per week; those in seventh grade were taking classes only in Orientation, Family and Development, and Values.⁹⁴ Additionally, Tocumen has not provided detainees with vocational training programs for many years, even though the center has a large, inactive workshop area designed for such classes.⁹⁵ The detainees at Tocumen reported that although each grade level had class twice a week, the guards did not bring all the students to class every day.⁹⁶ One high-school graduate remarked, “You learn nothing here.”⁹⁷ He was able to continue his studies at a secondary school only by sending and receiving homework assignments through his mother at weekly visits.⁹⁸ Another graduate successfully studied outside of the center only because his parents paid for private education and his transportation.⁹⁹ Additionally, Basilio Lakas also has an agreement that allows a limited number of students—currently six out of a population that ranges from about forty to eighty—to study at a large vocational school outside of the center.¹⁰⁰

The inmates are also often deprived of education for extended periods of time. In the Residencia Femenina, one girl remarked that she had never been to a class during her two months of incarceration, even though the administration told her that there were classes once a week.¹⁰¹ The center instituted a rule that the detainees could not attend classes until their families brought the papers from their former school to certify their grade level; none of the girls incarcerated at the time of our visit had been able to obtain those papers.¹⁰² At Basilio Lakas, classes were currently suspended because the center did not have any teachers.¹⁰³ The Harvard

⁹¹ Interview with Carlota Herrera de Allen, Director of the Instituto de Estudios Interdisciplinarios, Apr. 1, 2011.

⁹² Interview with Viodelca Alvarado, senior staff member, Centro de Cumplimiento de Tocumen, Mar. 30, 2011.

⁹³ Interview with Viodelca Alvarado, senior staff member, Centro de Cumplimiento de Tocumen, Mar. 30, 2011.

⁹⁴ Interview with L.M., Centro de Cumplimiento de Tocumen, Mar. 30, 2011.

⁹⁵ Interview with Antonio Israel Perez, Administrator of Centro de Cumplimiento de Tocumen, Apr. 2, 2011;

Interview with L.E., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁹⁶ Interview with P.B., L.M. and R.S., Centro de Cumplimiento de Tocumen, Mar. 30, 2011. They told the Harvard team that the professor sends a list of names to the guards before each class, and some days the lists do not contain everyone in the class. This is likely due to an attempt to limit the number of students in the classroom to eight, even though each class has more than eight students enrolled.

⁹⁷ Interview with L.E., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁹⁸ Interview with L.E., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

⁹⁹ Interview with D.O., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

¹⁰⁰ Interview with Vielka Tenis, Director of Basilio Lakas, Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

¹⁰¹ Interview with T.F., Residencia Femenina, Apr. 2, 2011.

¹⁰² Interview with Madre Ludmila at the Residencia Femenina, Apr. 2, 2011; Interview with Y.E. and C.A., Residencia Femenina, Apr. 2, 2011

¹⁰³ Interview with Vielka Tenis, Director of Basilio Lakas, Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

team requested information from the Ministry of Education about how teachers are solicited and designated to juvenile detention centers, but had not received a response at this writing.¹⁰⁴

4.2 Recreational Activities

Under the U.N. Rules, “[e]very juvenile should have the right to a suitable amount of time for *daily* free exercise, in the *open air* whenever weather permits.”¹⁰⁵ The center must provide adequate installations and equipment for these activities as well.¹⁰⁶ While recreation time varies from one center to another, all are operating in violation of this rule. In Tocumen, detainees reported that they are given recreation time about once a week, for no more than an hour and a half.¹⁰⁷ They are allowed to play only in the gymnasium; the soccer field outside is not used because the administration fears there may be escape attempts.¹⁰⁸ Additionally, at the time of the Harvard team’s visit, the administrator admitted that recreation time had been suspended for about two weeks during the investigation of the January incident;¹⁰⁹ many detainees reported that it had actually been suspended for over a month.¹¹⁰ In Basilio Lakas, authorities allow the detainees recreation time just once a week.¹¹¹ They are able to play on the soccer field only, even though there is also a basketball court on the premises, inactive, apparently because the administration has failed to replace the broken rims. At the Residencia Femenina we were told that the juveniles are simply not given recreation time or free time to go outside.¹¹²

Administration officials at every center said they would like to have more recreation but insisted that this would require more guards to supervise adolescents. They expressed hope that the newly created guard training program of the Ministry of Government would allow them to hire additional personnel in the near future. In Arco Iris, where authorities hired more guards to implement their new program emphasizing resocialization, the detainees have been able to spend much more time outside of their cells and in recreation activities.¹¹³ This advance stands in stark contrast to the situation in other juvenile detention centers in which the lack of guards is the stated basis for the lack of recreation opportunities. At the time of the Harvard team’s visit, Basilio Lakas employed 22 guards, with five on duty on any given day, for 44 detainees. Administrators there told us that they believed that had only enough guards to allow detainees recreation time once a week.¹¹⁴ In comparison, Tocumen administrators allowed detainees there

¹⁰⁴ Letter from Harvard International Human Rights Clinic to the Ministry of Education, sent Apr. 14, 2011 and Apr. 25, 2011.

¹⁰⁵ U.N. Rules, *supra* note 23, ¶ 47 (emphasis added).

¹⁰⁶ U.N. Rules, *supra* note 23, ¶ 47.

¹⁰⁷ Interview with A.P., Centro de Cumplimiento de Tocumen, Mar. 30, 2011; Interview with B.T., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with J.T., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

¹⁰⁸ Interview with Antonio Israel Perez, Administrator of Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

¹⁰⁹ Interview with Antonio Israel Perez, Administrator of Centro de Cumplimiento de Tocumen, Apr. 2, 2011;

¹¹⁰ Interview with P.B., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with J.T., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with N.I., Centro de Cumplimiento de Tocumen, Apr. 2, 2011;

¹¹¹ Interview with B.C. and H.N., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011; Interview with R.P. and J.M., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

¹¹² Interview with T.F., Residencia Femenina, Apr. 2, 2011; Interview with Y.E. and C.A., Residencia Femenina, Apr. 2, 2011.

¹¹³ Interview with Analida Arango, Centro de Custodia Arco Iris, Mar. 31, 2011.

¹¹⁴ Interview with Vielka Tenis, Director of Basilio Lakas, Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

an equivalent amount of recreation time but with fewer guards and more than twice the number of detainees.¹¹⁵ At Basilio Lakas, the Harvard team observed as many as three guards sitting in the security office at one point during the day, raising questions about the efficient application of human resources.

4.3 Work Activities

Because of the lack of leisure activities and recreation time, detainees place a very high value on opportunities to work, as it is the only significant amount of time they are able to spend outside of their cells. The U.N. Rules provide that all detainees should be able to choose the type of work they participate in,¹¹⁶ and should be able to perform remunerated labor in the community if possible.¹¹⁷ However, Panamanian detention centers currently provide work opportunities only to a select group of detainees and limit the types of opportunities offered. In Basilio Lakas, the Director told the Harvard team that six detainees are able to work every day, two in the kitchen.¹¹⁸ The kitchen is an especially coveted role, since detainees are able to spend eight hours outside of their cells. The director told us that all detainees with “good conduct” could work. In reality, the Harvard team’s conversations with detainees revealed that some detainees were able to work much more frequently than others. Some detainees reported working in the kitchen once a week, while others reported anywhere from twice a month, once every other month, or never.¹¹⁹ In Tocumen, only 25-35 detainees total (of 107) are able to work either inside or outside the center.¹²⁰ To work, detainees at Tocumen must be more than halfway through their sentence, must behave well in classes, and must be incident-free for six months.¹²¹ In the Residencia Femenina, the detainees remarked that they are only allowed out of their cells to help with cleaning, and that this happens only once every few weeks.¹²²

Recommendations:

- Hire more teachers to work in the centers, allowing detainees to take classes in more subjects and ensure that they learn at least the basic subjects.
- Organize classes so that all students can attend every class and keep the same schedule every week.
- Provide more vocational training opportunities, either inside or outside the centers.
- Provide opportunities for detainees to continue their studies outside the center without having to pay for such education themselves.

¹¹⁵ Tocumen has 18 total guards, with 3 on duty every day, for 107 inmates. Interview with Videlca Alvarado, senior staff member, Centro de Cumplimiento de Tocumen, Mar. 30, 2011.

¹¹⁶ U.N. Rules, *supra* note 23, ¶ 43.

¹¹⁷ U.N. Rules, *supra* note 23, ¶ 45.

¹¹⁸ Interview with Vielka Tenis, Director of Basilio Lakas, Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

¹¹⁹ Interview with R.P. and J.M., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011; Interview with M.M. and P.N., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011; Interview with N.R., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

¹²⁰ Interview with Videlca Alvarado, senior staff member, Centro de Cumplimiento de Tocumen, Mar. 30, 2011. Pueden ser de 10 a 15 que benefician de trabajos afuera. Pueden ser de 15 a 20 los que ayudan con la comida, con lavar la ropa etc.

¹²¹ Interview with Videlca Alvarado, senior staff member, Centro de Cumplimiento de Tocumen, Mar. 30, 2011.

¹²² Interview with T.F., Residencia Femenina, Apr. 2, 2011; Interview with Y.E. and C.A., Residencia Femenina, Apr. 2, 2011.

- Facilitate cooperation with the Ministry of Education to ensure that these goals can be achieved.¹²³
- Use the outdoor spaces within the centers for recreational activities.
- Hire more guards to supervise recreational activities, and effectively engage the guards currently employed.
- Create or identify more jobs to assign to detainees, both inside and outside the center.
- Create a more transparent system for assigning jobs to detainees.
- Ensure that female detainees are given equivalent attention and opportunities in education, recreation, and work.

5. *Special Protection Measures*

5.1 *The Panamanian Juvenile Justice System and Juvenile Detention System*

The juvenile justice system has failed to comply with the Convention and other international instruments, thereby violating the rights of juveniles accused of committing crimes. Recent reforms have created a harsher juvenile justice system by allowing for long periods of pre-trial detention and increased criminal penalties. These harsher penalties have been accompanied by insufficient protections, as Panama has not fully implemented the protections in Law 40 such as ones requiring the establishment of permanent specialized courts and providing sufficient public defenders. Moreover, the conditions of confinement in the Panamanian juvenile detention system violate international standards and the rights of the juvenile detainees.

5.1.1 Panama's Juvenile Justice System

In 1999, Panama created the Special Regime of Criminal Responsibility for Adolescents, through Law 40 of 1999 ("Law 40"), as part of the commitments acquired when it ratified the Convention on the Rights of the Child. Law 40 has been reformed seven times since 1999,¹²⁴ mostly as part of "iron fist" (*mano dura*) policies applied by recent administrations in response to public pressure. Children rights and human rights NGOs have rejected such reforms because they have led to a harsher juvenile justice system without the necessary interest or economic contribution from the State to allow the system to function properly. Below we offer a brief summary that highlights reforms to Law 40 as well as Panama's progress in implementing the law.

¹²³ Beijing Rules, *supra* note 85, ¶ 26.6 ("Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.").

¹²⁴ Law 40 has been reformed through the following laws: Law 38 of 2000, Law 46 of 2003, Law 48 of 2004, Law 15 of 2007, Law 6 of 2010, Law 32 of 2010 and Law 87 of 2010.

5.1.1.1 Recent Reforms to Law 40 of 1999

Pre-Trial Detention

Originally, Law 40 established that the maximum period for pre-trial detention was two months.¹²⁵ In 2003, the maximum period was modified to six months¹²⁶ and in 2007 to nine months.¹²⁷ In 2010, a modification was introduced so that in cases of intentional homicide, the period of pre-trial detention can be extended up until the termination of the process.¹²⁸ The government has instituted these policies in direct violation of international law. The Beijing Rules and the U.N. Rules provide that detention pending trial should only be used as a last resort, and that such detention should be for the shortest period of time.¹²⁹ The CRC has also specified in its General Comment on Children's Rights in Juvenile Justice that placing children in pre-trial detention for "months...constitutes a grave violation of article 37(b) of the [Convention]."¹³⁰ Further, in its 2004 Concluding Observations on Panama, the Committee expressed its concern at the potential length of pre-trial detention for juveniles in Panama.¹³¹ Rather than addressing this concern, Panama has further increased the permissible period of pre-trial detention in the reforms passed since 2004.

Duration of the Investigation

Law 40 also originally established a 30-day period for the investigation, which could be extended for another 30-day period if the adolescent being investigated was not in pre-trial detention.¹³² In 2003, the same provision was modified to a 90-day period, which could be extended for another 90-day period under the same conditions.¹³³ In 2007, the modifications included a possible two-month extension to the 90-day period for investigations of detained adolescents, if approved by a judge.¹³⁴ In 2010, a modification was introduced so that in cases of intentional homicide, the established period for an investigation is one year, which may be extended for another year if approved by a judge.¹³⁵

Increased criminal penalties

Originally, Law 40 established that the maximum length of a prison term was five years for intentional homicide, rape, kidnapping, theft, robbery, drug trafficking and terrorism.¹³⁶ In 2003, the law was amended to add serious intentional injury and intentional injury resulting in

¹²⁵ Law 40 of 1999 of the Special Regime of Criminal Responsibility for Adolescents ("Law 40"), art. 63.

¹²⁶ Law 46 of 2003, arts. 11, 13.

¹²⁷ Law 15 of 2007, art. 23.

¹²⁸ Law 32 of 2010, art. 8.

¹²⁹ Beijing Rules, *supra* note, ¶13.1; U.N. Rules, *supra* note, ¶17.

¹³⁰ Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice ¶80 CRC/C/GC/10 (Apr. 27, 2007).

¹³¹ Committee on the Rights of the Child, Concluding Observations: Panama ¶60 CRC/C/15/Add.233 (June 30, 2004).

¹³² Law 40, art. 85.

¹³³ Law 46 of 2003, art. 13.

¹³⁴ Law 15 of 2007, art. 25.

¹³⁵ Law 32 of 2010, art. 9.

¹³⁶ Law 40, art. 141(1).

death to the list of applicable crimes that could be punished with prison and changing the possible maximum term in prison to seven years.¹³⁷ In 2007, modifications included the addition of crimes such as extortion, illicit association, and gang membership to the list of applicable crimes and established the maximum prison term by category of crime with the highest period being 12 years for aggravated homicide.¹³⁸ In 2010, modifications included adding minimum prison term for each crime category.¹³⁹ For example, for aggravated homicide, the maximum term remained at 12 years, but the minimum period was set at six years.

Additionally, the 2010 reforms made Law 40, which originally applied only to juveniles between 14 and 18 years old,¹⁴⁰ applicable to juveniles between 12 and 18 years old,¹⁴¹ but established social rehabilitation as the applicable sanctions for children aged 12-14.¹⁴²

5.1.1.2 Panama's Progress in Implementing Law 40 of 1999

Creation of Criminal Juvenile Courts and Juvenile Prosecution Offices

Law 40 establishes the creation of eight criminal juvenile courts in different geographic regions in Panama.¹⁴³ In addition, it establishes the creation of a mixed court in the province of Darién with criminal juvenile justice jurisdiction.¹⁴⁴ Eleven years after the law's promulgation, two of the eight juvenile courts have still not been established. This means that four of Panama's nine provinces, Chiriquí, Bocas del Toro, Herrera and Los Santos, do not have a criminal juvenile court. In these four provinces, juvenile criminal cases continue to be heard by the children and juvenile courts that were supposed to be transitory.

Similarly, Law 40 establishes that there will be a juvenile prosecution office for every criminal juvenile court.¹⁴⁵ Today seven of the eight offices originally contemplated by the law are in place. In the provinces that do not have a juvenile prosecution office, juveniles are prosecuted by prosecutors from the ordinary justice system.

Creation of Courts for the Supervision of the Sentence

Law 40 establishes the creation of two courts charged with supervising the compliance with sentences and sanctions imposed on convicted juveniles.¹⁴⁶ Only one of these courts has been established.

¹³⁷ Law 46 of 2003, art. 17.

¹³⁸ Law 15 of 2007, art. 27.

¹³⁹ Law 6 of 2010, art. 33.

¹⁴⁰ Law 40, art. 7.

¹⁴¹ Law 6 of 2010, art. 2.

¹⁴² Law 6 of 2010, art. 3.

¹⁴³ Law 40, art. 19. In the updated version of Law 40, which includes all of the reforms to the law up to September 2010, article 19 became article 20.

¹⁴⁴ Law 40, art. 19. In the updated version of Law 40, article 19 became article 20.

¹⁴⁵ Law 40, art. 25. In the updated version of Law 40, article 25 became article 26.

¹⁴⁶ Law 40, art. 33. In the updated version of Law 40, article 33 became article 35.

Juvenile Public Defenders

Law 40 establishes that there will be at least one public defender for every juvenile criminal judge, with the exception of the judges in the province of Panama, for which there would be at least two public defenders.¹⁴⁷ This means that there should be at least 13 juvenile public defenders, but there are currently only 11 in the whole country. Moreover, these juvenile public defenders are responsible not only for criminal matters, but also divorce and family cases.

Recommendations:

- Create the judicial offices required by Law 40 and name the corresponding juvenile judges, prosecutors, and public defenders.
- Establish regular auditing of the Special Regime of Criminal Responsibility for Adolescents with indicators that allow the qualification of weaknesses and strengths of the system.
- Review Law 40 and its reforms to ensure its compliance with international standards.
- Refrain from reforming Law 40 without appropriate public consultations.

5.1.2. Conditions in the Juvenile Detention System

The conditions of confinement in the Panamanian juvenile detention system, both with regard to prison administration and physical facilities, are manifestly inadequate to protect the health, welfare, and dignity of juvenile detainees. Administrators manage these facilities in ways that violate international standards for juvenile detention. Further, the facilities in the juvenile detention system are unsanitary, overcrowded, and utterly unsuitable for housing children. Both the administration and condition of these facilities violate international standards and the rights of the juvenile detainees.

Pre-trial Detention

One detention facility, Arco Iris, is dedicated to housing juveniles in pre-trial detention. Currently, the typical length of detention before trial at Arco Iris, according to Analida Arango, is nine months.¹⁴⁸ However, the Harvard team interviewed several detainees who had been kept in pretrial detention by the authorities for periods in excess of nine months.¹⁴⁹ In the detention centers visited by the Harvard team, authorities generally separate convicted prisoners from those awaiting trial.

Separation of Detainees

The classification system implemented by detention center authorities is almost entirely based on gang affiliation, with little regard to seriousness of the offense or the age of the offender. The Beijing Rules provide that “juveniles in institutions should be kept separate from

¹⁴⁷ Law 40, art. 39. In the updated version of Law 40, article 39 became article 41.

¹⁴⁸ Interview with Analida Arango, Centro de Custodia Arco Iris, Mar. 31, 2011.

¹⁴⁹ Interview with H.V., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with D.A., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

adults and...detained in a separate institution or in a separate part of an institution also holding adults.”¹⁵⁰ However, it was clear in our visits to detention centers that not only were juvenile detention centers holding adults,¹⁵¹ but also that the directors of these centers made little or no effort to separate juveniles from adults. The Harvard team visited at least two cells that held both juveniles and individuals aged eighteen or older. In one cell, a sixteen-year-old was being held with a twenty-two year old offender.¹⁵² Similarly, authorities apparently made no attempt in any of the centers to separate detainees of the basis of the gravity of their offenses, as required under the U.N. Rules.¹⁵³ In fact, the only criterion of separation for juvenile detainees apparently used by authorities seemed to be gang membership.¹⁵⁴ While it is important that gang membership and other factors that affect the safety of detainees be taken into account when assigning detainees to cells, these factors cannot be used as an excuse to avoid separating detainees by age, gravity of offense and potential danger to others.

Overcrowding

Physical conditions at the detention centers visited by the Harvard team were inadequate to protect the health and human dignity of the juveniles residing in them. Overcrowding was a serious problem in all of the centers visited by our researchers. For example, Tocumen has an official capacity of 70, but was housing 128 juvenile detainees at the time of the Harvard team’s visit.¹⁵⁵ In many cells, authorities did not provide enough beds for all of the juveniles residing in the cell, leaving some detainees to sleep on mattresses on the floor¹⁵⁶ or, in at least one case, in hammocks hanging from the ceiling. Although overcrowding was a general problem throughout the centers, there were also drastic differences between cells in the same center. At Tocumen, stark differences in conditions of confinement were evident between cell blocks 1-A/1-B and cell block 1-C. One cell in cell block 1-A visited by the Harvard team measured approximately 162 square feet and housed five adolescent males; another of approximately the same size housed four detainees. In contrast, one spacious cell complex in cell block 1-C housing four youths consisted of three separate rooms—two bedrooms and one room with a ping pong table. Authorities apparently reserve the improved conditions in cell block 1-C for well-behaved detainees and for detainees who turned themselves into the criminal justice system voluntarily. However, the contrast between these two areas creates the opportunity for bribery and corruption. It also highlights the capacity of authorities to provide dignified housing to some adolescents as well as the manifest unsuitableness of cell blocks 1-A and 1-B.

¹⁵⁰ Beijing Rules, *supra* note 85, ¶ 26.3. A similar requirement is found at ¶ 29 of the U.N. Rules.

¹⁵¹ At the time of the Harvard team’s visit, the juvenile detention system was housing 127 persons aged 18 or older. Interview with Carlota Herrera de Allen, Directora of the Instituto de Estudios Interdisciplinarios, Apr. 1, 2011.

¹⁵² Interview with L.E., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

¹⁵³ U.N. Rules, *supra* note 23, ¶ 28.

¹⁵⁴ Interview with Viodelca Alvarado, senior staff member, Centro de Cumplimiento de Tocumen, Mar. 30, 2011; Interview with Analida Arango, director of Arco Iris, Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with Director of Basilio Lakas, Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

¹⁵⁵ Informe de la Asamblea Ciudadana Sobre el Estado del Centro de Cumplimiento de Tocumen, *supra* note 55; Interview with Carlota Herrera de Allen, Director of the Instituto de Estudios Interdisciplinarios, Apr. 1, 2011.

¹⁵⁶ Interview with N.G., Centro de Custodia Arco Iris, Mar. 31, 2011.

Poor Condition of Cells

Beyond the problem of overcrowding, the physical conditions of many of the cells in the detention centers visited by the Harvard team were inadequate. Many cells were poorly ventilated. Many cells were also quite dark, especially in cell blocks 1-A and 1-B of Tocumen; some of the cells in Basilio Lakas had been without electricity for at least two months.¹⁵⁷ The windows of one cell visited by the team were almost entirely blocked, with only a small gap to allow in light and air. In part because of the sanitary problems described below, the smell in the centers was often quite unpleasant. In those cells that had showers, detainees often complained that there was no way to prevent water from spreading on the cell of the floor—a situation that was especially problematic when an insufficient quantity of beds meant that some juveniles were forced to sleep on the floor.¹⁵⁸ This also increased the insect population in the cells.

Food and Water

Detainees also complained about the quantity and quality of the food, stating that the portions were small and the menu repetitive—hot dogs and rice or fish and rice.¹⁵⁹ Several detainees remarked that the food served during the team’s visit was markedly better than usual.¹⁶⁰

International law requires potable water to be provided on a regular basis to all those in detention. Unfortunately, provision of water has been a major issue in Panamanian detention centers, both for adults and juveniles.¹⁶¹ Given Panama’s tropical climate, water is essential both for hydration and personal hygiene. Our research team documented regular deficiencies in water supply to juvenile detention centers. In some centers, water was available during brief periods on a daily basis. At these and other centers, sometimes several days would pass without provision of water.¹⁶² As a result, detainees fill soda bottles and other containers with water, both to drink and to bathe. The lack of a regular supply of water—a fundamental right for those detained in sweltering conditions—is a cause of significant instability in juvenile detention centers. Many of the incidents involving tensions and official violence in the juvenile detention centers have their basis in detainee demands for water.¹⁶³ Indeed, such was the case with the January 9, 2011 incident, which began as a detainee protest over lack of water and ended with five murders and two severe injuries.¹⁶⁴

¹⁵⁷ Interview with S.I., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

¹⁵⁸ Interview with N.G., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with G.M., Centro de Custodia Arco Iris, Mar. 31, 2011.

¹⁵⁹ Interview with H.T., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with F.C., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

¹⁶⁰ Interview with J.R., Centro de Custodia Arco Iris, Mar. 31, 2011; Interview with A.C., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

¹⁶¹ Harvard International Human Rights Clinic, *Del Portón Para Aquí Se Acaban los Derechos Humanos: Injusticia y Desigualdad en las Cárceles Panameñas* (2008) 55-59, available at <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HarvardClinicPanamaprison.pdf>.

¹⁶² Interview with P.B., Centro de Cumplimiento de Tocumen, Mar. 30, 2011; Interview with R.P and J.M., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

¹⁶³ Interview with P.N. and M.M., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011; Interview with S.I., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

¹⁶⁴ See *infra* section 1.1.1.

Sanitary Facilities

Sanitary facilities were sorely lacking at all facilities visited by the Harvard team. The U.N. Rules require that “sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.”¹⁶⁵ In many cells, ***no bathroom facilities existed***. Thus, because detention center administrators lock juveniles in their cells at night and often during most of the day, children and adolescents have no sanitary facilities available to them. Although bathroom facilities were available and at least usable at all three centers, in most cases authorities severely restricted detainees’ access to the bathrooms. Many juveniles reported that guards removed them from their cells to use the bathroom only once a day.¹⁶⁶ Others reported that guards prevented them from leaving their cells to use the bathroom between four in the afternoon and 8 in the morning.¹⁶⁷ At all other times of the day, because authorities do not allow them to access the bathrooms, detainees are forced to defecate in plastic bags and to urinate in water jugs.¹⁶⁸ Guards often fail to remove these containers promptly, which creates a highly unsanitary environment for the juvenile detainees.¹⁶⁹

According to Panama’s 2009 State Report, Panama is continually investing funds in improving the physical plant; however, given the state of these facilities, it is difficult to believe that any important improvements have actually taken place since the writing of that report.¹⁷⁰ The Panamanian government has started construction on a new juvenile detention center, the Centro de Cumplimiento de Pacora, that is scheduled to open in July 2011, and will have a capacity of 190. However, while infrastructure improvements are welcome, simply building new facilities will be inadequate to solve the grave problems of disrepair and overcrowding that plague the current system. First, the changes in the juvenile criminal law described above, both in terms of pre-trial detention and in terms of longer possible incarceration sentences, make it likely that the juvenile justice system will place an increasing number of juveniles in detention center facilities. Thus, the construction of new facilities is unlikely to keep pace with the growth of the juvenile detainee population. Overcrowding will continue to be a problem until authorities place fewer children in detention centers. Most importantly, building new facilities will do little to improve the lives of juvenile detainees as long as Panamanian authorities continue to neglect and mistreat these children.

Recommendations:

- Limit pre-trial detention to a minimum.
- Develop classification systems that account not only for gang membership, but also for the juvenile’s age, gravity of the offense committed and danger to oneself and others.

¹⁶⁵ U.N. Rules, *supra* note 23, ¶ 34.

¹⁶⁶ Interview with V.O., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011.

¹⁶⁷ Interview with T.F., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with Y.E., Centro de Cumplimiento de Tocumen, Apr. 2, 2011.

¹⁶⁸ Interview with V.O., Centro de Cumplimiento Basilio Lakas, Apr. 1, 2011, Interview with J.D., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Interview with Y.E., Centro de Cumplimiento de Tocumen, Apr. 2, 2011; Informe de la Asamblea Ciudadana Sobre el Estado del Centro de Cumplimiento de Tocumen, *supra* note 55.

¹⁶⁹ Interview with O.K., Centro de Custodia Arco Iris, Mar. 31, 2011.

¹⁷⁰ Panama State Report, *supra* note 8, ¶ 587.

- Improve conditions in the cells; ensure that cells and hallways are regularly cleaned.
- Never enclose a child or juvenile in a cell unless there are adequate sanitary facilities in the cell itself.
- Avoid overcrowding.
- Ensure that food is sufficient both in quantity and in nutritional content to ensure the health of and satisfy the appetite of adolescents.

SUGGESTED QUESTIONS

- How does the Government intend to address the burning deaths of five juvenile detainees on January 9, 2011? What resources will be made available to the survivors of this event? What steps will be taken to ensure that this type of incident does not occur again?
- How does the Government intend to address the fact that guards and police in juvenile detention centers routinely beat, shoot, and use tear gas on detainees? What disciplinary procedures are currently being undertaken, and how will the Government ensure that guards and police no longer use physical violence on children?
- What system does the Government intend to create to ensure that authorities receive and respond adequately to juvenile detainees complaints?
- How does the Government plan to ensure that detention center authorities permit regular family visits and that family visits are not taken away as a form of punishment?
- What will the Government do to improve the classification of juvenile detainees?
- Apart from the construction of the Pacora center, how does the Government plan to address the problem of overcrowding in the juvenile detention system? Are there any planned changes to legislation or implementation of alternatives to detention?
- What steps will the Government take to ensure that juvenile detention facilities are maintained in healthy, sanitary, and dignified conditions?
- How will the Government ensure that all detainees have access to physical and mental health services?
- What is the Government's plan for expanding the educational, recreational, and vocational offerings available to detainees?
- Is the Ministry of Government working with other government institutions, such as the Ministry of Education, to ensure that more educational and vocational opportunities are offered in the juvenile detention centers? If so, how?
- Does the Government have a plan that describes how Law 40 will be implemented throughout the country? Does this include a way to monitor progress as well as strengths and weaknesses of the juvenile justice system?