

Objectives of the Americas roundtable

- To assess areas of progress and key challenges in OPCAT ratification and implementation processes in the Americas.
- To define strategies and actions to ensure timely and effective NPM designation, establishment and functioning in the region.
- To exchange experiences and establish contacts amongst torture prevention actors in the region, in order to revitalise and strengthen efforts to prevent torture and other ill-treatment (hereinafter "torture") through the OPCAT.

Overview of the situation of the OPCAT in the Americas

Overview of OPCAT ratification and implementation in the Americas

The decisive **historical involvement of Latin American states** in the lengthy gestation of the OPCAT has translated into significant progress in ratifications of the instrument in the region. As of October 2011, **14 countries in the Americas had ratified the OPCAT** (all in Latin America): Argentina, Bolivia, Brazil, Chile, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay; and one had signed it: Venezuela. **Six of them have formally designated their NPMs** but **only three are currently operational** (i.e. monitoring places of detention: Costa Rica, Honduras and Mexico). While there is little movement on the OPCAT in the Caribbean, it should be noted that advocacy platforms on the OPCAT have been established in Canada and the United States.

National Preventive Mechanisms in the Americas

- The majority of states in the region are opting for the **creation of new institutions** to exclusively carry out the NPM role: legislation to this effect has been adopted in Honduras, Guatemala and Paraguay and draft legislation to create a new NPM is under consideration in Bolivia.
- Some states are **remodelling pre-existing institutions** to take on an additional NPM role. For example, Costa Rica and Mexico have NPMs operating as separate units within pre-existing NHRIs. In Peru, draft legislation to designate the NHRI as NPM is undergoing inter-ministerial consultations. Uruguay included the NPM function in national legislation to create a new NHRI, which is now in the process of being formed.
- A number of states are also foreseeing **decentralised structures**. Draft legislation to create a national torture prevention system is under consideration by the federal legislature in Argentina and by the federal executive in Brazil. Local legislation to create preventive mechanisms (LPMs) in decentralized entities, as foreseen by these draft laws, has been adopted in the Argentinean provinces of Chaco, Rio Negro and Mendoza, and in the Brazilian states of Alagoas, Paraíba and Rio de Janeiro. In Ecuador, draft legislation proposes a mixed NPM structure, with a new national committee presided by the NHRI and with the integration of local committees.

The UN Subcommittee on Prevention of Torture (SPT) and the Americas

Seven of the 25 members of the SPT are from the Americas. The Americas is the region that has received the highest number of visits from the SPT so far: five countries have been visited: Mexico (2008), Paraguay (2009 and 2010), Honduras

(2009), Bolivia (2010) and Brazil (2011). The SPT visit reports of the first three states are public.

Overview of the Progress and Challenges of the OPCAT in the Americas five years after its entry into force

1. Progress

Throughout the Americas, actors have **mobilised** to promote the ratification and implementation of the OPCAT. These **campaigns** have also provided an umbrella for addressing, with renewed perspective and vigour, broader issues relating to combating torture and improving detention conditions. **Networks** have been born or reinforced, enabling committed actors to gain insights from comparative experiences and to improve detention monitoring practices. A number of **conferences** have provided an opportunity for exchange and analysis sub-regionally (Mesoamerica in Honduras 2008; Mercosur in Paraguay 2007 and Brazil 2010).

The most notable trend as regards OPCAT ratification and NPM designation **processes** is the **plurality of actors**, including protagonist roles for Ministries (Foreign Affairs or Justice), NHRIs and civil society, frequently coming together in drafting committees or networks. Most NPMs have been designated through **national or local laws**, many of which include **innovative provisions** not explicitly foreseen in the OPCAT (such as precautionary measures; databases; ethical hearings; quotas for professional or ethnic groups). The establishment of **local preventive mechanisms (LPMs)**, when processes of NPM designation have been stalled at the federal level, has demonstrated a clear commitment to torture prevention at the level of implementation. It has also served to mobilise local actors, raise awareness and paves the way for other federal states around the world.

2. Challenges

These positive developments often take time, leading to one of the greatest challenges: most states have **passed the one-year NPM designation deadline**, with many **processes becoming stalled**. Some of the obstacles observed are: weak understanding of the preventive approach; resource constraints; lack of prioritisation in the public agenda, demobilisation of actors after the designation of NPMs (non-respect of the decision taken in the process, lack of priority given to the OPCAT by the institutions, etc) and weak understanding of the obligations of the authorities in relation to NPMs (cooperative dialogue for instance). The establishment of LPMs creates potential challenges for coordination and coherence with future NPMs at the federal level.

Proposed concrete ways forward for discussion

To take advantage of the unique opportunity of this Forum to gather actors from the whole region, the roundtable will focus on the following questions:

1. How can **timely and effective OPCAT implementation** be ensured in the Americas? Who are the **key actors** and what are their roles?
2. How to ensure an open, transparent and inclusive **NPM designation process**?
3. How to ensure **continued engagement** by, and cooperation between, relevant actors (including the authorities), **following NPM designation**?
4. What are the possible **synergies** between LPMs, NPMs, regional bodies working against torture (i.e. Inter-American system) and international bodies including the SPT? How can these be explored, facilitated and strengthened?
5. Could a **regional network** of NPMs and other torture prevention actors add value by enabling the sharing of strategies and good practices to overcome challenges in OPCAT ratification and implementation in the region?