



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture

UN Committee against Torture

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APT submission on Panama

26 June 2017

Alternative report from the Association for the Prevention of Torture (APT) to the Committee against Torture providing background information and suggested questions and recommendations on torture prevention and the Optional Protocol to the UN Convention against Torture (OPCAT) for **Panama**, whose fourth periodic report will be reviewed by the Committee during its 61th session in Geneva.

The Association for the Prevention of Torture (APT) is an independent NGO based in Geneva. We work for a world free from torture, where the rights and dignity of all persons deprived of liberty are respected.

To achieve this vision we:

- *Advocate for strengthened legal and policy frameworks,*
- *Promote improved detention practices, and*
- *Advise on effective public oversight.*

1. Key facts

OPCAT ratification: 2 June 2011

NPM designated: Per Law No. 6 (22 February 2017), a new department will be established within the Ombudsperson's office ("Dirección Nacional adscrita a la Defensoría del Pueblo"), to perform the NPM mandate.

SPT: The SPT is scheduled to visit Panama during the second half of 2017.

2. OPCAT implementation

2.1. NPM establishment

The establishment of a national preventive mechanism (NPM) has been the subject of informal discussions since OPCAT ratification in 2011. To formalise the process, the Ministry of Foreign Affairs established a sub-commission on the establishment of the NPM (the "Sub-Commission"), composed of 11 government representatives and civil society organisations, and coordinated by the Ministry of Foreign Affairs of Panama. The Sub-Commission aimed to discuss the different NPM options available for Panama, agree on a model, and draft a NPM law.

Sub-Commission members agreed to create a new body as a NPM, and in 2015, they prepared a draft NPM law creating a new institution as the NPM. The APT provided the Sub-Commission with technical assistance during this process.¹

Despite the consensus reached amongst the Sub-Commission and a commitment made during its Universal Periodic Review, however, the Panama authorities decided to designate the existing Ombudsperson's Office as NPM instead.² As a result, the draft NPM law was amended to establish a new department within the Ombudsperson's Office, to perform the NPM mandate. The Sub-Commission was convened in June 2016 to be informed about these changes and to convey their comments and observations.

Law No. 6 (22 February 2017) (the "NPM law") formally established the NPM. It was adopted by the Council of Ministers in August 2016 and introduced to the Parliament in October 2016. It was adopted without amendment, and entered into force on 22 February 2017.³

2.2. NPM structure

The new NPM sits within the Ombudsperson's office and will be composed of one director; one deputy director; and professional, technical and administrative staff. The Director and Deputy Director are selected for a five-year period, renewable only once.

¹ See APT, 'Broad discussions on Panama's NPM', published 5 July 2012, at http://www.apt.ch/en/news_on_prevention/npm-panama/#.WVEIf-uGNar; and 'APT continúa apoyando a Panamá en la creación de su MNP' (Spanish), published 16 February 2016, at http://www.apt.ch/es/news_on_prevention/apt-continua-apoyando-a-panama-en-la-creacion-de-su-mnp/#.WVEBFaLddrl.

² Ombudsperson website at <http://www.defensoriadelpueblo.gob.pa/>.

³ Law n°6, 22 February 2017, available at: https://www.gacetaoficial.gob.pa/pdfTemp/28225_B/60121.pdf.

The NPM law also creates a consultative council attached to the NPM, composed of the Ombudsperson's office and four members proposed by civil society organisations, and appointed by the NPM's Director and Deputy Director. The civil society members shall be appointed for a three-year period.

2.3. NPM implementation

The NPM law stipulates that an implementing decree shall be adopted within the next four months following its publication in the Official Gazette (i.e. before 22 June 2017). The decree will describe further detail needed on the selection process of the NPM Director and Deputy Director, as well as the process for the establishment of the Consultative Council.

In April 2017, the Ombudsperson's office established an inter-institutional working group (the "Working Group"), comprising civil society representatives; and staff and representatives from the Ministry of Foreign Affairs, Ministry of Government and Ministry of Finance. The Working Group aims to:

- Revise the internal structure of the Ombudsperson's Office to include the new NPM;
- Devise a budget for the NPM (presented in June 2017); and
- Draft the implementing decree of the NPM Law.

Although the decree has not yet been adopted (as of 26 June), the APT is aware that the decree is currently being drafted and discussed by the Working Group. However, the Panama authorities do not know which institution should author the implementing decree: the Ministry of Foreign Affairs (which introduced the NPM law to Parliament); the Ministry of Government; or the Ombudsperson's office. This uncertainty should be clarified as soon as possible to ensure that the selection process moves forward.

2.4. Selection process: the Selecting Committee

Article 32 of the NPM law provides that the NPM Director and Deputy Director are to be appointed by a "Selecting Committee", composed of:

- One representative from the Legislative Power;
- One representative from the Executive Power;
- One representative from the Judicial Power;
- Two representatives from civil society organisations

All the Selecting Committee representatives shall have a proven track record in the promotion and defence of human rights. Representatives from the three government powers are to be designated by their own institution. However, the NPM law establishes a different process for the selection of civil society representatives within the Selecting Committee. The two CSOs representatives are to be selected by the State Pact for Justice, in particular by its Commission on Justice.⁴

Once established, the Selecting Committee shall undertake a public selection process to designate the Director and the Deputy Director of the NPM. The technical secretariat of the Selecting Committee will be based within the Ombudsperson's office.

⁴ Pacto de Estado por la Justicia. See at: http://www.procuraduria-admon.gob.pa/?page_id=6146

2.4.1. Challenges

As of 26 June 2017, only one member of the Selecting Committee had been appointed (from the Judicial Power). Representatives from civil society are currently being selected by their peers, and the deadline for the nomination of potential candidates to the State Pact for Justice is 26 June.⁵

2.5. NPM resources

Article 43 of the NPM law provides that the NPM shall draw its own annual budget, which will be presented to the Ministry of Finance in coordination with the Ombudsperson's Office budget.

As the NPM will require substantial additional resources (both in terms of equipment and staff), the Ombudsperson's office presented a consolidated budget for the NPM for 2017 and 2018, so that the NPM could become operational as soon as possible.

3. Conditions of detention

3.1. Prison conditions

Panama has the second highest incarceration rate in Latin America, with 421 inmates per 100,000 inhabitants.⁶ Nevertheless, the prison population has been decreasing in the past year. While in November 2016, the prison system held 17165 prisoners, statistics from the Ministry of Government indicated that as of May 2017, 16300 persons were deprived of liberty in 18 prisons.⁷

Although detention conditions vary considerably from one facility to another, there are persistent problems,⁸ such as:

- prison overcrowding⁹ ;
- poor living conditions of persons deprived of liberty¹⁰;
- inadequate medical services¹¹;
- disproportionate use of force and misuse of tear gas¹²;
- overuse of pre-trial detention; and
- Violence, drugs and corruption¹³.

⁵ See: http://www.defensoriadelpueblo.gob.pa/index.php?option=com_k2&view=item&id=6026:abren-convocatoria-para-seleccionar-a-representantes-ante-el-comite-de-seleccion-del-mecanismo-nacional-para-la-prevencion-de-la-tortura

⁶ World Prison Brief, information based on an estimated national population of 4.08 million in November 2016, available at: <http://www.prisonstudies.org/country/panama>.

⁷ Ministerio de Gobierno, Estadística Población Penitenciaria Mayo 2017, available at <http://www.sistemapenitenciario.gob.pa/contenido/transparencia>

⁸ See <http://humanrightsclinic.law.stanford.edu/wp-content/uploads/2013/11/La-Crisis-Continua-Final-Web.pdf> for further information on the situation of the penitentiary system in Panama, as well as the report from the Ombudsperson's Office (2011) on the Penitentiary System in Panama: http://www.defensoriadelpueblo.gob.pa/transparencia/images/stories/Transparencia/Defensoria/Articulo26/26.3_UNA_MIRADA.pdf

⁹ Report of the Working Group from Panama's Universal Periodic Review (2015), available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/16/6&Lang=E>.

¹⁰ Ibid.

¹¹ See at: <http://elsiglo.com.pa/panama/estan-muriendo-reos-enfermos/23971028>.

¹² IACHR, Hearing No.131, where it was highlighted the practice in La Joya and La Joyita.

In March 2015, a report analysing the situation of women deprived of their liberty was released,¹⁴ which highlighted the conditions and treatment of women deprived of their liberty. Women deprived of their liberty have been overlooked in the past years, as they represent less than 7% of the prison population. This analysis highlighted how women are at greater levels of risk due to conditions and treatment in detention, and clarified their needs. The report focussed, in particular, on issues including: judicial delays; poor access to health; lack of nutrition food; loss of links with families and/or relatives; lack of access to proper rehabilitation or reinsertion services; and lack of access to adequate facilities for pregnant women and/or women with babies.

To consider these issues, an inter-institutional roundtable on women deprived of their liberty was created in 2011. This roundtable aimed to improve conditions and treatment of women deprived of their liberty, and was composed of State institutions, international organisations and civil society organisations. It has to be noted, however, that this roundtable has not been operational for several months.

3.2. Security in prisons

Article 100 of Law No. 55 (2003) provides that the national police are tasked with maintaining security outside penitentiary centres in Panama.¹⁵ The Penitentiary Security Corps is responsible for the centres' internal security.¹⁶

Nevertheless, national police still have a prominent security role inside some penitentiary facilities in Panama,¹⁷ in particular in the three largest detention centres of the country (La Joya, La Joyita and Monte Esperanza in Colón).¹⁸ Despite the significant efforts made to strengthen the capacities of Panama's penitentiary staff, including through its Penitentiary Academy,¹⁹ the police have maintained their role.

4. Legal reform of the definition of torture

Panama established torture as a specific crime in 2011 by adding article 156-A to the existing Criminal Code. Article 156-A defines torture as follows:²⁰

"The infliction of physical or mental pain or suffering, for purposes of criminal investigation, intimidation, personal punishment, as a preventive measure, as a punishment, or for any other purpose."²¹

The Criminal Code provides penalties of imprisonment of between ten to fifteen years.

¹³ See: <http://laestrella.com.pa/panama/politica/romero-presenta-plan-contra-corrupcion-carceles/24006609>

¹⁴ See: https://www.unodc.org/documents/ropan/Diagnostico_MPL_final.pdf

¹⁵ Ley No. 55, 30 July 2003, available at: http://procurement-notice.undp.org/view_file.cfm?doc_id=91355

¹⁶ See: <http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>

¹⁷ Policía dentro de las cárceles no resolverá el problema (2015). See: <http://www.panamaamerica.com.pa/tema-del-dia/policia-dentro-de-carceles-no-resolvera-el-problema>

¹⁸ Ibid.

¹⁹ For instance, since 2015, the Penitentiary Academy runs a regular module on torture prevention for new recruits.

²⁰ Article 156-A added in January 2011, through Law N° 3, available here: <http://bit.ly/2sifg8n>.

²¹ Unofficial translation. In original, "Quien inflija a una persona penas o sufrimientos físicos o mentales, con fines de investigación criminal, como medio intimidatorio, como castigo personal, como medida preventiva, como pena o cualquier otro fin, ...".

The same sanction shall be imposed for the use of methods on a person intended to obliterate the personality of the victim or to diminish his/her physical or mental capacities, even if they do not cause physical pain or mental anguish.

The APT notes that the definition does not include an offence by omission, and it is not clear whether different forms of participation, such as such as “instigation, [...] or consent or acquiescence”,²² may also be prosecuted as acts of torture under the law. Also, the definition does not make it clear whether the crime is capable of commission by other types of public officials and private persons.

5. Suggested questions and recommendations

In light of the material above, the APT proposes that the Committee formulates the following questions and recommendations to Panama:

5.1. Articles 1 and 4

Suggested recommendations

- Recommend that Panama adopts a definition of torture which covers all elements of the definition contained in article 1 of the Convention and amend its domestic criminal law accordingly.

5.2. Articles 2 and 16

Suggested questions

- On the NPM Selecting Committee, please provide information on the timeframe for the appointment of the representatives of the Executive and Legislative Powers to the Selecting Committee;
- Please provide information on the expected budget to be allocated to the NPM in 2017 and 2018;
- Please clarify which institution is responsible for the adoption of the implementing decree and provide information on the measures being taken to ensure that the implementing decree is adopted within the timeframe recommended by the law.

Suggested recommendations

- Recommend that Panama fulfils its obligation under the OPCAT by establishing the NPM within the Ombudsperson’s Office as soon as possible; granting it all the necessary human, financial and material resources to operate effectively and independently, including through an open and transparent process of selection of the Director and Deputy Director;
- Recommend that Panama adopts the implementing decree of the NPM legislation as soon as possible;

²² UNCAT, article 1.

5.3. Articles 10 and 11

Suggested questions

- Please provide information on the measures taken to ensure that all new recruits within the Penitentiary System received the appropriate human rights training, including on torture prevention.
- Please provide information on the expected timeframe to ensure that the internal security of penitentiary centres is being managed exclusively by trained and capable penitentiary staff.