



# Coherence of oversight systems: Independent human rights institutions in Latin America<sup>1</sup>

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## Introduction

This note offers a brief overview of independent human rights institutions in Latin America and their work in the area of torture prevention and detention monitoring more specifically. Its objective is to highlight institutional features and practical experiences of Latin American institutions that countries, such as Tunisia, may want to take into account when they consider ways to address similar questions related to policy and practice of detention monitoring.

This report has been commissioned by the Association for the Prevention of Torture (APT) to review lessons learned and best practices of independent human rights institutions in Latin America. It adopts a broad understanding of independent human rights institutions with a particular focus on National Human Rights Institutions (NHRIs). NHRIs herein are broadly defined as “quasi-governmental or statutory institution[s] with human rights in [their] mandate”.<sup>2</sup> Other institutions in Latin America are also assessed in the report, where relevant, in order to highlight potentially instructive examples of institutional design and practice.

Five sets of issues are discussed in this report as outlined in the concept note provided by the APT as background to their commissioning of this report. The information and materials reviewed in the preparation of this report include a wide range of secondary sources, including institutional and government reports, international agency evaluations, NGO reports, as well as news reports. Given the timeframe for the preparation and delivery of the report, the report is necessarily not exhaustive. Rather, in light of available information, which in some areas is limited, the objective of the report is to identify a selection of best practices

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<sup>1</sup> This report was commissioned by the Association for the Prevention of Torture (APT) to **Dr Par Engstrom** in May 2015. It is part of a research project on the architecture of independent human rights institutions in order to advise Tunisian actors on the coherence of its future system of oversight of places of deprivation of liberty. The information contained in this report is accurate to the best knowledge of the author. Any views that can be attributed to the author are expressed entirely in his personal capacity and do not necessarily reflect those of any institution he is affiliated with. The report has been commissioned by the Association for the Prevention of Torture (APT), but the contents are entirely the author’s responsibility and do not reflect the policy or views of the APT. In preparation of this report the author has greatly benefited from his collaboration with and expertise of Tom Pegram regarding most of the issues examined herein. A special thanks is also due to Mario Hidalgo for the information on the appointment processes of the Ombudsperson in Ecuador and the relevant provisions of the 2008 Ecuadorian Constitution more generally.

<sup>2</sup> Open Society Justice Initiative, *From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions* (2013), p.95; citing Richard Carver, *Performance and Legitimacy: National Human Rights Institutions*, International Council for Human Rights Policy (2000), p.3.

and lessons learned from the experience of independent human rights institutions in Latin America.

The report is divided into six main sections. First, the report gives a general overview of independent human rights institutions in Latin America. The second to sixth sections provide answers to the questions identified in the APT concept note in the following areas: institutional collaboration; appointment procedures; legislative frameworks and budgets; implementation and follow-up; and public accessibility.

## 1. Overview of Independent Human Rights Institutions in Latin America

Beginning with Guatemala in 1985, all States in Latin America have established independent human rights institutions, or NHRIs, in the past three decades (see Annex 1).

In terms of formal structures of independent human rights institutions, there is a high level of structural homogeneity among NHRIs in Latin America. This is often explained by the powerful influence of the Iberian Human Rights Ombudsman (*Defensor del Pueblo*) model. Most NHRIs in the region have in broad terms the institutional features of the Spanish 'hybrid' or human rights ombudsman. These institutional characteristics include, in particular, a human rights protection mandate, robust investigative powers, and the ability to receive complaints. The NHRIs in Latin America have constitutional status, with the exception of Chile, Costa Rica, and Uruguay.

All NHRIs in the region, with the partial exception of Chile, display formal safeguards of independence and investigative powers broadly commensurate to those demanded by the OPCAT for NPM designation. All NHRIs in Latin America have been accredited by the UN-affiliated International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). As per the most recently updated information provided by the ICC (May 2014), 15 NHRIs in Latin America received "A" status indicating full compliance with the Paris Principles (see Annex 1), and one (Honduras) received "B" status, due to partial compliance with the Paris Principles. Uruguay, the only Spanish-speaking country in Latin America without an ICC-accredited NHRI initiated in 2013 the activities of its NHRI,<sup>3</sup> with the view to secure full accreditation by the ICC.

In many cases however, the regional NHRI structures display degrees of institutional robustness above and beyond the standard laid down by the Paris Principles.<sup>4</sup> All offices have a broad and unrestrictive rights mandate and the power to investigate *ex officio*. However, many offices in the region also display independence and power safeguards which are left optional or omitted altogether in the Principles. Latin American NHRIs enjoy explicit powers to subpoena information,<sup>5</sup> receive complaints,<sup>6</sup> refer cases to public prosecutor offices and courts,<sup>7</sup> participate in amicus curiae briefs,<sup>8</sup> supervise military and security facilities,<sup>9</sup> advise on legislation,<sup>10</sup> promote international human rights law,<sup>11</sup> and engage with international

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<sup>3</sup> *Institución Nacional de Derechos Humanos y Defensoría del Pueblo* (INDDHH).

<sup>4</sup> The list of institutional features included in this paragraph is drawn from the work of Tom Pegram.

<sup>5</sup> Including the ability to compel witnesses to attend meetings under police escort in Costa Rica. Except for Chile, Honduras, Panama, Paraguay, Peru, Uruguay and Venezuela.

<sup>6</sup> Except Chile.

<sup>7</sup> Except for Chile and Mexico.

<sup>8</sup> This power is explicit in the mandate of NHRIs in Peru and Venezuela.

<sup>9</sup> Except Argentina and Chile.

<sup>10</sup> Except Mexico.

human rights organisations.<sup>12</sup> Latin American offices cannot enforce their decisions, though notably, the Colombian office can detain individual violators and the Guatemalan NHRI is empowered to issue *habeas corpus* writs.

The ‘hybrid’ structure of independent human rights institutions in Latin America means that their mandates encompass the functions of the ombudsman as a redress mechanism for maladministration and a human rights institution for advocacy.<sup>13</sup> They provide, in other words, a “one-stop shop” across a range of issues. Some observers note that this allows them to provide economies of scale and avoid additional infrastructure costs. They may also be able to work across different issue-areas in ways that could enhance institutional cooperation.<sup>14</sup> However, at the same time, managing work across multiple mandates may be challenging for any single institution, particularly in the absence of adequate resource levels. As discussed in Section 4 below, this last issue has proved particularly relevant in debates in recent years in several Latin American countries concerning the designation of NHRIs as NPMs under OPCAT.

In the regional context of Latin America, the special case of Brazil is worth noting. After a very protracted institutional process, law 12.986 was adopted in June 2014, which transformed the Council for the Defence of the Rights of the Human Person (*Conselho de Defesa dos Direitos da Pessoa Humana*, CDDPH, originally set up in 1964), into a new National Council for Human Rights (*Conselho Nacional de Direitos Humanos*, CNDH). In contrast to most Latin American NHRIs, which receive their mandates from the legislative branch of government, the CNDH is linked to the executive branch of government, through the Presidency’s National Human Rights Secretariat (*Secretaria de Direitos Humanos da Presidência da República*). The CNDH will be composed of 22 members, with 11 civil society members. Though it should be noted that of these 11 members, one will be a representative of the Brazilian Bar Association (*Ordem dos Advogados do Brasil*, OAB), and one member will be representing the National Council of Attorney-Generals from the Federal and State Public Prosecutor Offices (*Conselho Nacional dos Procuradores-Gerais do Ministério Público dos estados e da União*). The other nine civil society representatives will be selected through an election. The CNDH is expected to seek accreditation as a National Human Rights Institution from the ICC.

## 2. Institutional Collaboration

This section outlines core organisational frameworks of institutional monitoring arrangements of places of detention in Latin America. Given the high level of OPCAT ratification and NPM designation in the region, the focus will be on these institutional arrangements, with special emphasis on procedures and practices of institutional collaboration between NPMs and NHRIs, both at national and sub-national level, and with organised civil society.

As a preliminary point, it should be noted that although many countries of Latin America have extensive experiences with transitional justice institutions, the most institutionalised of these have either been temporary by design (in the case of Truth Commissions) or not

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<sup>11</sup> Except Argentina and Paraguay.

<sup>12</sup> Except Argentina, Bolivia, Paraguay, Peru and Venezuela.

<sup>13</sup> UNICEF Office of Research, *Championing Children’s Rights: A global study of independent human rights institutions for children* (2013), p.257.

<sup>14</sup> Office of the High Commissioner for Human Rights, *National Human Rights Institutions: History, Principles, Roles and Responsibilities* (2010), pp.17-18.

directly related to monitoring functions (e.g. reparations programmes). For these reasons, transitional justice institutions as such have tended to have little bearing on independent monitoring of places of detention in Latin America. It should be highlighted, however, that formally extensive institutional and legislative reforms (including creation of Ombudsperson offices), which took place in the contexts of political transitions (from military to elected governments in the case of the Southern Cone countries, and from civil war to 'peace' in the case of Central America), had the effect of demilitarising security forces in particular.

## 2.1. NHRI-NPMs in Latin America

In the regional context of Latin America, the question of institutional collaboration between entities with monitoring mandates may be best addressed by considering the process of designation of National Preventive Mechanisms (NPMs). Latin America as a region has a high level of OPCAT ratification, with 14 States parties. Most of these countries have designated or created their NPM (see Annexes 1 and 2). The NPM designation process in Latin America has in general been very protracted, however. Common challenges have included struggles over institutional budgets (see Section 4 below), concerns over the suitability of existing institutions to act as NPMs, and resistance from sectors of the public security services.

Nonetheless, a notable feature of NPM designation processes in Latin America is that a significant number of states have designated an existing institution as NPM. To date, six of twelve designated NPMs in Latin America have been NHRIs (Chile,<sup>15</sup> Costa Rica, Ecuador, Mexico, Nicaragua, and Uruguay<sup>16</sup>). As outlined in the previous section, the Latin American NHRI model is formally aligned with many of the structural features specified in OPCAT (Articles 18-20) governing NPM designation.

Costa Rica and Mexico were the two first Latin American OPCAT states to have operational NPMs, as both opted to appoint existing NHRIs as their respective NPMs. In Costa Rica, the *Defensoría de los Habitantes* (the Ombudsman) was designated through a presidential decree in 2007 as the NPM. The Ombudsman's office has created a small unit within the office to carry out the NPM tasks. In Mexico, the National Human Rights Commission (NHRC) has been designated as the NPM. A specific unit within the Commission, the *Tercera Visitaduría*, which is composed of a Director and a number of interdisciplinary staff, some of whom were formerly involved in prison monitoring within the NHRC, was appointed to carry out the task of visiting, engaging in dialogue with authorities, and issuing recommendations. Its first annual report detailed over 300 visits to places of detention that the office had carried out in several Mexican states. To facilitate this, it has signed agreements with a number of human rights commissions of some of those states.

Processes of designation are ongoing in some countries, including in Chile and in Peru. Chile decided to appoint its National Institute of Human Rights to fulfil the task of NPM, but the domestic legislative process has not been completed to date.<sup>17</sup> Similarly, in Peru the *Defensoría del Pueblo* has not been allocated the necessary funding to carry out the additional NPM duties. The Peruvian office is in many ways ideally placed to assume the NPM mandate. The office is formally robust in design terms, enjoying safeguards of independence

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<sup>15</sup> The Chilean NHRI is still to be formally designated under domestic law.

<sup>16</sup> Uruguay appointed its National Human Rights Commission which at the time of designation had not yet been created. Its NHRI status is pending.

<sup>17</sup> Since 2012, the Chilean NHRI has expressed its interest in incorporating the mechanism into its duties, provided that a series of conditions are met, in particular financial ones, which have been submitted to the Ministry of Justice. However, the legislation providing for its creation has not been adopted by Congress.

(such as constitutional standing, election by parliament, immunity, and fixed tenure), as well as an unrestrictive human rights mandate, coupled with broad quasi-judicial powers (it can receive complaints, undertake investigations, act *ex officio*, refer matters to the Prosecutor's Office, submit *amparo*, *habeas corpus* and *amicus curiae* briefs, among other attributes). Importantly, from an NPM perspective, it has subpoena authority and powers of inspection without prior notification.<sup>18</sup> One deficit that has been addressed in the draft NPM legislation is explicit jurisdiction over the military.<sup>19</sup>

Finally, it should also be noted that in some States that have not ratified the OPCAT, NHRIs are actively working on issues related to detention monitoring; in the cases of Colombia and El Salvador in particular.

## 2.2. Multi-institutional NPMs

Elsewhere in the region – notably Argentina, Guatemala, Honduras, and Paraguay – alternative structures have been designated as NPMs, even in the presence of an NHRI (see Annex 1). If anything, this illustrates that NHRIs – even if accredited “A” status – may not necessarily be suited to the task of monitoring of places of detention under the OPCAT. This is particularly the case if they suffer from inadequate funding, do not have prior institutional monitoring experience and expertise, and/or lack a robust presence and jurisdiction at the sub-national level.

The case of Argentina exemplifies the complexities involved in the creation of a national detention monitoring system. But it also highlights some ways to effectively involve a range of stakeholders in the institutional design process to facilitate multi-institutional collaboration. The designation process of the NPM in Argentina was protracted. In October 2008, a coalition of 22 NGOs submitted a draft law to Congress. The legal project sought to provide a new body with jurisdiction at the federal, provincial and city level regarding a wide spectrum of detention monitoring competencies. It further proposed that a coordinating National Committee for the Prevention of Torture be composed of seven members including representatives of NGOs. The draft text explicitly directed the National Committee to collaborate with the Office of the National Ombudsperson for Federal Prisons (*Procuración Penitenciaria de la Nación*) and analogous offices at the provincial level.

In November 2012, six years after the Optional Protocol came into force (and in breach of Article 24 of the OPCAT) the Argentine Senate finally approved the National System for the Prevention of Torture.<sup>20</sup> The final approved law largely mirrors the proposal first submitted by the NGO coalition in 2008, with notable modifications in the area of composition. The final law increases the number of National Committee members from seven to 13 to include six parliamentary representatives, the National Ombudsperson for Federal Prisons, two representatives of local torture prevention mechanisms, three representatives of NGOs, and one representative of the Secretary of Human Rights within the Ministry of Justice. Notably, following a process of extensive multi-party consultation, the final text makes no mention of Argentina's A-status NHRI, the *Defensor del Pueblo de la Nación*, with the office effectively excluded from the region's first multiple-institution NPM.<sup>21</sup> A Federal Council of Local

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<sup>18</sup> See Article 161 and 162 of the Peruvian Constitution and Law No. 26520, 8 August 1995.

<sup>19</sup> See Article 5, Supreme Decree Project, Available at:

[http://www.justiciaviva.org.pe/webpanel/doc\\_int/doc06052010-192213.pdf](http://www.justiciaviva.org.pe/webpanel/doc_int/doc06052010-192213.pdf)

<sup>20</sup> See Law No. 26827, 13 January 2013.

<sup>21</sup> Early studies by international agencies considered the Argentine NHRI as a possible vehicle for OPCAT implementation. However, long-standing concerns relating to the institutional independence of the NHRI combined with the lack of stakeholder support, led to the exclusion of the institution from Argentina's NPM.

Preventive Mechanisms is envisaged in the law which will in turn designate local preventive mechanisms in each of Argentina's 24 provinces. Six have already been designated.<sup>22</sup> An increase of political representatives within the National Committee has raised concerns regarding the independence of the NPM. However, beyond disagreement over NPM composition and question marks over the independence of the National Committee, the delay in designation illustrates the complexity of designing a mechanism appropriate to the country's federal political system with significant formal provincial autonomy. Given the structure of the Argentine political system, the resulting NPM arguably offers a best practice model for federal system OPCAT implementation.

Another example of multi-institutional design is provided by Brazil. Although a regional laggard when it comes to the creation of independent human rights institutions at the national-level, there have been important developments in Brazil in recent years in relation to monitoring of detention facilities. A National Committee for the Prevention and Combatting of Torture (CNPCT) was created in 2014. The Committee is part of the new National System for the Prevention of Torture, established by a 2013 law to implement OPCAT in Brazil. The Committee has the mandate to elect the eleven members that will make up the country's NPM. However, the effective operationalisation of the National System is advancing slowly, with the NPM still not operative. The National System also provides that states establish local mechanisms for the prevention of torture, working in collaboration with the NPM. An increasing number of Brazilian states have adopted specific legislation that establishes local torture prevention mechanisms. To date, seven Brazilian states have designated local mechanism.<sup>23</sup>

It should also be noted that in the case of Brazil, there is an autonomous judicial body independent from other branches of government, in the form of the Public Prosecutor Office (*Ministério Público Federal*). The public prosecutors have a broad mandate to prosecute allegations of human rights violations, both upon receipt of complaints and *ex officio*. This institutional feature of the Brazilian Public Prosecutor is relevant considering that it is enshrined in the Brazilian Constitution of 1988, which provides the office with a broad mandate, mission and prerogatives similar to those commonly assigned to NHRIs in Latin America.

Indeed, the case of the *Ministério Público* in Brazil highlights a broader institutional trend in Latin America; namely the development of institutional links between NHRIs and Public Prosecutors in the region. For some, these forms of collaboration between NHRIs on the one hand, including those with involvement in monitoring of places of detention as in the case of Chile for example, and Public Prosecutors/Defenders on the other, may lead to effective institutional partnerships. Although the Brazilian Federal Public Prosecutor has been criticised for not actively pursuing its human rights mandate, state-level prosecutors in some Brazilian states, e.g. in São Paulo, have been more vigorous in this regard, including in relation to police violence and the criminal justice system more broadly. Similarly, the Public Defender's Office (*Ministerio Público de la Defensa*) in Argentina has also played an active role in torture prevention related activities. For example, in 2013 it launched a national campaign under the banner 'Year Against Torture'.

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<sup>22</sup> These can be found in the provinces of Chaco, Mendoza, Misiones, Río Negro, Salta, and Tucumán.

<sup>23</sup> Alagoas, Espírito Santo, Minas Gerais, Paraíba, Pernambuco, Rio de Janeiro and Rondônia. Nevertheless, the only operational body is Rio de Janeiro, while Pernambuco has recently completed the selection process of its members.

### **2.3. Multi-level institutional collaboration**

In a number of countries in Latin America there are sub-national institutions whose mandates raise important issues concerning collaboration between different institutional levels of the state apparatus. As already highlighted above, a noteworthy development is the creation of local preventive mechanisms in Argentine provinces and in Brazilian States, in response to the specific needs in federal structures as well as to the lengthy processes to establish a national mechanism at the federal level. In Argentina and in Mexico there are also provincial and state-level ombudsman offices, and in Argentina, Colombia, Mexico, Paraguay and Uruguay there are municipal ombudsman offices. In Uruguay, even before the creation of the National Institute of Human Rights and Ombudsman office (*Institución Nacional de Derechos Humanos y Defensoría del Pueblo*) in 2008, the country had a departmental level ombudsman (in Montevideo) and a parliamentary commission concerned with prison conditions.

The case of Mexico provides an illustration of the institutional challenges inherent in the design of multi-level monitoring bodies. The federal NHRI (*Comisión Nacional de los Derechos Humanos*, CNDH) is endowed with a restrictive jurisdiction. It is only able to act on complaints of abuse against federal officials, as it has no mandate over abuses committed by state-level officials (no minor issue as the vast majority of estimated abuses occur in state and federal district jurisdictions). This is a crucial deficit given the federal structure of Mexico and compares unfavourably with the outcome of NPM designation in Argentina discussed above, also a federal political system. The NHRI-NPM has entered into agreements with several state-level human rights commissions. However, there is little evidence of effective action at the state level. For example, the SPT 2008 visit report notes a number of instances where state commissions were not familiar with their obligations under OPCAT and ill-equipped to perform such a function. Historically, relations between the federal CNDH and state-level commissions have been characterised more by conflict than coordination. Notably, the local Mexico City office has provided a highly credible institutional contrast to the national-level office.

In most countries in Latin America the question of institutional presence throughout national territory in order to conduct effective monitoring is particularly important. There are several examples in the region of coordination and collaboration between national and local branches of *Defensorías*. In the case of Costa Rica, for example, the NHRI has offices throughout the national territory which are directed to coordinate activities with the central NPM Unit.

### **2.4. Mechanisms to facilitate institutional collaboration**

There are several examples in Latin America of inter-institutional agreements that have been put in place to enable independent human rights institutions greater scope in monitoring activities, including in ways that may surpass their formal mandates. For example, in the case of the NHRI in Costa Rica, the executive decree that created the institution does not explicitly grant the NHRI authority to inspect other public and private detention locations such as juvenile centres and psychiatric institutions. However, in practice, the office has interpreted its jurisdiction expansively while calling on the government to fully comply with its obligations under the OPCAT. Although the NHRI does not have formal authority to inspect detention facilities of the judiciary, an inter-institutional agreement has been reached. The NPM Unit may conduct inspections alongside local authority health officials who then issue their own technical reports. It has also conducted training with, among others, immigrant detention centre personnel, directors of the Penitentiary system, police officers, and public prosecutors.

The *Defensoria's* NPM Unit reports that in general public authorities have been cooperative. Notably the Minister of Justice has facilitated a high-level commission to monitor NPM follow-up activities.

A formal inter-institutional agreement does not guarantee, however, collaboration in practice. In the case of Mexico, for example, the NHRI-NPMs work is facilitated by inter-institutional agreements with a range of government agencies. In practice, though, the actions of the NHRI-NPM are often met with indifference by the federal courts and other accountability institutions. Moreover, despite being accredited 'A status' by the ICC, a lack of de jure and de facto independence from government influence has been a recurring issue throughout the NHRI's institutional life.

Another interesting example of institutional structures to foster collaboration between the official monitoring body and other institutions with overlapping mandates appeared in the draft NPM legislation in Bolivia. Although the final version of the law was adopted with revised provisions, the draft legislation aimed to set up a three-tier arrangement whereby a National Commission is to coordinate activities alongside Departmental Commissions and a Commission of Indigenous Peoples and Nations (Art. 34). The NPM – Service for the Prevention of Torture, which was formally created in 2014 – would also be directed to formally coordinate its activities with human rights organisations and individuals (Art. 39).

## **2.5. Institutional collaboration with organised civil society**

With regards to formal structures to ensure collaboration with NGOs and civil society organisations in monitoring activities, the case of Honduras is an interesting example. The Honduran NPM, CONAPREV, which began operations in September 2010, entered into a formal agreement of coordination with the NGO *Centro de Prevención, Tratamiento y Rehabilitación de Víctimas de la Tortura* (CPTRT) in February 2013 and the two entities have begun to make joint prison visits. The CONAPREV Commissioner, Fernando Morzán, has also publicly supported the relatives of the victims of the Comayagua prison fire, in which 360 prisoners died, and denounced the lack of action on the part of prosecuting authorities. In its 2012 follow-up visit and report for the Honduran NPM, the SPT concludes that CONAPREV has 'a great deal of potential ... a potential that can be developed if it is given the human and financial resources that it needs to do its job'.<sup>24</sup> It should be noted, moreover, that the Honduran experience is notable for the exclusion of the at the time A-status NHRI, the National Commissioner for Human Rights (CONADEH), from NPM designation and, more dramatically, a process of NPM activation which occurred against a backdrop of the military coup of July 2009 and its aftermath.

## **3. Appointment Procedures**

This section examines the main features of the appointment procedures for independent human rights institutions in Latin America. The main focus is on the oversight mechanisms that exist to ensure that the best qualified candidates can be appointed. It also reviews the participatory mechanisms that exist for civil society input and involvement in appointment processes. In a Latin American context, civil society participation is generally viewed as the best available safeguard to facilitate the appointment of credible individuals at leading positions in independent human rights institutions.

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<sup>24</sup> SPT 2013 report, pp.3-4.



### 3.1. NHRI appointment procedures

In terms of the appointment procedures of the Heads of NHRIs, most commonly in Latin America the selection is made by the legislative branch based on candidate proposals received from the Executive branch or, in some cases, from civil society. In many instances the appointments are made through the use of a qualified (two-third) majority. The Ombudsman in Honduras, however, is elected by the legislature by simple majority. The legislative frameworks regulating appointments generally set high standards for appointments in terms of human rights experience and moral rectitude, and provides strong legal protection vis-à-vis other office holders. The terms of office generally vary with, for example, three years in El Salvador and six in Honduras, with the possibility of re-election.

The fact that selection processes for the position of ombudsperson tend to be driven by the legislative branch rather than the executive is often highlighted as an institutional feature that increases safeguards to ensure institutional transparency and independence. It is also argued that legislative appointments facilitate broad consensus around the selected candidate across political parties represented in the legislature.<sup>25</sup>

In practice, however, legislative appointment and oversight processes are not without their own challenges. One issue concerns Congressional deadlock when a qualified legislative majority cannot be reached. This happened in Nicaragua, for example, and the term of the Ombudsperson had to be extended by presidential decree.<sup>26</sup> A two-thirds Congressional majority may be desirable as it would signal cross-party consensus in support of a candidate in many political systems. A simple majority, in contrast, could allow the imposition of candidates by numerically influential political factions in Congress. A robust legislative endorsement of a proposed candidate could be important in order to bestow political authority upon a prospective mandate-holder. It might also grant her/him a certain degree of political independence. In Latin America, however, there have been a significant number of delayed appointments of NHRI mandate-holders due to protracted political negotiations by political factions in Congress. In some cases, this has resulted in the designation of interim officeholders who have lacked the legal status of elected official.

Another issue concerns problems in identifying qualified candidates and how to ensure open and transparent recruitment processes. One interesting example of an appointment procedure based on merits is the case of the Costa Rican NHRI. Candidates for that office are selected according to a meritocratic point system.

As outlined below, mandatory civil society consultation is another example of an institutional effort to promote meritocratic procedures. In Nicaragua and Ecuador legislation explicitly states that civil society or human rights organisations must be consulted in the selection of candidates. In the case of Honduras, the country's NPM, CONAPREV, has been given a mixed appointment procedure. The NPM is comprised of three individual members, designated respectively by the executive, congress and civil society organisations.

NHRIs in Latin America have generally wide discretion how to administratively organise their work, including making appointments of personnel. Leaving recruitment decisions to institutions themselves require a robust organisational culture however, based on meritocracy. The absence of transparent recruitment of qualified personnel is likely to rapidly undermine overall institutional credibility and public support. There are examples, however, of legislative appointments of unit heads within NHRIs in the region. In the Dominican

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<sup>25</sup> UNICEF *Championing Children's Rights*, p.267.

<sup>26</sup> UNICEF *Championing Children's Rights*, p.267.

Republic, for example, the appointment process of deputy ombudspersons is similar to the appointment process of the *Defensor del Pueblo*. The appointment is made by the Senate from a short list of three candidates submitted by the Chamber of Deputies.<sup>27</sup> Some argue that such appointment processes confer on the function an additional layer of legitimacy compared to an appointment by the general ombudsperson only.

### 3.2. Civil society participation in appointment processes

One aspect widely debated in Latin America has been the involvement of organised civil society in appointment processes. Civil society participation, it is argued, can increase legitimacy, promote objectivity and help ensure that the candidates considered have more robust and relevant professional trajectories. Civil society organisations involved generally advocate for candidates who are committed to human rights and who have demonstrated independence from government influence. It is generally argued that participation of civil society generates increased external scrutiny of possible candidates; that it creates greater legitimacy in the appointment processes; and that, as a result, accountability is increased overall.

In terms of formal procedures for civil society participation in appointment processes, the legislative frameworks regulating appointments in Bolivia and Nicaragua, for example, provide for the involvement of civil society in the appointment process. In Bolivia the law stipulates that the appointment process must be open to public competition, and allows civil society to propose or challenge the appointment. In Nicaragua, candidates are nominated by the legislature in consultation with civil society organisations (Article 138 of the Constitution and Article 8 of the Law of the Ombudsman for the Defence of Human Rights).

Many NHRIs in the region have drafted their own regulative laws, often in consultation with civil society. In Costa Rica, for example, the regulative law was drafted by NHRI personnel and endorsed by executive decree. The law avoided prolonged political negotiations in Congress therefore, but also public scrutiny. Similarly, the Peruvian regulative law was drafted in large part by civil society jurists.

There are other examples of good practices in the region in which broad participation of civil society is potentially facilitated. The most notable, and possibly the most radical in terms of institutional design, can be found in Ecuador. The 2008 constitutional reforms in Ecuador created two other branches of government in addition to the executive, legislative, and judicial branches: the electoral branch; and the transparency and social control branch. The latter is in charge of fostering civil society participation, particularly through the Council for Public Participation and Social Control (*Consejo de Participación Ciudadana y Control Social – CPCCS*). The Council, in turn, is responsible for appointing officials, such as the Attorney General, the Comptroller General, the National Electoral Council members, the Human Rights Ombudsman, superintendents, and the Board of the Judicature. As part of the nomination process, the CPCCS is required to organize citizen selection commissions (*Veedurías para los procesos de designación de autoridades*), which are in charge of submitting candidates to citizen oversight.

In terms of the regulation of the designation of the Ecuadorian Ombudsman,<sup>28</sup> in the first instance there is an open call for applications to take part in a 'citizen selection commission'. This Commission consists of 10 commissioners: 5 citizens (representatives of civil society

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<sup>27</sup> UNICEF *Championing Children's Rights*, p.267.

<sup>28</sup> The author is grateful to Mario Hidalgo for the information provided in this paragraph.

organisations or ordinary citizens) and 5 state representatives (with one representative each from the five branches of government: the executive, legislative, judicial, electoral, and transparency and social control branch). The Commission is responsible for the selection of the Ombudsperson, with technical support from the Council of Citizen Participation and Social Control, as well as the Attorney General, the Public Auditor, the Public Defender, and others. Once the Commission is constituted, an open competition is convoked and candidates are assessed through a meritocratic point system. The scores that individual candidates receive are published and the public is given a certain period of time to challenge the scores and any individual candidate based on her/his competencies. At the end of this process, the candidate with the highest score is designated Ombudsperson. The overall selection procedure is supervised by a citizen oversight mechanism (*veeduría ciudadana*), which issues a public report.<sup>29</sup>

Overall, therefore, the 2008 Constitution shifted a significant degree of formal influence over appointments from political parties represented in Congress to civil society. The Ecuadorian constitutional reform is not without its critics, however, who claim that in practice civil society participation has been far more limited than promised, and that executive control on appointments has increased, rather than becoming more limited, over time. In particular, some observers note that the lack of legislative participation in the nomination process has led to increased dominance of the executive branch.

#### **4. Harmonisation of Standards and Administrative Procedures**

This section reviews some of the main legislative frameworks that exist in Latin America to govern budget allocation to and within independent human rights institutions. Available information on these issues is limited unfortunately, despite increasing efforts to implement public transparency legislation in many Latin American countries.

##### **4.1. Constitutional status and legislative frameworks**

With regards to framework legislation and administrative procedures regulating budget allocation to independent human rights institutions, detailed information is often not readily available. It should be noted, however, that most independent human rights institutions in Latin America enjoy relatively strong administrative independence as a result of their constitutional status. Examples of countries that created NHRIs via constitutional mandate are Guatemala (1985), Mexico (1990), El Salvador (1991), Colombia (1991), Paraguay (1992), Honduras (1992), Argentina (1993), Peru (1993), Nicaragua (1995), Bolivia (1997) and Venezuela (1999). In Ecuador (1996) and Panama (1996), NHRIs were initially created by law, but then later incorporated into the constitution.

Framework legislation of NHRIs in the region generally grants the institutions administrative autonomy. Heads of NHRIs are free to organise their offices and to set their institutional agendas.

##### **4.2. Budgetary independence**

Budgetary independence is certainly one of the key components of institutional independence overall. In relation to resource allocation, in most countries in the region,

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<sup>29</sup> Further details are available, in Spanish, at <http://www.cpccs.gob.ec/index.php?mod=designacion1-4>

funding for the independent human rights institutions are allocated from the national budget. The funds devoted to them are supposed to enable them to cover running costs. NHRIs' budgets are included within the overall budget of the Legislative branches in Argentina, Bolivia, Costa Rica, Guatemala, and Panama. In other cases – Colombia, Ecuador, Honduras, Nicaragua, and Venezuela, for example – NHRI budgets are allocated within the general state budget. It is only in Mexico and El Salvador where NHRIs have their own budgets.

With regards to salaries, the case of the *Institución Nacional de Derechos Humanos y Defensoría del Pueblo* in Uruguay is interesting in that the law creating it includes provisions that stipulate the salary level of the members of its executive board (Art. 2 sets the salary at 75% of the nominal salary of a Senator).

With the notable exception of the Mexican office, NHRIs throughout Latin America are severely underfunded given the scope of their mandates and competencies. Indeed, one of the tools available to governments to exert control on NHRIs and curtail their institutional independence has been to either freeze or cut NHRI budgets.

Many offices therefore rely quite heavily on international funding. Although some offices publish their budgetary information online on their respective websites, the information is generally not systematised or easily comparable. In particular, detailed information on the origins of funding is often not readily accessible.<sup>30</sup> Many institutions receive international donor support for specific programmes and activities; for example, Costa Rica, Ecuador, El Salvador, Honduras and Nicaragua.

With regards to NHRIs that have been designated as NPMs, one key obstacle that these institutions face is that they are not given adequate resources to carry out the additional duties as NPMs. The NHRIs are given extra competencies, but without extra resources. The case of the *Defensoría* in Costa Rica illustrates this. Following an initial rejection of extra resources by Congress in 2008,<sup>31</sup> a lack of funds delayed the formation of the NPM unit until 2009. The work of the unit continues to be affected by a lack of logistical and economic resources. It is crucial, then, for the issue of institutional resources to be agreed prior to the creation of a monitoring body. The case of Peru is illustrative in this regard. The highly credible Peruvian *Defensoría del Pueblo* has publicly argued that if it were to accept the designation as NPM it would need to be endowed with the sufficient resources.

Certainly, securing funding and resources is not a guarantee of institutional effectiveness. The availability of resources is just one factor that determines institutional effectiveness. The Mexican NHRI is a case in point. Despite being the most well-funded NHRI in the region, it continues to be subject to severe criticisms for lack of institutional effectiveness.

## 5. Implementation and Follow-up

Independent human rights institutions in Latin America have a general obligation to report to the legislature, from which the institutional mandate of the offices derives. This reporting duty is generally fulfilled through the submission of an annual report on activities, which may also include general and specific recommendations. The reports are public and are generally presented in public sessions, which may generate media coverage and public attention and

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<sup>30</sup> UNICEF *Championing Children's Rights*, p.268. One exception is the Bolivian *Defensoría del Pueblo*, which receives 50 per cent of its funding, including staff salaries, from external sources.

<sup>31</sup> Annual Report 2007-2008, p.418.

scrutiny.<sup>32</sup> Detailed information on the practical delivery of these reports would require more extensive research. NHRIs in Latin America have, however, much broader range of mechanisms and tools available to them to ensure implementation and follow-up; some of which are briefly reviewed in this section, including the recourse to international human rights bodies, especially in the form of the Inter-American Human Rights System.

### **5.1. Formal mechanisms of implementation**

Independent human rights institutions in Latin America have robust formal mandates to monitor state performance and to propose remedial action. Most institutions in the region have the ability to review legislation, policies and practices and make proposals for change. Notably, all institutions in the region have the ability to handle individual complaints. In particular, Latin American institutions usually have strong investigative powers, and most can initiate investigations either based on a complaint or on their own initiative.

Their capacity to ensure implementation of institutional recommendations, however, is generally weaker. It should be noted though, that some independent human rights institutions in Latin America have the power to bring cases to court, and to intervene in judicial proceedings.

Moreover, some NHRIs in the region, such as Colombia and Peru, have the power of legislative initiative. The potential in these cases of the NHRI using the occasion of the presentation of its annual report to propose and amend legislation is significant. In addition, even in cases where the NHRI does not have direct legislative powers, it may present legislative proposals to institutional supporters in Congress, including members of congressional human rights committees, who in turn can formally present them.<sup>33</sup>

### **5.2. Leveraging international mechanisms for implementation**

Access to a regional human rights system (in the case of Tunisia, the African system), in addition to the UN system, may provide independent human rights institutions with leverage to increase the likelihood of government follow-up and implementation. Independent human rights institutions in Latin America can seek remedial action through the regional human rights system, comprised of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. As a recent UNICEF report notes, “[i]nstitutions can submit complaints, communications and petitions with the Inter-American Commission on Human Rights, follow up recommendations, and provide relevant information through hearings, country visits and reports, as well as collaborate with [...] rapporteurs. Likewise, with the Inter-American Court of Human Rights, they can provide information and amicus briefs, monitor states’ cooperation with the Court and request precautionary measures in case of imminent threats.”<sup>34</sup>

To date, Latin American NHRIs have used these tools very sparingly. In part, this is explained by the fact that the Inter-American Commission does not have an established procedure on how to engage with NHRIs. This is in contrast to the African Commission on Human and

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<sup>32</sup> The Honduran Commissioner’s 2010 Annual Report was presented to Congress in a private session however, as a result denying public scrutiny.

<sup>33</sup> Open Society Justice Initiative, *From Rights to Remedies*, p.104

<sup>34</sup> UNICEF *Championing Children’s Rights*, p.280

Peoples' Rights, which has such a procedure in place.<sup>35</sup> The General Assembly of the Organisation of American States (OAS) has formally sought to enhance collaboration between the human rights organs of the OAS and national human rights institutions, but concrete institutional developments have been limited to date.

Moreover, in 2004 the Inter-American Commission on Human Rights established a mandate of a Special Rapporteur on the Rights of Persons Deprived of Liberty. The Special Rapporteur has a range of functions that could provide ample scope for collaboration with independent human rights institutions in the region, including the powers to carry out unannounced visits to places of detention, and to coordinate verification and follow-up activities of National Ombudsmen and NHRIs with regard to conditions of detention. As an additional example of innovative monitoring practices, a Bristol University report notes that the Special Rapporteur can use on-site visits to verify "the fulfilment of precautionary measures and provisional measures issued by the Inter-American Commission under Article 25 of the Commission's Rules of Procedure and by the Inter-American Court under Article 63 of the American Convention on Human Rights respectively with regards to situations related to conditions of detention. In September 2006, for example, the Special Rapporteur visited a detention centre for minors in Brazil to verify whether provisional orders issued by the Court in November 2005 had been implemented. It would appear that the Inter-American Court had considered the adoption of these measures partially based on the report of his visit to the detention centre in July 2005. In September 2008, the Special Rapporteur visited a neuropsychiatric hospital in Paraguay to verify whether precautionary measures adopted July 2008 by the Inter-American Commission to protect the lives and physical integrity of the hospital's patients, and to prevent further acts of physical violence and sexual abuse inside the hospital."<sup>36</sup>

In brief, various tools are at the disposal of independent human rights institutions in Latin America to follow-up on recommendations, including the use of international complaint mechanisms. Though, it should be noted that these tools remain distinctly under-utilised by national institutions in the region.

## 6. Accessibility

This section outlines a selection of existing institutional mechanisms to increase public engagement with and access to independent human rights institutions in Latin America. Given the highly mobilised character of organised civil society in many Latin American countries, public engagement with independent human rights institutions in the region is often channelled through civil society organisations, including professionalised NGOs. It should be noted, however, that many examples exist of Latin American NHRIs actively seeking to increase institutional accessibility, particularly through various form of decentralisation.

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<sup>35</sup> Bristol University report, *The Inter-American Commission on Human Rights' Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas and the Optional Protocol to the Convention Against Torture*, on file with author, p.15.

<sup>36</sup> Bristol University report, *The Inter-American Commission on Human Rights' Principles and Best Practices*, p.6.

## 6.1. Public engagement and access through organised civil society

Participation of organised civil society in the designation process may be particularly important when considering ways to facilitate public access to monitoring bodies once they become operational. There are several examples in Latin America of active involvement of civil society actors in the process of designation of NPMs. The case of the designation process in Argentina could be instructive in this regard, as highlighted above. The Peruvian experience of NPM designation is also notable for the robust support of civil society for a standalone NHRI-NPM model. A consortium of NGOs under the umbrella civil society organisation, the *Coordinadora Nacional de Derechos Humanos* (the National Human Rights Coordinator), submitted the original legislative proposal to the Ministry of Justice calling for the NHRI to be designated as the NPM. The proposal was met with approval by the Ministry and subsequently approved by the inter-ministerial National Council of Human Rights in December 2010. The Peruvian Congress then approved the law in December 2014, but the Peruvian government has delayed the enactment of the law.

It should be noted however that in many countries in the region public engagement with NHRIs, as well as designated NPMs, has been limited. In the case of Costa Rica, for example, no formal consultation with non-governmental actors in the process of designation took place, and relations between the Costa Rican NHRI and social actors are notably lower in intensity than many of its regional peers.

In terms of public access more concretely, the importance of a physical presence and trained and competent staff to receive visitors should not be underestimated. The Peruvian *Defensoría*, for example, has a high institutional profile and enjoys significant support from the Peruvian population. In contrast to the often inaccessible institutions of the state in Peru, the *Defensoría* has offices in central Lima where complaints and queries can be brought, and where staff receives individuals in a welcoming physical environment.

NHRIs in Latin America also offer dedicated phone lines for people to contact the institutions, and increasingly are disseminating information through various social media platforms. And, in cases where they have the required competencies, some NHRIs have online petition mechanisms on their respective websites. The Mexican NHRI and the Venezuelan *Defensoría*, for example, have online forms that could be used to submit petitions through their institutional websites.

The example of the Mexican NHRI, nonetheless, is often highlighted to demonstrate the risks of a national human rights institution isolated from civil society and at risk of political capture. The National Human Rights Commission (CNDH) was created by executive decree in 1990 in 48 hours and with no consultation outside government circles.<sup>37</sup> Similarly, in 2007, the CNDH accepted the invitation of the Mexican government to serve as the NPM. Following designation by executive decree, the NHRI's Advisory Council directed the internal Third Inspectorate-General to assume additional functions under OPCAT. Civil society strongly criticised the government for pushing through the designation of the CNDH and effectively ignoring the results of an extensive multi-party consultation exercise. The outcome of

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<sup>37</sup> Richard Carver, *Performance and Legitimacy: National Human Rights Institutions*, International Council for Human Rights Policy (2000), p.37.

designation is an NHRI-NPM which effectively excludes civil society from any formal role.<sup>38</sup> To date, relations between the NHRI-NPM and civil society remain strained.

## 6.2. Regional access

Another thorny area of practice concerns accessibility in remote areas of national territory. Many *Defensorías* in Latin America have developed decentralised structures in order to extend their institutional presence throughout national territory. In some cases, mobile units have been set up to reach remote areas. Guatemala and Peru, in particular, stand out as highly decentralised offices. In Colombia, the *Defensoría* has offices and designated staff to contact in each department of the country.

There are examples of NHRI units concerned with children's rights in Latin America that have sought to overcome obstacles to public access through an institutional presence in, as well as regular visits to, remote areas. Yet, UNICEF report significant disparities among institutions in the region in the regularity of visits. In their responses to a recent UNICEF survey, "the *Procuraduría* in Nicaragua reported making 50 such visits in 2007, while institutions in Bolivia, Colombia and Guatemala claimed they made around 15 visits per year. Institutions in El Salvador and Panama made even fewer visits, around 4 or 5 per year. The *Defensoría del Pueblo* in both Ecuador and Peru reported no visits to remote areas, but in these countries that function is most likely performed by the community *defensorías*, which are typically closer to the people."<sup>39</sup>

UNICEF also note the existence of community *defensorías* as part of the children's ombudsperson system in several countries in Latin America as part of efforts to expand public access to the monitoring function of independent institutions. Though the UNICEF report indicates that there is no general assessment of the role of these community *defensorías*, and it cautions that there are no assessments of their "effectiveness, and the potential for replication in other settings – with relevant adjustments."<sup>40</sup>

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<sup>38</sup> See joint NGO statement, '*Gobierno Federal decide unilateralmente mecanismo nacional de prevención de tortura, habiendo convocado foros para su integración*', 27 June 2007. Available at: [http://peacebrigades.org/fileadmin/user\\_files/projects/mexico/files/PIM137.pdf](http://peacebrigades.org/fileadmin/user_files/projects/mexico/files/PIM137.pdf)

<sup>39</sup> UNICEF *Championing Children's Rights*, p.273.

<sup>40</sup> UNICEF *Championing Children's Rights*, p.283.



## ANNEX 1: OPCAT – NPM – NHRI – by country

Country	OPCAT ratif.	NPM designation/creation	NPM type	NHRI <sup>41</sup> (status)
Argentina	2004	2012. National System to Prevent Torture, comprising: National Committee for the Prevention of Torture (composed of 13 members, including the Ombudsperson for Federal Prisons ( <i>Procurador Penitenciario de la Nación</i> ); a Federal Council of Local Preventive Mechanisms; local preventive mechanisms (designation pending in many cases) in each of the 24 provinces <sup>42</sup> ; and public institutions and NGOs.	New specialised institution	<i>Defensor del Pueblo de la Nación</i> (1993) (A)
Bolivia	2006	2014. Service for the Prevention of Torture	New specialised Institution	<i>Defensoría del Pueblo</i> (1994/1998) (A)
Brazil	2007	2013. National System to Prevent and Combat Torture at the federal level. Local preventive mechanisms are designated in several states in Brazil. <sup>43</sup>	New specialised Institution	National Council for Human Rights ( <i>Conselho Nacional de Direitos Humanos, CNDH</i> ) (2014) (pending)
Chile	2008	[2009]. <u>National Human Rights Institute</u>	NHRI/NPM (pending)	<i>Instituto Nacional de Derechos Humanos</i> (2010) (A)
Colombia	n/a	n/a	n/a	<i>Defensoría del Pueblo</i> (1992) (A)
Costa Rica	2005	2005. <u>Ombudsperson's Office</u> ( <i>Defensoría de los Habitantes</i> )	NHRI/NPM Unit	<i>Defensoría de los Habitantes</i> (1993) (A)
Ecuador	2010	2010. <u>Ombudsperson's Office</u> ( <i>Defensoría del Pueblo</i> )	NHRI/NPM Unit	<i>Defensoría del Pueblo</i> (1998) (A)
El Salvador	n/a	n/a	n/a	<i>Procuraduría para la Defensa de los Derechos Humanos</i> (1992) (A)
Guatemala	2008	2010. National Office to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment	New specialised Institution	<i>Procuraduría de los Derechos Humanos</i> (1987) (A)
Honduras	2006	2006. <u>National Committee for the Prevention Against Torture (CONAPREV)</u>	New specialised Institution	<i>Comisionado Nacional de Protección de los Derechos Humanos</i> (1992) (B)
Mexico	2005	2005. <u>National Human Rights Commission</u> ( <i>Tercera Visitaduría</i> )	NHRI/NPM Unit	<i>Comisión Nacional de los Derechos Humanos</i> (1990) (A)
Nicaragua	2009	2009. <u>Ombudsperson's Office</u> ( <i>Procuraduría para la Defensa de los Derechos Humanos</i> )	NHRI	<i>Procuraduría para la Defensa de los Derechos Humanos</i> (1999) (A)
Panama	2011	Not designated	n/a	<i>Defensoría del Pueblo</i> (1998) (A)
Paraguay	2005	2005. <u>National Preventive Mechanism Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment</u>	New specialised institution	<i>Defensoría del Pueblo</i> (2001) (A)
Peru	2006	Not designated. Law designating the Ombudsperson's Office as NPM is pending enactment by the President	TBC. [NHRI/NPM Unit]	<i>Defensoría del Pueblo</i> (1996) (A)
Uruguay	2005	2005. <u>National Human Rights Institution</u> ( <i>Institución Nacional de Derechos Humanos y Defensoría del Pueblo</i> )	NHRI/NPM Unit	<i>Institución Nacional de Derechos Humanos</i> (2012) (pending)
Venezuela	2011 <sup>44</sup>	n/a	n/a	<i>Defensoría del Pueblo</i> (1999) (A)

<sup>41</sup> Note that this column refers to the date in which the NHRI was activated as opposed to established in legislation which in many cases was considerably earlier. For instance, in Paraguay, the NHRI was established in law in 1992 but only activated in 2001. In Uruguay, legislation preceded activation by three years.

<sup>42</sup> LPMs Designated (all designated LPMs are new specialised institutions: Chaco: Provincial Committee for the Prevention of Torture and Ill-treatment; Mendoza: Provincial Commission for the Prevention of Torture and Ill-treatment; Misiones: Provincial Commission for the Prevention of Torture; Rio Negro: Committee of Evaluation of Follow-up and Implementation of the CAT; Salta: Provincial Commission for the Prevention of Torture and Ill-Treatment; Tucuman: Commission for the Prevention of Torture and Ill-treatment

<sup>43</sup> LPMs designated: Alagoas: State Mechanism to Prevent and Combat Torture (New Specialised Institution); Rio de Janeiro: Mechanism to Combat and Prevent Torture (New Specialised Institution); Espirito Santo: State Mechanism to Prevent and Combat Torture (New Specialised Institution); Paraíba: State Mechanism to Prevent and Combat Torture (New Specialised Institution); Pernambuco: State Mechanism to Prevent and Combat Torture (New Specialised Institution); Rondonia: State Mechanism to Prevent and Combat Torture (New Specialised Institution); Minas Gerais: State Mechanism to Prevent Torture.

<sup>44</sup> OPCAT signed and pending ratification.

## ANNEX 2: NPM Legal frameworks by country

Country	Institution	NPM Legal Framework
Argentina	National System to Prevent Torture	<u>National System to Prevent Torture legislation</u> (Law n° 26.827, published on 11 January 2013). <u>National System to Prevent Torture regulating Decree 465/2014</u> (9 April 2014). Legal frameworks for LPMs exist in several provinces. <sup>45</sup>
Bolivia	Service for the Prevention of Torture	<u>Law N° 474</u> (30 December 2013). <u>Decree N° 2082</u> implementing the NPM Law (20 August 2014)
Brazil	National System to Prevent and Combat Torture (federal)	<u>Law N°12.847</u> (2 Aug. 2013). <u>Implementing Decree N°8.154</u> (16 Dec. 2013). <u>Law N°12.857</u> creating the NPM members' positions (2 Sept. 2013). Legal frameworks for LPMs exist in several Brazilian states <sup>46</sup>
Chile	<u>National Human Rights Institute</u>	<u>National Human Rights Institute's Law</u> (10 December 2009)
Colombia	n/a	n/a
Costa Rica	<u>Ombudsperson's Office (Defensoría de los Habitantes)</u>	The Ombudsperson's Office was initially designated as NPM through Presidential Decree N° 33568 (13 Dec. 2006). Subsequently, a specific legislation was adopted, <u>NPM Law N° 9204</u> (18 Feb. 2014).
Ecuador	<u>Ombudsperson's Office (Defensoría del Pueblo)</u>	<u>NPM Resolution N°111</u> by the Ombudsperson's Office (8 November 2011)
El Salvador	n/a	n/a
Guatemala	National Office to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment	<u>Legislative Decree 40-2010</u> (November 2010)
Honduras	<u>National Committee for the Prevention Against Torture (CONAPREV)</u>	<u>NPM Law N° 136-2008</u> (5 December 2008) and <u>Amendments</u> to Article 7 of the NPM legislation (27 May 2014)
Mexico	<u>National Human Rights Commission (Tercera Visitaduría)</u>	<u>Inter-ministerial agreement</u> with the Human Rights Commission and National Human Rights Commission's regulation ( <u>Article 61</u> ). National Human Rights Commission's <u>Constitutional basis</u> and <u>founding legislation</u> .
Nicaragua	<u>Ombudsperson's Office (Procuraduría para la Defensa de los Derechos Humanos)</u>	<u>Presidential Agreement N° 04-2012</u> (16 January 2012). <u>Founding legislation</u> of the Ombudsperson's Office (December 1995)
Panama	n/a	n/a
Paraguay	<u>National Preventive Mechanism Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment</u>	<u>Law N° 4288</u> of 27 April 2011
Peru	Law designating the Ombudsperson's Office as NPM is pending enactment by the President	Amendments to the Organic Law of the Ombudsperson's Office (pending approval by the President)
Uruguay	<u>National Human Rights Institution (Institución Nacional de Derechos Humanos y Defensoría del Pueblo)</u>	<u>National Human Rights Institution Law</u> , N° 18.446 of 24 December 2008. <u>Amendments</u> to NHRI Law (Law N° 18.806 of 14 September 2011). <u>NPM Implementing Agreement</u> of 6 December 2013
Venezuela	n/a	n/a

<sup>45</sup> LPMs Legal frameworks: Chaco: Law n° 6483 (1 February 2010); Mendoza: Law n° 8279 (16 May 2011); Misiones: Law IV - N°65 (28 August 2014); Rio Negro: Law n 4621(10 January 2011, modified by Law n° 4964 of 5 June 2014); Salta: Law n 7733 (14 September 2012); Tucuman: Law n 8523 (12 September 2012).

<sup>46</sup> LPMs legal frameworks: Alagoas: Law n°7.141/2009 (December 2009); Rio de Janeiro: Law n. 5778/2010 (30 June 2010); Espirito Santo: Law n°10.006 (April 2013); Paraíba: Law n° 9413 (July 2011); Pernambuco: Law n° 14.863 (December 2012); Rondonia: Law n° 3.262 (5 December 2013); Minas Gerais: Law n° 21.164 (17 January 2014).

**Annex 3:**  
**Supplement: Transitional justice mechanisms and independent human rights institutions in Latin America**

As noted in the initial report submitted, many countries in Latin America have extensive institutional experience with a wide range of transitional justice mechanisms (TJMs). However, the most institutionalised of these mechanisms have been temporary by design and have had limited institutional legacy effects, including on subsequently established independent human rights institutions. This is most notably the case with the various temporary Truth Commissions set up in the region in the early transition period (in most, but not all countries as illustrated in the table below).

The table below provides institutional information on the types and sequencing of Transitional Justice Mechanisms (TJMs) adopted in a selection of Latin America countries, with examples from countries that experienced different types of transitions in the region.

In summary, the establishment of NHRIs in the region does not follow a uniform logic. Some countries created NHRIs as part of peace agreements after the formal end of internal armed conflict (the case of El Salvador, e.g.). In the case of Argentina, the country's NHRI was established as part of broader economic and institutional reform processes in the early 1990s in ways that were detached from any concerns with human rights protection. In a few cases, independent institutions with extensive human rights mandates were created several decades after political transition (e.g. Brazil, Chile, and Uruguay) in parallel with, but disconnected from, ongoing (late) transitional justice initiatives. Interestingly, in countries with quite contrasting experiences of conflict and transition (or lack thereof) such as Colombia, Guatemala, Mexico, Paraguay, and Peru, NHRI creation took place in the context of authoritarian rule and/or ongoing armed conflict.

Overall, therefore, the Latin American contrasting experiences with transitional justice, both in terms of types of TJMs adopted and in terms of the sequencing of such mechanisms, share one commonality of relevance to our current concern with independent human rights institutions; namely, that transitional justice processes have occurred, in some cases, in parallel with, but disconnected from, the creation and consolidation of NHRIs. In the countries where significant transition-period institutional reforms occurred relevant to our concerns with monitoring of places of detention, e.g. of security forces and criminal justice systems (cases of El Salvador and Guatemala most prominently), NHRIs were not given any significant roles.

The reasons for this institutional disconnect are multiple, but the following might be highlighted: the transitions in Latin America generally took place in a period prior to the international expansion and diffusion of NHRIs; transitional justice mechanisms in the region have generally been backward-looking in terms of their emphases on violations by prior regimes, whilst NHRIs have generally been given forward-looking human rights mandates; TJMs and NHRIs have, in general, been supported by different political constituencies, including different types of domestic civil society groups adopting distinct advocacy strategies, as well as different parts of state bureaucracies; and the most prominent institutionalised TJM, Truth Commissions, given their temporary nature, have tended to be weakly institutionalised.

**Table: Transitional Justice Mechanisms (TJMs) and NHRIs in a selection of Latin American countries**

Country	Date and form of formal transition	Type and sequencing of TJMs		NHRI (year of creation) (ICC status)
		Initial (0-5 years)	Later (5+ years)	
<b>Argentina</b>	1983 (military dictatorship)	TC, trials, amnesty, reparations	Large-scale trials	<i>Defensor del Pueblo de la Nación</i> (1993). (A)
<b>Brazil</b>	1985 (military dictatorship)	Amnesty	Reparations, TC created in 2011	National Council for Human Rights ( <i>Conselho Nacional de Direitos Humanos</i> , CNDH) (2014) (pending)
<b>Chile</b>	1991 (military dictatorship)	TC, amnesty, reparations	2 <sup>nd</sup> TC, large-scale trials	<i>Instituto Nacional de Derechos Humanos</i> (2010) (A)
<b>Colombia</b>	None	Justice and Peace law, trials, amnesties, reparations, commission of inquiry		<i>Defensoría del Pueblo</i> (1992) (A)
<b>El Salvador</b>	1991 (civil war)	TC, amnesty	Foreign trials	<i>Procuraduría para la Defensa de los Derechos Humanos</i> (1992) (A)
<b>Guatemala</b>	1996 (civil war)	TC, limited amnesty	Limited domestic trials, foreign trials	<i>Procuraduría de los Derechos Humanos</i> (1987) (A)
<b>Mexico</b>	2000 (1-party rule)	International judicial processes (e.g. the Inter-American Human Rights System)		<i>Comisión Nacional de los Derechos Humanos</i> (1990) (A)
<b>Paraguay</b>	2003 (military dictatorship/1-party rule)	No amnesty, later TC	Reparations	<i>Defensoría del Pueblo</i> (2001) (A)
<b>Peru</b>	2000 (authoritarian government/civil war)	TC, trials, reparations	Trials (e.g. Fujimori conviction)	<i>Defensoría del Pueblo</i> (1996) (A)
<b>Uruguay</b>	1984 (military dictatorship)	TC, amnesty	Trials, 2 <sup>nd</sup> TC, reparations	<i>Institución Nacional de Derechos Humanos</i> (2012) (pending)