

INVESTIGATION ON DEATHS OF PRISONERS AT THE GUERRERO CORRECTIONAL INSTITUTION IN AGUADILLA, PUERTO RICO

I. Introduction

This report is the product of an exhaustive investigation conducted by the working group of the American Civil Liberties Union (ACLU), Puerto Rico Chapter. The ACLU is a non-partisan, non-sectarian, non-profit organization based in New York City, with chapters in the 50 states of the United States and Puerto Rico. In addition, the ACLU has a series of specialized projects, including the Prisoner Rights Project and the Drug Policy Reform Project. Our organization, with more than 500,000 members, has a working group comprised in its majority by attorneys, organizers, educators and other professionals. These persons are dedicated to the defense of civil liberties and human rights, as guaranteed by the Constitution of Puerto Rico, the Constitution of the United States, and international treaties. To achieve its organizational objectives, the ACLU uses strategies such as court litigation, community education, legislative lobbying, and research and dissemination of information on specific cases of alleged civil and human rights violations.

The following report makes an analysis from a human rights perspective of the specific case of deaths of prisoners between the years 2002 and 2008 at the Guerrero Correctional Institution in Aguadilla, Puerto Rico (hereinafter the Guerrero Jail). During these six (6) years, information was obtained regarding

deaths of fifty-three (53) inmates, the majority of whom were being held in pre-trial detention.¹ It is particularly alarming that many of these deaths occurred during their first days in jail. In the most extreme cases, the deaths occurred during the first forty-eight (48) hours following admission of the prisoner or detainee to that correctional facility. According to official sources, the deaths did not show signs of violence and did not appear to be related to acts of aggression among prisoners.

In the year 2004, the country's news media started publishing information regarding unusual deaths at the Guerrero Jail. The reports also noted that family members were upset over their lack of access to information under the government's control. Relatives of the deceased prisoners reported that they were not notified that their relative died on account of health problems, and in many cases were not notified that their relative had died at all.

Given the alarming number of unexplained deaths reported, the ACLU took up the task of conducting an independent investigation on the government's handling of these cases. Our interest, as an organization dedicated to promoting respect for and protection of human rights and civil liberties in Puerto Rico, is to investigate whether the deaths are tied to possible violations of prisoner rights.

This investigation has as its objectives, in the first place, to find out whether any violation occurred of human rights and civil liberties of the deceased detainees and of their relatives. Secondly, if it is found that human rights violations occurred, the report seeks to denounce those violations and offer

recommendations to the pertinent agencies, so that they may adopt preventive measures. As such, the report promotes compliance with and development of administrative policies based on applicable human rights standards. Thirdly, this report seeks to inform the country on this issue and promote independent strategies by which to monitor governments, thereby seeking to ensure that governmental administrations will comply with human rights standards.

The report is organized in the following manner: Section Two describes the investigation's objectives and how the data relevant to the facts in question were acquired. Section Three outlines the legal framework used for analyzing the facts. Section Four describes the facts in question and analyzes them based on the framework established in Section Three. Section Five summarizes the investigation's findings. Section Six contains the preliminary conclusions, and Section Seven outlines the recommendations.

VI. PRELIMINARY CONCLUSIONS:

FAILURE BY THE AGENCIES CONCERNED TO FULFILL THEIR DUTY TO INVESTIGATE

The deaths at the Guerrero Jail point to possible violations, by acts or omissions, of the human rights of the deceased detainees and of their family members. Evidence compiled by the ACLU indicates that these prisoners' deaths were not investigated by penitentiary authorities. Even the autopsies ordered under the laws of Puerto Rico and international human rights standards when a person dies in State custody failed to be prepared. The failure of the penitentiary authorities to investigate the prisoners' deaths could be interpreted as a violation of their right to life.

The situation at the Guerrero Jail was quite critical, with an extremely high mortality rate, to which the penitentiary authorities failed to respond. The number of prisoners who died at the Guerrero Jail, according to official information, was the highest within the entire Puerto Rican penitentiary system. Our investigation found no other jurisdiction with a similar number of unexplained deaths at a penal institution.

The alarming number of deaths at the Guerrero Jail and the failure to adequately investigate them may constitute deliberate indifference on the part of the jail's administration towards the medical needs of these prisoners. On repeat occasions the jail's administration, though aware of the events, failed to respond to this emergency situation and take preventive measures. This may have led to the deaths of dozens of prisoners. Such actions may be in violation

of the constitutional prohibition against cruel and unusual punishment under the Eighth Amendment of the Constitution of the United States and the Charter of Rights of Puerto Rico.²

Speculation and uncertainty dominated the situation at the Guerrero Jail. Even today, the causes of death are unknown. Four (4) years following disclosure of the number of deaths reported at the Guerrero Jail, there is as yet no report or evidence that any external investigation has been finalized by the government regarding the causes of these deaths. **Failure by the entities concerned to investigate the deaths that have occurred at the Guerrero Jail reveals contempt for the human and civil rights of the jail population.** This act of omission foments impunity for possible violations of prisoners' human and civil rights and keeps adequate preventive measures from being taken to prevent unexplainable deaths in the future. It is cause for concern that for the years 2007 to 2008, deaths of other prisoners in the first days of their admission were still being reported.

The ACLU observed that problems persist for coordination among the agencies concerned. The DCR [Department of Corrections and Rehabilitation] and the CHSC [Correctional Health Services Corporation] failed to demonstrate that they have the necessary communications to effectively administrate the correctional system. To the contrary, each of them acts independently and often there are no mechanisms evidencing communication between the two (2) administrations on issues as important as investigating cases of prisoner deaths. Our observations also saw no signs of effective communications between DCR

and CHSC, on the one hand, and ICF [Institute of Forensic Sciences] on the other, to guarantee compliance with the requirement to prepare the legally mandated autopsies.

FAILURE TO FULFILL THE DUTY OF CARE FOR DETAINEES AWAITING TRIAL

The government also failed to comply with international standards requiring greater care for persons detained at incarceration facilities who have yet to be tried. The majority of the deceased inmates were detainees awaiting trial.

FAILURE TO FULFILL THE DUTY TO PROVIDE ADEQUATE MEDICAL SERVICES:

The evidence reviewed by the ACLU confirms that the majority of inmates who died while detained at the Guerrero Jail were persons addicted to controlled substances, admitted to the institution's detoxification program. **The certified toxicological and autopsy reports reviewed by the ACLU do not coincide, however, with the official government version that these prisoners' deaths were due to the consumption of the drug named *Xylazine*.** Furthermore, scientific studies indicate that consumption of that chemical, used by veterinarians, though not recommended for use in humans, does not pose a risk of death.³ Prompt, adequate medical care prevents its mortal effects.⁴

The ACLU was able to investigate certain indications of inadequate provision of medical services as a possible cause of the deaths. This included delays in providing necessary medical care for prisoners at the Guerrero Jail, as well as

serious delays in transporting prisoners to external medical facilities, which might have placed prisoners at risk.

The ACLU also found that no measures were taken to respond to the emergency once the suspicion arose that the deaths might be attributed to the use of *Xylazine*.

If one were to assume that an investigation was conducted and that it reflected a correlation between the deaths of the detainees during their first days of admission and the consumption of *Xylazine*, the least that the authorities concerned should have done would have been to take measures to respond to the situation.

Any process adopted to respond to such a situation must ensure immediate medical care, including the prompt transportation of detainees to adequate medical facilities.

FAILURE TO FULFILL THE DUTY TO INFORM:

In Puerto Rico there is a serious problem of access to information under government control, especially when what is involved is the situation of prisoners. **Throughout this incident governmental transparency was absent, and the public was denied access to information needed to form an opinion on what happened at the Guerrero Jail.** The ACLU requested but was not provided access to any report or investigation on the deaths at the Guerrero Jail. In addition, the DCR (the prisoners' principal custodian) on repeated occasions refused to meet with the ACLU or to cooperate with our investigation.

The government also failed to comply with international human rights standards that require written, publically available reports on investigations of alleged human rights violations. On repeated occasions the government ignored the importance of preparing a written report that would allow for confirmation of the verbal information provided and of the actions taken by the agencies concerned. Prisoners' relatives and the public in general have a right to pass judgment on the actions and rulings of the government, as is consecrated in international and constitutional law and the pertinent human rights treaties, particularly when what is at stake are the lives of dozens of prisoners.

FAILURE TO ABIDE BY THE RIGHTS OF FAMILY MEMBERS:

The Corrections Administration failed to fulfill its duty to notify the prisoners' family members that their relative suffered a health complication and subsequent death. In the individual cases that we were able to evaluate, the Corrections Administration had or should have had the necessary information on the prisoners and their family members in order to contact them. This violates international human rights standards, which require States to immediately notify family members regarding any health complications, transportation to hospitals and/or the death of their prisoner relative. Family members of the prisoners who died at the Guerrero Jail attempted, unsuccessfully, to obtain explanations on what happened.

DISCRIMINATION AGAINST THE HOMELESS ADDICT POPULATION:

Many prisoners who died in custody at the Guerrero Jail should never have been incarcerated. Some homeless persons were sent to jail for violating discriminatory, unconstitutional law enforcement codes that prohibit acts protected by the right to free speech, such as asking for money or spending the night in public spaces. Others were arbitrarily detained, solely because they were addicted to controlled substances, thus violating due process of law and the constitutional maxim that prohibits cruel and unusual punishment. Poor homeless people died that the OSAJ [Pretrial Services], in a discriminatory manner, did not recommend for a bond reduction. They were sent to the Guerrero Jail to supposedly ensure their appearance in Court. But their court appearance never did take place, due to their sudden deaths.

The ACLU is concerned over the possibility that discrimination is taking place against the homeless addict population. This is seen in the consideration of the right to bond and in the practice of involuntary institutionalization, which constitutes a pre-trial detention in violation of international human rights standards.

The weak response by the agencies in question demonstrates their limited sensitivity towards the prisoners' situation as well as the limited commitment of the various branches of government to respond to this population's needs.

VII. RECOMMENDATIONS:

General Recommendations:

We urge the government to assume its responsibility to safeguard the human rights of the jail population. It is indispensable to investigate all denunciations of human rights violations without delay, especially all deaths of persons in State custody, with the aim of identifying the cause and manner of death.

Each agency or part of the criminal justice system must see to it that cases of deaths in jails are adequately investigated. The duty to investigate does not lie solely with the administration of the jails' health system or with the entity in charge of preparing autopsies. Rather, all parts of the government empowered to investigate have a duty to ensure that the death of any person in State custody is promptly investigated.

The government must see to it that the results and content of all investigations conducted in response to the death of a person in State custody are available to the decedent's family members and to the public in general.

The government must ensure greater transparency and access to necessary information on the situation of prisoners. This especially holds true in relation to inmate deaths. Access to information must apply not only to matters involving investigations into deaths of detainees, but also subsequently adopted measures.

Special Recommendations:

Corrections Administration

The Corrections Administration must adopt the necessary mechanisms to prevent deaths such as those that occurred at the Guerrero Jail. For such purpose, it is indispensable to conduct a proper investigation of each death and review its surrounding circumstances, so as to assess the need for corrective measures. To this aim, it must be ensured that the penitentiary system functions in a coordinated manner. The penitentiary administration and healthcare providers must work together and investigate causes of deaths in the jails in order to prevent future cases such as the ones documented in this report. CHSC cannot conduct one assessment process on the deaths while the Corrections Administration conducts another, devoid of interagency coordination.

The results of these investigations must be available to prisoners' family members and to the public in general.

Penitentiary authorities must keep detainees' family members and the community informed of any dangerous situation within the jails.

The Government of Puerto Rico must see to it that Puerto Rican jails comply with the Minimum Rules of the United Nations for the Treatment of Prisoners and other international standards on the humane treatment of persons in custody. All protocols adopted in correctional system operations in Puerto Rico must be in keeping with international human rights standards. Outstanding among these duties is that of keeping prisoners' families informed of any problem involving the health, transfer, or death of a prisoner.

Institute of Forensic Sciences (ICF)

The ICF must comply, without making excuses, with its statutory duty to conduct legally mandated autopsies and toxicological examinations on all deceased prisoners.

The ICF must comply with its statutory duty to conduct the necessary scientific and forensic investigations in cases of deaths of persons in State custody.

Legislative Assembly

The Legislative Assembly must comply with its duty as established in Legislative Resolution 324 [*R. de la C. 324*] and prepare the report on the findings and conclusions of the legislative investigation regarding the incidence of deaths in the correctional system, taking the content of this ACLU report into consideration.

The Legislative Assembly must comply with its duty to carry out independent investigations in response to denunciations of human rights violations and must make their results accessible to the public.

The Legislative Assembly must pass legislation ordering an exhaustive governmental investigation in response to the concerns set forth in this ACLU report regarding the sudden, unexplained deaths of prisoners at the Guerrero Jail.

Legislation must be enacted to find alternatives to incarceration of persons with problems of addiction. The penalty of incarceration for persons with addiction problems poses a grave risk to these persons' health and fails to fulfill the

criminal justice system's ultimate goal under our constitutional system, which ought to be the social and moral rehabilitation of the convict.

The Legislative Assembly must review the procedures established for involuntary internment of persons with problems of addiction, such as Law No. 66 on the Administration of Mental Health Services and Services to Fight Addiction (Spanish abbreviation: AMSSCA), 3 L.P.R.A. [Laws of Puerto Rico Annotated] § 402j, since such involuntary internment could result in a violation of international standards on the right to freedom and due process of law.

Department of Justice

The Department of Justice must fulfill its legal obligation to investigate the circumstances around the death of any person in State custody, with the aim of identifying civil rights violations.

The Department of Justice must promptly handle all denunciations of human and civil rights violations and keep family members and victims of such violations informed of the investigations it conducts.

Administration of the Courts

The Courts must seek alternatives to pretrial detention in order to respect the right to freedom and presumption of innocence of all human beings, regardless of their social status. The courts must adopt mechanisms to avoid discriminatory practices against poor, homeless addicted persons in granting the benefit of bail.

Drug Courts must seek alternatives to incarceration or pretrial detention of addicts in detoxification programs in the jails, with the aim of keeping addicts in the free community.

REFERENCE NOTES:

¹ Office of Statistics and Program Plans of the Department of Corrections and Rehabilitation, *Informe de muertes y razón de la muerte en las Instituciones Correccionales (los años fiscales 2001-2002 al 2006-2007)* [Report on Deaths and Reasons for Death at Correctional Institutions (fiscal years 2001-2002 to 2006-2007)].

² See *Cleveland Perdue v. Brustche*, 881 F.2d 427 (1989); *Skinner v. Uphoff*, 234 F. Supp. 2d. 1208, 1216 (2002); *Carlos Morales Feliciano v. Sila María Calderón Serra*, 300 F. Supp. 2d. 321 (2004).

³ See *Spoerke et al.*, *supra* nota 142; *Haigh, J.C. supra* nota 150.

⁴ See *Wong S. et al.*, *supra* nota 151.