



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

- **PREVENTING TORTURE -
A SHARED
RESPONSIBILITY**

Regional Forum on the
OPCAT in Latin America





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Preventing torture - a shared responsibility

Regional Forum on the OPCAT in Latin America

Panama,
30 September - 2 October 2014

The [Association for the Prevention of Torture](#) (APT) is an independent non-governmental organisation based in Geneva, working globally to prevent torture and other ill-treatment.

APT's vision is a world free from torture where the rights and dignity of all persons deprived of liberty are respected.

The APT was founded in 1977 by the Swiss banker and lawyer Jean-Jacques Gautier. Since then the APT has become a leading organisation in its field. Its expertise and advice is sought by international organisations, governments, human rights institutions and other actors. The APT has played a key role in establishing international and regional standards and mechanisms to prevent torture, among them the Optional Protocol to the UN Convention against Torture.

In 2010, the APT opened a Regional Office in Panama City to support Latin American states and other national actors in the effective implementation of the OPCAT.

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ISBN 978-2-940337-78-1

Original design: minimum graphics

Layout: Anja Härtwig, APT

Photos: Alberto Quiros Bonett

Logo of the Regional Forum: Shazeera Zawawi

Printing: Villi®, France

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Executive Summary



As of December 2014, 14 Latin American states are parties to the Optional Protocol to the UN Convention against Torture (OPCAT) and 12 have designated or created their National Preventive Mechanisms (NPMs). In Argentina and Brazil, several Local Preventive Mechanisms (LPMs) have been established at the provincial or state level. However, major challenges remain in the implementation of OPCAT in the region.

To respond to these challenges, and following a request from Latin American participants at the APT Global Forum on OPCAT in Geneva in 2011, the APT convened the first-ever Regional Forum on OPCAT implementation in Latin America. The event, held in Panama from 30 September to 2 October 2014, consisted of a two-day conference with 120 participants from a variety of backgrounds (including NPMs, LPMs, all three branches of the State, international bodies, NGOs) and a one-day working meeting between NPMs, LPMs and members of the UN Subcommittee on Prevention of Torture (SPT).

The overall goal of the event was to promote stronger cooperation between all relevant actors in the area of prevention of torture at the national, regional and international levels, with a view to strengthening the effectiveness of national and local torture prevention mechanisms.

The present report contains an analytical summary of the main issues discussed during the different sessions (see full programme in annex) and outcomes, including suggestions for further action.

Latin American mechanisms can be categorised in three types:

1. National human rights institutions (NHRIs)
2. New specialised institutions, and
3. National systems for the prevention of torture in federal states, consisting of national and local preventive mechanisms.

The establishment of effective mechanisms poses several challenges which are partly common to all NPMs and partly specific to the type of NPM chosen. For NHRIs, the need to ensure an adequate legal basis and a dedicated structure for the NPM's preventive function (separate from the NHRI's reactive one), as well as a multidisciplinary composition, were highlighted. Newly established specialised institutions face major challenges regarding (financial) independence and the building up of a public profile, while national

preventive systems have to find appropriate solutions with regard to the effective coordination of national and local mechanisms and ensuring conformity of all participating mechanisms with OPCAT requirements. Furthermore, lack of appropriate financial, material and human resources of NPMs and LPMs as well as deficiencies related to financial and institutional independence (the budget and/or the institutional design being under the control of the executive branch) are common challenges for all types of mechanisms throughout the region.

NPMs and LPMs also face challenges in implementing the OPCAT's broad mandate. There was agreement that preventing torture means adopting a holistic and systemic approach by examining and addressing the whole range of factors that might be conducive to torture, including public policies. Monitoring bodies have been struggling to cover the wide scope of places of detention envisaged in the treaty, including less traditional places such as psychiatric hospitals, centres for juveniles and homes for elderly persons. This is partly due to resource constraints, but also to a lack of technical expertise in monitoring these places.

While all persons deprived of their liberty are vulnerable because of the imbalance of power created by detention itself, some people find themselves in situations of specific vulnerability. The discussions focused on addressing the situation of women, LGBTI persons, indigenous peoples and persons with mental health problems, who are deprived of their liberty. It became apparent that these groups often remain invisible, their needs are not adequately taken into account and they are also exposed to risks of ill-treatment. Prevailing discriminatory attitudes and patterns against these groups in society are reproduced and magnified inside places of detention, especially prisons. A human rights-based approach, which places the prevention of torture in its broader context, well before detention starts, was suggested as a way to strengthen the protection of groups in situations of vulnerability. Such a perspective needs to be reflected in the composition and the working methods of NPMs to ensure that these bodies are properly equipped to address the specific needs of persons and groups in situation of vulnerability in detention.

The implementation of recommendations - effecting real changes in the lives of persons deprived of their liberty - constitutes the litmus

test of the work of all monitoring bodies. In order to achieve concrete changes, they need to adopt a broad, strategic and systemic approach to following up on recommendations. Recommendations should be made in line with best practice standards and all available means should be used to ensure their implementation, based on a sound analysis and strategic outlook, and in cooperation with other actors.

There was recognition of the worrying fact that, despite a clear prohibition in the OPCAT, reprisals form part of the landscape of detention monitoring. This undermines the most basic principle of monitoring: “do no harm”. Reprisals can constitute both operative obstacles to effective monitoring and serious human rights violations. Monitoring bodies need to be aware of this and develop a systematic strategy to mitigate the risk of reprisals, including by adhering to a professional monitoring methodology and by cooperating with other actors.

The need for systematic cooperation among different actors in the field of torture prevention surfaced as a cross-cutting issue throughout the discussions. Such cooperation not only helps relevant actors to understand and broaden the range of different perspectives on the issues at stake, but also greatly contributes to strengthening the impact of monitoring bodies.

Through such exchanges, the event successfully achieved the objective of promoting greater cooperation and thus positive change in the implementation of the OPCAT at the domestic level in the region. Furthermore, the event served to strengthen the relationships between NPMs, LPMs and the SPT, but also among national and local mechanisms who unanimously agreed on the need to create a platform for regular online exchanges and consultation on their respective practices.

Acknowledgements

This report was written by APT Board member Walter Suntinger. It is the result of the very rich discussions and ideas that emerged during the Regional Forum thanks to the contributions of all present in the event, which included representatives of all NPMs and LPMs, SPT members, national state authorities, civil society organisations, OHCHR, IACHR and other individual experts committed to the prevention of torture in Latin America.

The APT is very grateful to all of them for responding so positively to our invitation and making this Forum such a useful encounter. The APT thanks in particular Elizabeth Odio Benito, who delivered an inspiring keynote speech on the genesis of the OPCAT, and who kindly agreed to publish these personal thoughts in the foreword of this report.

The APT remains most grateful for the cooperation provided by the Parlantino, the Panamanian Ministry of Foreign Affairs and the UN OHCHR to ensure the Forum was a successful encounter of prevention practitioners.

The APT wishes to express its special gratitude to Walter Suntinger who thoroughly analysed all material from the different sessions to provide the present report. The APT would also like to thank the staff who contributed to the elaboration of this report: Isabelle Heyer (Americas Programme Officer), for the revision and general coordination of this publication; Barbara Bernath (Chief of Operations), Sylvia Dias (Director, Office for Latin America), María José Urgel (Deputy Director, Office for Latin America), Jean-Sébastien Blanc (Detention Adviser) and Veronica Filippeschi (OPCAT Adviser) for their very valuable comments and contributions throughout the revision process; Claire Nevache (Project Officer) and Anna Sanchis (Intern) for compiling all relevant information and meticulously transcribing the content of the Forum's discussions.

The APT would also like to extend its gratitude to Jem Stevens, who edited this report.

Finally, the APT would like to thank His Excellency Hermann-Josef Sausen, Ambassador of Germany in Panama, for his steadfast confidence that this initiative was worthwhile and his support for the funding from the German Federal Foreign Office.



The APT would like to thank the German Federal Foreign Office for supporting the project of the Regional Forum, including the publication of this report, and the Government of Liechtenstein for the support of the APT Office for Latin America.

Abbreviations

APT	Association for the Prevention of Torture
CAT	UN Committee against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
IACHR	Inter-American Commission on Human Rights
ICRC	International Committee of the Red Cross
ILANUD	United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders
ILO	International Labour Organisation
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
LPM	Local Preventive Mechanism (in federal states)
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
Parlatino	Latin American Parliament
OHCHR	Office of the UN High Commissioner for Human Rights
OPCAT	Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
SPT	UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
UN	United Nations
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Foreword



I thank you for inviting me to tell again the story about how the OPCAT came about as many present here today do not know about it and it is well worth knowing.

In the 1970s, a Swiss philanthropist, Jean-Jacques Gautier, inspired by the model of visits to prisoners of war carried out by the International Committee of the Red Cross (ICRC), conceived the idea that this model should be expanded and adapted to preventing torture also during peacetime. The principles of cooperation and confidentiality, which characterise the work of the ICRC, could therefore also govern preventive visits.

For this purpose, he founded what would later become the Association for the Prevention of Torture (APT), which, together with a group of academics and the International Commission of Jurists (ICJ), worked on the implementation of this innovative idea.

At the end of the 1970s, by a strange twist of fate, I received a visit of two members of the ICJ in my office as Minister of Justice of Costa Rica suggesting to me that Costa Rica would have the moral credentials to present a draft text to the UN proposing this new instrument. With the support of the then President of Costa Rica, Roderico Carazo, we formally submitted the Draft Optional Protocol to the UN Sub-Commission on Human Rights in 1980. But the time was not yet ripe for this idea at the UN, and it was therefore first put in place in the European context with the adoption, in 1987, of the European Convention for the Prevention of Torture.

However, in 1998, again the stars interfered and I was called to Geneva at the request of the Governments of Costa Rica, Switzerland and Sweden, to become the Chair of a working group of the UN Commission on Human Rights with the task of continuing the work on this Protocol. We worked for a period of 3 years, greatly assisted by the APT. There were different positions within the Working Group, with the Latin American Regional Group being strongly determined to achieve a good result in the form of a strong Protocol.

One day, the delegation of Mexico, which had just made a radical change in its international politics, converting itself into a staunch supporter of human rights, appeared with a proposal to move things forward. I do not know to whom this had occurred, but it came out of the Mexican Foreign Ministry, and the proposal was very simple: establish, in addition to the international Subcommittee, national mechanisms for the prevention of torture. It was as if the sky had opened. I quickly realised: this is the solution. I had been Minister of Justice in my country twice and was therefore familiar with what was going on in prisons and what children, women and men had to

endure there. The national mechanisms were the great solution. It seemed a brilliant idea to me.

However, several European states disliked this proposal as they thought that the national mechanisms would undermine the very idea of the Protocol and even destroy it. So it was a difficult process of negotiations, with opposition from the Protocol's enemies - and there were many - and opposition from the friends of the Protocol who did not believe in the national mechanisms. We nevertheless advanced in our work and, at the beginning of 2002, we knew it was now or never. The enemies of all the work that we were doing reckoned that no consensus could be reached on the text and that it would be buried. And then - as the chairperson of the Working Group - I took one of these "heroic" decisions to put the text to the vote, a quite unusual move, which met with bitter reactions. But we succeeded, and a majority in the Working Group, including the sceptical friends, voted in favour. The text was then also adopted by the UN Commission on Human Rights and finally by the UN General Assembly in December 2002.

This Protocol is now in the hands of both the Subcommittee on Prevention of Torture (SPT), which, as a UN body, carries out such important work, and, in particular, in your hands: the National Preventive Mechanisms. You are the eyes who can identify the systemic failures in our places of detention and you have to make the authorities aware of them and show how to change the systems; all this keeping in mind the principles of impartiality, objectivity, non-selectivity and a strong commitment to human rights.

It is very clear that our task is a difficult one. As Amnesty International has reminded us only in May 2014 in its report « Stop Torture », torture and other forms of ill-treatment were practiced in 141 countries in the world in the last five years. It is our task to creatively fight it by working on the conditions to prevent it. It will be the courage, the honesty and the loyalty to this idea, embodied in your work, which will turn this continent and the world into a place free from torture.¹

Elizabeth Odio Benito, Costa Rica

Former Chairperson of the UN Open-ended Working Group on the Draft Optional Protocol and former Judge at the ICC and the ICTY

¹ This text is an extract of the [keynote speech delivered by Elizabeth Odio Benito during the opening ceremony of the Regional Forum](#).

I. Introduction



1. Background to the Regional Forum

Since the 1980s, Latin American states have been at the forefront of promoting the idea of an Optional Protocol to the UN Convention against Torture (OPCAT) and they played a key role in the negotiation process that led to its adoption by the UN General Assembly in December 2002. A “strong” OPCAT region, Latin America has the second highest number of ratifications after Europe, with 14 States Parties. In light of this context, and given its traditionally strong engagement in the region, the APT decided to open a regional office in Panama in 2010 to assist states and other national actors to implement the OPCAT at the domestic level.

In 2011, the APT held a Global Forum on the OPCAT, with roundtable discussions focusing on each region. Participants at the Americas roundtable highlighted key challenges in implementing the OPCAT in the region, including: a lack of political will to implement the OPCAT, challenges related to ensuring effective National Preventive Mechanisms, problems of implementation in federal and large decentralised states, and the need to mobilise public opinion for the idea of torture prevention. One of the ways forward identified was the need to “*create a regional network to share experiences and jointly build a common strategy on advocating for and strengthening OPCAT implementation*”.²

“I find it very important to stress what the title of this Forum expresses: ‘our shared responsibility’. It is essential that we all have worked together to achieve these results, not only the members of the National Preventive Mechanisms, but also representatives of state authorities, civil society, the judiciary, international bodies, who all contributed and enriched the work of these days.” (Fernando Morazán, NPM, Honduras)

To respond to this request and the needs for further exchange among NPMs in the region, the APT took the initiative of organising the first ever Regional Forum on OPCAT implementation in Latin America. The three-day event was convened in Panama City from 30 September to 2 October 2014 at the Latin American Parliament (*Parlatino*),

² APT, [The Global Forum on the OPCAT: Outcome Report](#), 2012, p.66.

under the auspices of the UN Office of the High Commissioner for Human Rights (OHCHR) and the Panamanian Government. The event consisted of two parts: a two-day conference, with the participation of a wide range of torture prevention actors and a one-day working meeting between national and local torture prevention mechanisms and the UN Subcommittee on Prevention of Torture (SPT).

“I would like to thank you for having chosen Panama to host this Forum. It has been very interesting. We have been working for two intensive years to establish a mechanism, and we still don’t have it, but this is going to give us new impetus.”
(Elsie Saavedra, Prison Pastoral Care, Panama)

The overall objective of the Regional Forum was to promote stronger cooperation between all relevant actors in the area of torture prevention at the national, regional and international levels, with a view to strengthening the effectiveness of national and local torture prevention mechanisms.

The specific objectives of the two-day conference were to:

- Identify solutions to the challenges in implementing the OPCAT in Latin America;
- Emphasise the responsibility of state authorities and the role of civil society to cooperate with NPMs and LPMs in order to ensure the thorough implementation of their recommendations; and
- Define strategies of cooperation between the different actors in order to respond to specific issues faced by persons deprived of their liberty, in particular groups in situation of vulnerability.

The 120 participants of the conference included: members of all Latin American NPMs and LPMs, representatives from the 14 OPCAT States Parties in the region, including national authorities (executive, legislative and judiciary), representatives from civil society organisations and academia, as well as representatives from international bodies (the SPT, OHCHR, Inter-American Commission on Human Rights (IACHR) and ICRC) and other international experts and organisations working in this field (see full list of participants in Annex II).

Day three was dedicated to a working meeting – the first ever held – among members of all NPMs and LPMs from the region and SPT members. Representatives of OHCHR and ICRC attended as observers. The specific objectives of the meeting were to:

- Identify concrete solutions to the challenges and obstacles faced by NPMs and LPMs in fulfilling their mandate under the OPCAT;
- Design strategies of cooperation with different actors (authorities, media, civil society) in order to overcome these obstacles;
- Consolidate cooperation between the NPMs/LPMs in the region with a view to creating a regional network; and
- Strengthen cooperation between NPMs/LPMs and the SPT.

To guide and facilitate the debate in each session and working group, the APT prepared background papers with points for discussion. These are all available on the APT website.³

“For us as the SPT, it is essential to have a space for discussion such as this Regional Forum. We can establish direct contact with the mechanisms, State authorities and civil society. Meetings such as this one really allow us to clarify questions and concretize issues; which might otherwise need several country visits”. (Enrique Font, SPT)

³ See [website of the APT](#).

2. About this report

The goal of this report is to present an analytical summary of the main issues discussed during the different sessions and working groups (see agenda in annex I) over the three days of the Regional Forum and its main outcomes. The report is aimed at the participants of the Regional Forum as well all actors working with the OPCAT system, and to strengthen the prevention of torture, in the Latin American region.

The report is organised as follows:

- Section II gives a short overview of OPCAT implementation in Latin America.
- Sections III to VII summarise the main content of discussions and outcomes of the different sessions of the event, including:
 - Challenges in setting up of effective NPMs and how to respond to them (session 1);
 - Challenges related to the OPCAT mandate and how to respond to them (discussed across the board and also on day 3);
 - How NPMs can protect specific groups or persons in situations of vulnerability in detention (session 2);
 - How the impact of NPMs can be enhanced through follow-up to recommendations (session 3); and
 - How to mitigate the risk of reprisals (panel discussion).
- Section VIII provides recommendations and ideas for further action with a view to strengthening NPMs and the work of a variety of other relevant actors in preventing torture in the region.

II. Overview of OPCAT implementation in Latin America



What is the OPCAT?

The Optional Protocol to the UN Convention against Torture (OPCAT) is a unique international human rights treaty, which assists states to prevent torture and other forms of ill-treatment, by establishing a system of regular visits to all places of detention, conducted by national bodies, the National Preventive Mechanisms (NPMs), and an international body, the Subcommittee on Prevention of Torture (SPT). The OPCAT is therefore an operational treaty contributing to the effective implementation of states' obligation to prevent torture under the UN Convention against Torture (UNCAT).

The OPCAT bodies work in close cooperation with national authorities, identifying gaps in laws and practice to protect the rights and dignity of all persons deprived of their liberty.

The OPCAT was adopted by the UN General Assembly on 18 December 2002. It entered into force on 22 June 2006. As of December 2014, 76 states are party to the treaty.

1. OPCAT ratification and NPMs in Latin America

Fourteen Latin American states are party to the OPCAT: Argentina, Bolivia, Brazil, Chile, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay. Among the other Latin American states which are party to the UN Convention against Torture, Venezuela has signed the OPCAT but ratification remains pending and Colombia, Cuba, the Dominican Republic and El Salvador have neither signed nor ratified the OPCAT.

Out of the 14 OPCAT States Parties in the region, 12 have fulfilled their obligation to designate or establish their National Preventive Mechanism (NPM) and several Local Preventive Mechanisms (LPMs) have been set up at the provincial or state level in the federal states of Argentina and Brazil. The OPCAT does not prescribe any specific model for NPMs but leaves considerable flexibility to states to decide on the best-suited model within their national context. However, the NPM chosen must abide by some minimum requirements as provided for in the OPCAT (see below Section III.1). Also, the process of identifying the most appropriate type of NPM should be done through an open, transparent and inclusive process, which involves a wide range of relevant stakeholders, including civil society.⁴

⁴ SPT, *Guidelines on national preventive mechanisms* (UN Doc CAT/OP/12/5), 9 December 2010, §16.

What is a National Preventive Mechanism?

National Preventive Mechanisms (NPMs) are domestic monitoring bodies set up by the States Parties to the OPCAT which must be independent from the state authorities and have the mandate to:

- Conduct visits to any place where persons are or may be deprived of liberty at any time (art. 19(a));
- Review and comment on laws, policies and practices relating to deprivation of liberty (art. 19(c));
- Make recommendations to the authorities to improve the treatment and conditions of persons deprived of liberty and the functioning of places of detention (art. 19(b));
- Maintaining direct, and if necessary confidential, contact with the SPT (art. 20(f)).

The mechanisms in Latin America can be categorised in three types:⁵

1. **National human rights institutions:** Costa Rica (Ombudsperson's Office), Chile (National Institute of Human Rights), Ecuador (Ombudsman's Office), Mexico (National Commission of Human Rights), Nicaragua (Ombudsman's Office) and Uruguay (National Institution for Human Rights and Ombudsman's Office)
2. **New specialised institutions:** Paraguay, Honduras, Guatemala and Bolivia
3. **National systems for the prevention of torture**, which include not only the creation of a mechanism at the federal level, but also local preventive mechanisms at the state or provincial level: Argentina and Brazil.

⁵ For more information on the situation in each country, see the table in Annex III, the recent report published by the APT and OHCHR, *Realidades de los Mecanismos Nacionales de Prevención de la Tortura en América Latina*, 2014 and the APT OPCAT database.

2. The SPT in Latin America

What is the SPT?

The Subcommittee on Prevention of Torture (SPT) is the international monitoring body established under the OPCAT. It is composed of 25 independent experts from all regions of the world (including seven from Latin America) who are elected by States Parties to the treaty. The SPT has the mandate to:

- Conduct visits to any place of deprivation of liberty in any State Party to the OPCAT and make recommendations to authorities to better prevent torture and other forms of ill-treatment. Following each visit, the SPT submits a confidential report to the State Party that can be made public upon the State's request. States are encouraged by the SPT to make those reports public (art. 11(a));
- Provide advice to state authorities on the implementation of the OPCAT and the establishment of NPMs (art. 11(b)(i)); and
- Maintain direct contact with NPMs, assist and advise them in their functioning. (art. 11(b)ii and iii).

Since its creation in 2007, the SPT has carried out visits to the following Latin American countries: Mexico (2008), Paraguay (2009), Honduras (2009), Bolivia (2010), Brazil (2011), Argentina (2012), Peru (2013), Nicaragua (2014) and Ecuador (2014). The SPT conducted a second visit to Paraguay in 2010 (the only follow-up visit carried out so far in Latin America). In addition, it conducted an “advisory visit to the NPM” in Honduras (2012) and Ecuador (2014) – this is a new type of visit that the SPT initiated in 2012 to strengthen its mandate to assist NPMs.

Most states have published the SPT reports, with the exception of Bolivia and Peru (the reports of the latest visits to Nicaragua and Ecuador were not sent yet to the respective governments of these states).⁶

The SPT has developed several tools to assist both states (in the designation and establishment processes of NPMs) and NPMs (in their functioning):

⁶ See [website of the SPT](#).

- Guidelines on national preventive mechanisms⁷
- Analytical self-assessment tool for National Prevention Mechanisms, complemented by a matrix⁸

The SPT has organised itself into four regional teams, including one on the Americas. Each team is headed by a regional coordinator and has the task of undertaking and coordinating NPM-related activities of the Subcommittee in the relevant region. Within the regional teams, each individual SPT member is assigned one or more countries of maintaining an up-to-date overview of the situation regarding the establishment and work of the NPMs in those countries. The membership of the regional team and the focal points for each country are available on the SPT website.⁹

⁷ SPT, *Guidelines on national preventive mechanisms* (UN Doc CAT/OP/12/5).

⁸ See SPT, *Analytical self-assessment tool for National Preventive Mechanisms* (UN Doc CAT/OP/1), 6 February 2012.

⁹ See [website of the SPT](#).

III. Challenges in setting up effective NPMs – and how to respond to them



1. Introduction

Latin American NPMs and LPMs face a number of challenges in complying with the OPCAT, as do NPMs in other parts of the world. However, it is clear that some challenges are specific to each mechanism depending on the national context, others are related to the type of mechanism and some are common to all types of mechanisms in all regions of the world.

Minimum OPCAT requirements for effective NPMs

- Functional independence and independence of personnel (art. 18 (1))
- Adequate human, financial and logistical resources (art. 18 (3))
- Multidisciplinary profile of members, gender balance and adequate representation of ethnic and minority groups (art. 18 (2))
- Access to all places of detention and their installations and facilities (art. 20 (c))
- Access to all information referring to the places of deprivation of liberty as well as to the treatment of detained persons and their conditions of detention (art. 20 (a)(b))
- Access to all persons deprived of their liberty, including the opportunity to have private interviews without witnesses (art. 20 (d))
- Power to make recommendations to the relevant authorities (art. 19 (b))
- Power to submit proposals and observations concerning legislation and public policies (art. 19 (c))
- Direct communication with the SPT (art. 20 (f))
- Protection of any person communicating with the mechanism against reprisals (art. 21)
- Privileges and immunities of members and personnel of mechanisms necessary for the exercise of their functions (art. 35)
- Dialogue and cooperation between the authorities and the NPM on the implementation of the NPM's recommendations (art. 22)

The session started with an introductory presentation from the SPT on some of the challenges related to OPCAT implementation in the region. The participants then split into three working groups to discuss the more specific challenges for each type of NPM in Latin America.

In each working group participants included: representatives from NPMs or LPMs, state authorities (from the executive, the legislature or the judiciary), civil society (NGOs and academia), the SPT and other international experts.

2. National human rights institutions as NPMs

The context

Costa Rica, Ecuador, Mexico and Nicaragua have designated existing National human rights institutions (NHRIs) as NPMs, while Chile and Uruguay have assigned the NPM function to newly created NHRIs. In Peru, the legislation designating the Ombudsman's Office as NPM was approved by Congress in December 2014 but is not yet in force. In Chile, debates on the modalities for the establishment of the NPM are ongoing. NPMs within NHRIs are therefore currently operational in five countries in the region.

The discussions were based on the following questions, which had been [identified in preparations for the session](#):

- Does the NPM function have an explicit **legal basis** in the NHRI law?
- To which extent have NHRIs **set up a separate unit** to develop the preventive mandate in relation to the reactive functions of the NHRI? What needs to be done to develop an appropriate and mutually reinforcing relationship between the preventive and the reactive functions of the NHRI?
- How to ensure a **multidisciplinary** approach of the NPM in view of the fact that most members/Ombudspersons and their staff have a legal background?
- How to ensure the **functional independence** of NHRIs and, therefore, of the NPM operating within these institutions, and that it is perceived as independent?
- How can **interaction and cooperation with civil society** be developed in the context of exercising the preventive mandate, given the fact that, in most cases, relationships between civil society and NHRIs have developed in the context of the institution's reactive mandate?

Legal basis and relationship between the NPM and other departments of the NHRI

The SPT has recommended that “*Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget.*”¹⁰ This is closely linked to the need to provide a proper legal basis for NPMs which are hosted within an NHRI.

It emerged from the discussion that there is a trend towards establishing a specific legal basis for NPMs within NHRIs in the region. This is most clearly the case in Costa Rica where the NPM is operational since 2009, but was given a more robust legal basis in 2013, granting it a broad autonomy as a decentralised unit within the Ombudsman’s Office.¹¹ In Mexico, the Internal Regulation of the National Human Rights Commission was revised in 2007 to assign the NPM function to an existing department (*Tercera Visitaduría*) inside which a specific NPM unit was created. The Uruguayan law establishing the National Human Rights Institution has only one article providing the legal basis of the NPM, but it was noted in the discussions that the provisions of the OPCAT are directly applicable in Uruguayan law. The NHRI established a specific NPM unit in 2013 but the NPM does not have any additional legal basis. This unit was said to be separate from the NHRI’s reactive function but to need better institutional capacities.

In Nicaragua and Ecuador, where NPM units were created within the respective Ombudsman’s offices through a decision of the Executive, specific legislation developing the NPM functions and powers are currently being debated to create a more solid basis for the NPM. However, in Chile, where the NHRI was also designated as NPM through a decision of the Executive, this institution does not have any legal basis in relation to its NPM mandate.

Multidisciplinarity

The operational and preventive focus of the OPCAT means it is important to ensure the multidisciplinarity of the NPM, both in terms of its composition (different professional backgrounds within the

¹⁰ SPT, *Guidelines on national preventive mechanisms* (UN Doc CAT/OP/12/5), §32.

¹¹ For the full text of the legislation and any other NPM legislation, consult the [APT OPCAT database](#).

NPM) and its approach. The discussions highlighted that this is one of the main challenges facing NHRIs as NPMs in the region. It is worth highlighting that the participants reached the following conclusions:

- There was a clear recognition of the need for a multidisciplinary composition of the NPM. Some NPMs already have or are in the process of strengthening the multidisciplinary basis of their work.
- Resource constraints seem to be the main obstacle in ensuring multidisciplinary. Innovative and creative solutions have been tried out in several countries in order to achieve a stronger multidisciplinary approach, for example including volunteers as specialists for visits (in Nicaragua).
- The strongest need for additional expertise seems to be in relation to understanding and assessing the health care aspects of places of deprivation of liberty. This could be achieved either through members with a medical/psychiatric background or by relying on external experts.
- There is a need to integrate the respective knowledge of the different disciplines represented in the NPM into a fully transdisciplinary approach of the mechanism. Such an approach would allow the merging of the knowledge of the different disciplines, resulting, in particular, in a more complete understanding of the reality and the causes of torture and ill-treatment and of effective solutions to tackle them.

Interaction and cooperation with other actors, including civil society

From the discussions, it was clear that the relationship between NPMs and civil society organisations (NGOs in particular) varies in the different countries. In some countries, for example Uruguay, civil society was instrumental in the process of setting up the NHRI and the NPM. This is reflected in the NHRI law, which creates a forum for discussion between the NHRI and civil society (*Asamblea Nacional de Derechos Humanos*). In other countries (Mexico and Nicaragua), there is less or no cooperation between NPMs and NGOs. This is linked to the perceived lack of independence of the NPM. However, the discussion allowed some frank exchanges on this issue and some willingness to engage with each other in the future was shown on both sides. NGOs present expressed a strong interest to contribute

to the work of the mechanism – not only in the context of specific visits but also in shaping public policies and in raising awareness about the NPM recommendations and the need for their effective implementation (see section VI).

It was stressed that one of the crucial roles of civil society (NGOs but also academia) would be to supply expertise when the NPM lacks a multidisciplinary composition. The case of Chile, where there is a strong tradition of academic research on the situation in prisons, was mentioned as an example where cooperation with the future NPM could be developed.

Ways forward from the discussion ▶▶

- ⇒ States should ensure that all NPMs are established by a law which complies with the OPCAT, and create a separate unit or department within the NHRI to carry out the NPM function, in line with the SPT Guidelines.
- ⇒ States and NPMs should step up efforts to ensure multidisciplinary in the composition of the institution and transdisciplinarity of the working approach of NPMs.
- ⇒ Strengthen NPM interaction and cooperation with NGOs, e.g. by including a provision on cooperation within the NPM laws.

3. New specialised institutions as NPMs

The context

Bolivia, Guatemala, Honduras and Paraguay have opted for establishing new institutions as NPMs. In Panama, a consultative process, including civil society organisations, on the type of NPM is ongoing, with a specialised institution being the preferred option.

The establishment of new institutions as NPMs has – prima facie - the obvious advantage that the preventive focus and mandate can be guaranteed from the beginning. Furthermore, a broad consultation process among relevant actors can raise awareness and improve knowledge around the NPM's preventive mandate. However, there are also specific challenges that new institutions are faced with. The discussion was based on the following questions [identified in preparation for the session](#):

- How can appropriate **resources** be secured for a new institution?
- How is the **selection process** of the members conducted?
- As all the new institutions have a collegial structure, how can appropriate **processes of decision-making** and identity-formation be ensured?
- How does the new institution deal with the fact that it needs to **build up a public profile**, creating the credibility and legitimacy that are indispensable for an effective NPM work?
- How can the NPM work in **cooperation** with other actors, including international actors?

Financial resources

Most new, specialised NPMs face serious difficulties in securing sufficient financial resources to conduct their work. Even when a budget is assigned to the institution, the NPM often faces significant obstacles in accessing these funds. This is an issue that has also affected LPMs created as new institutions in Brazil and Argentina. The problem is more acute when the NPM budget is located within the executive branch, e.g. the general administration, although in some cases local mechanisms have also had difficulties accessing their assigned budget from the Legislative Assembly. In such cases, changing political contexts can have a strong influence on the resources of the NPM, raising concerns regarding the NPM's financial independence.

Participants recommended that the budget of newly established institutions be included within the regular annual budget of the State and, preferably, under the control of the Parliament rather than the Executive.

Selection of NPM members

Another issue that surfaced strongly in the discussions concerned the selection process of NPM members. The Paraguayan process is a clear example of good practice due to the active participation of a wide variety of actors (both from the State and from civil society) in the selection of the NPM members. However, in other countries no public and transparent process took place, a fact that has consequences for the public perception of the NPM.

Building the NPM public profile and legitimacy

Some participants suggested that “social audits” (*auditoría social*) should be undertaken on how NPMs are performing, contributing to a process of self-reflection and strengthening of their work. Such an audit could be done based on the SPT “*Analytical self-assessment tool for National Preventive Mechanisms*”.¹² Civil society would have an important part to play in such an audit.

The Paraguayan NPM provided a good example of how strategic thinking can be used to establish the NPM’s credibility and legitimacy in its initial phase of work. This body strategically chose to conduct its first visits to a care centre for children, based on the idea that the issue of the treatment of children might serve well to generate a sympathetic response from the general public towards its work.

Cooperation with civil society and with international actors

“Cooperation between civil society organisations and national preventive mechanisms should go beyond the context of visits, as NPMs have broader powers that allow them to promote structural reforms, including by proposing new legislation and public policies.” (Lucía Chávez, Mexican Commission for the Defence and Promotion of Human Rights)

In terms of cooperation with other relevant actors, positive examples can be highlighted regarding cooperation with civil society organisations, who are very closely integrated into the work of some mechanisms. In Honduras and Paraguay, the mechanisms have agreements with non-governmental organisations – a cooperation that has taken the form of participation of civil society experts in the NPM visits (in the case of Honduras, to tackle the lack of medical expertise of the NPM) but also of drafting of joint legislation on detention-related issues. In the case of Guatemala, civil society organisations can present candidates to be elected as members of the NPM Advisory Council.

¹² See SPT “*Analytical self-assessment tool for National Preventive Mechanisms*”.

The relationship between NPMs and international actors, in particular the role of the SPT in strengthening the work of new institutions as NPMs, figured prominently in the discussions. SPT members present in the working group stressed the need to get solid and detailed information about any relevant issue in order for it to be able to provide adequate support, either in the context of country visits or letters the SPT sends to the state authorities. In the case of Honduras, the positive and regular interaction between the SPT and the NPM -beyond the SPT visits- was highlighted. The participants also referred to the positive cooperation between the Honduran NPM and the Inter-American Commission on Human Rights, in preparation for the Commission's visit to that country, following a prison fire causing the death of 360 persons in February 2012.

Ways forward from the discussion ▶▶

- ⇒ States should make sure NPMs are granted adequate financial, material and human resources and can access them without obstacles.
- ⇒ States should include the budget of new specialised NPMs within the general state budget under the control of the Parliament.
- ⇒ NPMs should strengthen interaction and cooperation with other actors, including international bodies and NGOs.
- ⇒ NPMs should engage in a process of systematic evaluation of their work, guided by the SPT's "Analytical self-assessment tool for National Preventive Mechanisms".
- ⇒ Social audits should be undertaken of NPM work, with the involvement of civil society.

4. National preventive systems in federal states

The context

It is a particular challenge for federal states to set up national preventive mechanisms in line with the OPCAT. The challenges are of a legal, political and territorial nature. In Latin America, Argentina and Brazil have opted for the creation of a national system for the prevention of torture. These national systems consist of different institutions at the federal level and at the state or provincial level, which are either created specifically for this purpose or designated to form part of it. At the core of these national systems are the preventive mechanisms created at the federal level, supplemented by the local preventive mechanisms (see table in Annex III and APT OPCAT database for more information on the respective systems in Argentina and Brazil).

In both countries, the establishment of local preventive mechanisms preceded the establishment of the national mechanism. In Argentina, several laws establishing local preventive mechanisms were enacted and two mechanisms were already operational (Chaco and Rio Negro) when the national law was adopted at the end of 2012. In Brazil, five states had already enacted laws establishing an LPM and one LPM (Rio de Janeiro) was operational before the national law entered into force in mid-2013.

The discussions were based on the following questions, [identified in preparation for the session](#):

- How to ensure that all preventive mechanisms within the system are in line with the **OPCAT requirements**?
- What is the appropriate **division of competencies** and jurisdictions between the federal and the provincial/state levels?
- How can effective **coordination and cooperation** between the different parts of the national system be ensured?
- How to address the **slow processes** for setting up LPMs and the fact that, in several states, no such mechanisms have been established yet?
- How does **communication with the SPT** work in view of the fact that the national laws in Argentina and Brazil assign the task of communicating with this body to the National Preventive Mechanism?

Conformity of provincial or state laws establishing LPMs with OPCAT requirements

The discussions clearly highlighted the need to ensure that laws establishing Local Preventive Mechanisms are in line with OPCAT requirements. In Brazil, although the laws setting up these bodies, as well as their institutional affiliations (under the Executive or Legislature) vary, the structure of these bodies is similar as most follow the initial model proposed at the federal level (establishment of two bodies: a Committee and a Mechanism elected by the Committee). Proposals were made to elaborate guidelines on setting up LPMs, in order to guide policy makers at the state level. The National Committee for the Prevention and Combat of Torture - whose members were elected in July 2014 - would be the central actor in this regard and could elaborate the guidelines in an open dialogue with local actors and then lead the process of integrating the LPMs into the national system. According to the legislation creating the national system, this integration is not automatic but depends on the fulfilment of certain criteria to be established by the National Committee. Being integrated in the national system could give LPMs the possibility of getting federal funds to conduct their work.

The situation in Argentina represents a similar challenge in that several of the local preventive mechanisms are said not to be in line with the OPCAT requirements. The development of LPMs strongly followed a “local logic” without clear criteria and, often, without adequate resources. This is a potentially dangerous development. As one participant raised: “You kill the LPM before it is born”. Participants proposed that a model LPM law be elaborated - this could then be modified in the given local context. The future “Federal Council of LPMs” and the future National Mechanism for the Prevention of Torture will have a central role to play in promoting the establishment of local mechanisms in conformity with the OPCAT. The current difficulties lie in the fact that these national/federal bodies have not yet been set up.

Coordination and cooperation between NPMs and LPMs with a view to enhancing their impact

A clear need was expressed to ensure adequate coordination and cooperation between NPMs and LPMs. This is important both to avoid overlap and to ensure adequate coverage of places of deprivation of liberty in the light of limited resources.

A principle mentioned several times was that of subsidiarity, but conceived of in a dynamic and flexible way so as to be open to adaptation to new developments at the provincial or state level. Different forms of subsidiarity were discussed: the NPMs could, on the basis of an overall national strategy, select the places to be visited, depending on the work done by LPMs. Another form of subsidiarity could consist in the LPMs carrying out the bulk of the monitoring work, and the NPM adopting a more structural, political approach in developing strategies of implementation. This would back up the work of LPMs and have the potential of strengthening their impact. It was clearly expressed by participants that any rigid approach to subsidiarity would have to be avoided as this might have the consequence of limiting the impact of the work of the NPM.

Interaction with other actors, including the role of civil society

Participants stressed the important role that a wide variety of actors played in the fight against torture in the two countries, and that national and local preventive mechanisms should establish systematic relationships with them. This is particularly true for civil society organisations, which played a fundamental role in establishing the national and local preventive systems in both Argentina and Brazil.

Communication with the SPT

Although the national laws establishing NPMs assigned the task of communicating with the SPT to the national preventive mechanisms, participants stressed that this should not be understood as implying that communication between LPMs and the SPT was excluded. In fact, when the SPT visited Brazil, it closely worked with the Rio de Janeiro LPM, on a variety of issues.

Institutional design and financial independence of LPMs

As said above, some LPMs were said not to comply with OPCAT requirements. Specific points discussed were:

- The institutional designs of some mechanism put them under the control of the executive function, undermining their functional independence; and
- Linked to this, budgets of LPMs are often part of government budget and are not voted on by the respective parliamentary body.

Ways forward from the discussion ►►

- ⇒ The National Committee (in Brazil) and the future National Commission or Federal Council of Local Preventive Mechanisms (in Argentina) should define a strategy to ensure that LPMs are set up in accordance with the OPCAT requirements, which could include the publication of standards and guidelines, for the creation of LPMs, and/or the elaboration of a LPM “model law”.
- ⇒ Create a system of interaction and cooperation between the different parts of the national system of prevention, based on a well thought-out principle of subsidiarity.

5. Main common challenges for all types of NPMs and LPMs

In the three sessions focusing on different types of NPMs, cross-cutting challenges for all NPMs and LPMs were highlighted. These are briefly outlined here.

Adequate resources

Resource constraints emerged as one of the fundamental challenges of a crosscutting nature, with major consequence for other aspects of NPM work. The issue of resources covers two distinct aspects.

A lack of resources plagues many NPMs and LPMs in Latin America as the states do not grant them the necessary financial resources for them to operate properly, e.g. to fulfil their basic function of carrying out visits with a certain regularity. Some NPMs and, in particular, the LPMs, partly consist of volunteers or rely on volunteers to carry out the visits. Other mechanisms lack the resources for office space and travelling. In some countries, financial considerations are contributing to stalling the process of designating NPMs or making them operational.

“It is necessary to work with the SPT to guarantee the autonomy of NPMs in practice (...), in particular their financial autonomy and free access to, and management of, resources assigned by Parliament. This was a need expressed by NPMs in all countries of the region.” (Roque Orrego, NPM, Paraguay)

A further problem concerns the budgetary arrangement, decision-making process and location of the NPM's budget within the Executive function. This is an issue of particular concern in relation to new specialised institutions as NPMs and LPMs which has, as mentioned earlier, strong implications for the independence of the mechanism.

Independence

Ensuring the independence of NPMs constitutes another fundamental challenge which is relevant to all three types of NPMs. Discussion points included:

- Lack of financial independence;
- Lack of functional independence: the institutional designs of some preventive mechanism put them under control of the executive function; and
- Lack of independence of personnel: some preventive mechanisms include governmental officials or members directly appointed by the executive.

IV. Challenges for NPMs in fulfilling the OPCAT mandate



1. Understanding the preventive approach to fighting torture

“The regular visits are an element of prevention as such, if they are not announced and carried out in a systematic manner. However, according to the OPCAT, the visits do not only serve this purpose. They serve to get specific knowledge of the conditions which make torture and ill-treatment possible; some of them are situation-specific, some are systemic or deeply structural.” (Enrique Font, SPT)

The challenge faced by NPMs and LPMs in adopting a preventive approach to fighting torture was the subject of a specific discussion during the working meeting on day three of the Regional Forum. This topic also came up during the conference on days one and two. The debate can be summarised under three headings.

The concept of prevention

There was agreement that preventing torture necessarily means adopting a broad and systemic view and that this implies thoroughly examining the whole range of factors that might be conducive to torture. Such an endeavour would be directed at all relevant areas and levels that have a bearing on the occurrence of torture, including a situation of impunity as a systemic factor, problematic public policies and deficient legislation. The suggestion was made that the prevention of torture might involve concentrating on three variables in a holistic way: the victim, the perpetrator and the system. In order to effectively work on prevention, there is a need to define with some specificity what factors produce which result and which actors must be involved in order to be able to effectively change an undesirable situation. It was also noted that such an approach required an appropriate selection of NPM members and capacity-building measures for the NPM to effectively implement such a broad approach.

Preventive monitoring and dealing with individual cases

One of the fundamental practical challenges in this regard is the question of how to deal with individual cases of torture or ill-treatment in the context of preventive visits. This was the object of an intensive debate, surfacing throughout the Regional Forum's proceedings. As one participant put it, "it is impossible not to get knowledge of individual cases": an appropriate way of dealing with individual cases is thus needed. It was the general understanding that individual cases constitute important indicators for existing structural causes which allow torture to occur and that pertinent risk factors and risk areas should be identified. However, NPMs are not best placed to investigate and resolve the individual case.

It is therefore essential for NPMs to establish appropriate modalities of collaboration with other actors, in order to deal with individual cases. When NPMs are set up as part of an NHRI, individual cases can be referred to the complaints section of the NHRI for further action. Specialised NPM institutions can refer cases directly to the Ombudsperson or the public prosecution. However, such a view did not remain undisputed by some participants, in particular from civil society organisations but also by members of some mechanisms, which argued that at least strategic litigation regarding individual cases should be part of the preventive approach.

There was a common understanding that preventive work involves working on and with the public prosecution and the judiciary, which were said to lack the awareness and technical skills for dealing with torture cases. Concrete suggestions in this regard included:

- Pushing for the creation of a separate unit of the public prosecution with the task of dealing specifically with cases of torture;
- Raising awareness about the Istanbul Protocol¹³ and proposing and/or organising capacity-building measures for public prosecutors and the judiciary, including the judges supervising the proceedings (*juez de garantía*), public defenders, and prison doctors; and
- Building up a register of cases related to torture and ill-treatment brought before domestic courts.

¹³ [Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.](#)

“We don’t know how to get access to centers for drug addicts and to so-called “de-homosexualisation” clinics where conditions of detention are very serious. The challenge ahead of us is that these places are, in general, illegal and privately-run and are thus not monitored.”

(María del Cisne Ojeda, NPM, Ecuador)

Prevention beyond visits

It is generally agreed that NPM or LPM visits as such have a deterrent effect. However, for preventive monitoring to be fully effective, these mechanisms have to go beyond mere visits and could undertake the following additional activities:

- To look at and try to influence public policies that are, in a broad sense, relevant to their mandate. This fundamental task depends on the country context, but may include, among others, crime fighting policies and policies on mental health. They might also include social policies where these are relevant to the occurrence of torture, e.g. the criminalisation of poverty.
- To advocate for appropriate capacity-building measures as part of an overall preventive approach. Such capacity-building should be targeted at a variety of relevant actors, including staff of (psychiatric) hospitals, the public prosecution, judiciary, public defender’s office, prison staff and the police.
- To seek institutional agreements with different authorities with a view to implementing necessary action for the prevention of torture.

Ways forward from the discussion ▶▶

- ⇒ NPMs and LPMs should develop working definitions of torture prevention and engage with a wide variety of relevant actors in order to influence policy and action with a view to prevent torture.
- ⇒ The SPT should contribute to further developing a working definition of torture prevention, to facilitate a shared understanding among all actors of what it means in practice.¹⁴

¹⁴ SPT, *The concept of prevention* (UN Doc CAT/OP/12/6).

2. Fulfilling the broad scope of the mandate

Under the OPCAT, NPMs are expected to monitor a broad variety of places where persons are deprived of their liberty, ranging from traditional places such as prisons and police stations to centres for juveniles and psychiatric institutions. The challenge this poses was specifically discussed at the working meeting on day three of the Regional Forum.

Current state of affairs

The discussion made it clear that, thus far, no NPM in the region has been able to cover the broad scope of places of deprivation of liberty provided for in the OPCAT. Some mechanisms reported a gradual expansion of their work to cover less traditional places of deprivation of liberty, other than prisons and police detention centres, or decided to focus initially on such places. In the case of Uruguay, the NPM has been monitoring facilities where children and adolescents in conflict with the law are being detained as well as the conditions and treatment in social care homes for juveniles. Also, in recognition of their vulnerability, the Guatemalan NPM has started visiting homes for elderly persons.

“One of the main challenges for us is the monitoring of psychiatric hospitals. We have no experience in monitoring those places. We therefore need training and the support of other mechanisms on how to monitor them.”

(Álvaro Osorio, NPM, Nicaragua)

The following non-traditional places of detention were highlighted as posing challenges for monitoring, among others: psychiatric hospitals, facilities for persons with disabilities, police buses (to which the Chilean National Human Rights Institute had been successful in gaining access), privately-run detention centres for migrants (in Patagonia), non-authorised privately-run clinics (in Ecuador), and military centres (in Paraguay). Also monitoring of short-term police detention (e.g. in the context of social protest) and of police raids is a difficult task.

The obstacles to a full coverage of places of deprivation of liberty that fall under the NPM's mandate are linked to the following factors:

- Lack of adequate financial and personal resources for doing so, given the sheer amount of relevant institutions;
- Lack of expert members to form part of the visiting team (either as member of NPM or externally recruited);
- Lack of technical knowledge and skills on the part of the NPMs to do professional monitoring in different institutions which are partly difficult to monitor;
- Lack of appropriate psychiatric expertise for monitoring psychiatric hospitals;
- Lack of awareness and/or information on the part of NPM members about the fact that specific problems exist in certain institutions that are within the scope of the NPM mandate; and
- Lack of adequate planning and strategy within the NPM.

“In the context of our broad mandate (under art. 4 of the OPCAT), we have tried to face reality and gradually cover more places where we need to intervene. We have begun with the juvenile justice system and are now starting work in the context of the system of protection for children and adolescents whose rights are abused.”

(Alvaro Colistro, NPM, Uruguay)

Ways forward from the discussion ▶

- ⇒ NPMs should include the issue of how to cover the broad scope of the mandate systematically in their strategy and planning process: regarding the selection of places to be visited, composition of the visiting team, choice of interlocutors (during the visit, but also outside of it, e.g. in the case of short term detention). An analysis of existing problems/vulnerabilities can provide a useful criterion and starting point for developing these strategies.
- ⇒ NPMs should undertake capacity-building measures for NPM members, aimed at developing the necessary technical skills

and knowledge about the characteristics of non-traditional institutions.

- ⇒ NPMs should closely work in cooperation with other actors (civil society, universities, etc.) to supply the necessary knowledge and technical skills, inter alia by having external experts participating in NPM visits.

V. Vulnerabilities in detention- What can preventive mechanisms do to protect groups in situations of vulnerability?



1. Introduction

“The prison increases and deepens the inequalities and discriminatory mechanisms that exist extramuros.”

(Ana Juanche, SERPAJ, Uruguay)

All persons deprived of their liberty are vulnerable because of the imbalance of power created by detention itself. But some people find themselves in situations of specific vulnerability in detention—often because of the social context and of their status in society.

There is no exhaustive list of groups of persons in situations of vulnerability as this depends very much on the specific context. However, the following groups regularly find themselves in a situation of vulnerability: children and adolescents, women, persons with disabilities, LGBTI persons, migrants, indigenous persons, and persons with mental health problems.

Awareness about the relevance of vulnerability in detention is increasing, and international and regional organisations and human rights monitoring bodies have started to address these concerns by putting forth specific standards regarding the protection of certain groups of people.

In a systemic approach to preventive monitoring, it is useful to distinguish the following categories of risk factors:

- Personal factors: age, sex, level of education, ethnicity, physical/mental health, legal situation, economic dependency, lack of family ties, past or present trauma;
- Contextual factors: attitudes of personnel in charge of supervising deprivation of liberty, environment of deprivation of liberty, overcrowding, ratio staff/detainees, attitude of persons deprived of liberty, access to legal, social and health services; and
- Socio-cultural factors: attitude of society and media towards persons deprived of liberty, societal stigma and prejudice towards certain groups, social exclusion or invisibility.

Against this background, the goal of this session was to discuss the situation of selected groups or persons in situations of vulnerability and to:

- Analyse their specific situation;
- Identify factors of risk they face;
- Identify good practice in relation to treatment and conditions in detention; and
- Discuss particular challenges of monitoring NPMs face.

2. Women

“One of the main problems identified is the fact that we apply the same general model to all persons deprived of their liberty and we don’t give assistance based on the real and concrete person we have in front of us. (...) It is fundamental to break the men-centered approach that prevails in prisons and the use of the same regulations in all detention facilities. It is not the same to handle a prison for men, for women or a center for minors.” (Guillermo Arroyo, ILANUD)

Background

In order to understand the situation of women in detention, it is necessary to keep in mind the historical patterns of discrimination against women and male domination, which find expression in and are perpetuated by violence against women, among others. The situation within places of detention is a reflection of the situation outside of detention. Furthermore, it has to be taken into account that prisons have traditionally been built by men for men. They are therefore shaped by a clearly male vision of the world. These structural conditions tend to aggravate, from the very outset, the situation of women in detention. The UN Bangkok Rules (2010)¹⁵ recognise the distinct gender-specific needs of women in detention, introduce safeguards in response to risks women face of ill-treatment and torture, and propose alternatives to incarceration.

Against this backdrop, discussions were based on the following issues [identified in preparation for the session](#):

¹⁵ [United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders \(the Bangkok Rules\)](#), UN GA Resolution 2010/16.

- The deficient infrastructure of prisons for meeting the needs of women;
- The inadequate provision for gender specific hygiene, sexual and reproductive healthcare;
- The lack of adequate treatment of women who were victims of violence or are drug or substance dependent;
- The lack of involvement of women in decision-making regarding deprivation of liberty; and
- Inadequate understanding of the consequences that deprivation of liberty has for women, their children and society at large.

The situation of women in detention in Latin America

The profile of women in prison in Latin America as it emerged from the discussion can be described as follows: It is a relatively young population, coming mostly from the poorer segments of society. Almost all women in prisons have been victims of violence, often of sexual violence. The majority of these women have been sentenced for drug-related crimes, often in connection with the action of their partners. Some are sentenced for homicides, in particular in reaction to previous violence against them. Many women in prison have a problem of drug dependency, due to several factors. Suicides of women in prisons are common.

The following contextual factors were mentioned as background to the situation of women in detention in the region: the "war on drugs" has led, in recent years, to an increase of imprisonment of women, e.g. with the percentage of detained women in Brazil rising from 5% to 7% in the whole territory, and to 10% in the states having borders with other countries. Situations of poverty and violence against women are fundamental factors that need to be taken into account when analysing their situation and vulnerability. There was general agreement that social policies for women have been replaced by criminal policies against women throughout the region. Also, the male perspective undergirding the whole criminal justice system was seen to be relevant, and that this bias received too little attention.

Participants stressed the need for states and society to forcefully address the presence of women in prison. As a participant put it: *"The State does not know what to do with them"*. Women and their specific needs tend to be invisible in prison, but even more

so in other centres of deprivation of liberty, such as immigration detention centres and psychiatric hospitals. It was clear that this problem existed in the whole Latin American region.

In prison, women are treated as “annexes”, e.g. they are held in buildings next to men’s buildings or in former prisons for men, after male detainees were transferred to newer places. In this way, spaces for women in prisons are more limited than the ones for men. In some countries, like Nicaragua, women are often held in police buildings which are even less adequate for meeting their needs. Gender stereotyping is pervasive and excludes women from accessing services and activities.

The special needs of women in detention with regard to hygiene and health care are often ignored. This neglect in turn leads to more violence against women and also situations of sexual blackmailing by the very authorities they are entrusted to. This system, it was said, promotes prostitution.

Some women face multiple vulnerabilities, for example those belonging to indigenous groups, lesbians, juveniles or women with disabilities. Foreign women prisoners are particularly affected by detention because of the lack of family ties and the fact that repatriation of women to their home countries is seldom practiced.

There is a lack of understanding and sensitivity with regard to the situation of women and children held in detention. As there is no public policy in this regard in many countries, children are simply held with their mothers, and the fate of children leaving the prison upon reaching the age limit remains unknown.

Body searches of women and their family members often are degrading and negatively impact on the quality of the visits women receive. The same is true for limitations on intimate visits. One of the reasons for this limitation is the fear of authorities that women will get pregnant. The practice was reported to oblige women to take contraceptives violating their right to privacy.

There are very few examples of good practice. One of these is the activities promoted by the Guatemalan NGO Casa Artesana, which has presented a criminal policy with a specific gender focus to the government as well as a specific protocol for women in detention. Furthermore it has established a model for implementing the UN Bangkok Rules.

The role of monitoring bodies

The gender aspect is not yet taken into account in a systematic manner by monitoring bodies in the region, which often remain silent on women's issues. The reasons for this were said to include: the absence of a gender-sensitive perspective and approach in NPM work; and a lack of understanding of the needs of women in detention and of specific capacity-building. Links with universities and specialised NGOs in this field are not yet fully developed (see below).

Ways forward from the discussion ►►

Participants stressed the necessity to take a broad perspective when looking for ways to improve the situation of women in detention:

- ⇒ State authorities should systematically include a gender perspective in shaping public criminal and social policies, taking into account the connection between poverty and detention of women.
- ⇒ As the situation is similar across the region, regional guidelines on women in detention could be developed by NPMs together with regional and international actors. These guidelines could then be implemented by each country. All relevant actors, including NPMs, should forcefully address the risks faced by women in prison and develop policies to pay systematic attention to the specific needs of women in detention, as well as adopt legislation on alternatives to detention, in accordance with the UN Bangkok Rules.
- ⇒ Professional education and training offered in prisons should be systematically offered to women, without any discrimination.
- ⇒ NPMs and LPMs should include a systematic gender perspective in their work. This includes, among other things: ensuring adequate representation of women in NPMs and LPMs; adopting gender-sensitive approaches to, and methodologies for, monitoring; and building the capacity of NPM and LPM members in this field.¹⁶

¹⁶ See APT/PRI, *Women in detention: a guide to gender-sensitive monitoring*, 2013.

- ⇒ NPMs and LPMs should liaise with universities and NGOs working on the human rights of women, in particular with those specialised in reproductive health and the treatment of HIV infected persons. Such links could be used for building the capacities of monitoring body members as well as for developing sound strategies to tackle the problems encountered.

Additional readings

- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).
- APT/PRI, *Women in detention: a guide to gender-sensitive monitoring* (2013).

3. LGBTI persons

“What is happening is that, not only in Brazil, but globally, we continue to be caught in the man/woman binarism, in that a prison is either for men or for women and that no other models fit. As a consequence, the State does not anticipate or perceive the aggression it can represent to treat persons who are different as if they were the same. The consequence is that persons are exposed, in a closed and invisible setting, to the same moral harassment, lack of respect, prejudices and discrimination that they suffer in society.”

(Luciano Mariz Maia, Deputy Ombudsman, Federal Ombudsman’s Office for Citizens’ Rights, Brazil)

Background

LGBTI is an acronym used for Lesbian, Gay, Bisexual, Transgender and Intersex persons. The terms lesbian, gay and bisexual can be understood through the prism of sexual orientation. According to the preamble of the Yogyakarta Principles, sexual orientation

is understood to refer to *"each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender."*¹⁷

Transgender and intersex, by comparison, can be analysed through the prism of gender identity, understood by the Yogyakarta Principles *"to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms."*¹⁸

In most societies in the region, prevailing discriminatory attitudes negatively affect LGBTI persons. Homophobic and transphobic discrimination in the community is reproduced and magnified inside places of detention. This may include acts of violence against LGBTI persons, especially in prisons, which tend to be dominated by a "macho" culture and stereotypes regarding minorities. There is also strong discrimination against LGBTI persons by the police and in judicial proceedings.

A social perspective focusing on the exclusivity of the categorisation "women - men" constitutes one of the main structural problems contributing to the invisibility of LGBTI persons in prison, where there is a generalised stigma attached to LGBTI persons.

The following issues faced by LGBTI persons in places of detention were [identified in preparing this session](#) and constituted the basis for the discussions:

- The invisibility of the needs of LGBTI persons in prisons;
- Discrimination and stigmatisation;
- A higher exposure of LGBTI persons to torture and other cruel, inhuman and degrading treatment; and
- Deficient sanitary and medical attention to LGBTI persons, especially transgender detainees.

¹⁷ [Yogyakarta Principles](#) on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

¹⁸ Preamble, [Yogyakarta Principles](#).

The situation of LGBTI persons in detention in Latin America

Participants observed that LGBTI persons are often held in the unhealthiest parts of detention centres and are often relegated to particular places within them, with very little possibility of accessing basic services and participating in what are already limited activities within places of detention. They tend to be, as one discussant put it, “confined within confinement”. Cases of violence against LGBTI persons in prison were reported from several countries, and LGBTI juveniles were said to find themselves in a situation of high vulnerability in Uruguay. Conjugal/intimate visits are often denied on a discriminatory basis, and the specific health needs of LGBTI persons neglected.

In some countries (e.g. Ecuador), recent progress led to the adoption of laws which prohibit discrimination on the ground of sexual orientation. Furthermore, there is a growing movement in the country calling for the abolition of privately-run (and often illegal) rehabilitation centres for drug users, which in addition provide “therapies” aimed at “de-homosexualisation” of patients.

The following crucial dilemma figured prominently in the discussion: how to ensure the protection of LGBTI persons against violence by other detainees while avoiding their excessive separation and isolation? In other words: how to deal with the basic tension between the principles of non-discrimination and participation on the one hand and the right to life and physical integrity on the other. This dilemma characterises the situation across the region. In some places of detention in Brazil, there were no reported problems in integrating LGBTI persons with the rest of the prison population, while in others serious difficulties exist. A recent joint resolution of the Presidency of the Republic’s National Council to Combat Discrimination and National Council on Criminal and Penitentiary Policy in Brazil recommends that the possibility of hosting LGBTI persons in separate units be offered, as well as the possibility of allocating transgender women (who are particularly exposed to violence as they are sometimes perceived as sex workers) – in female facilities.

Systematically segregating LGBTI detainees should be avoided and solutions found on a case-by-case basis, always taking into account the detainee’s wishes. Generally speaking, the lack of clear standards regarding the rights of LGBTI persons in contexts of deprivation of liberty is problematic. Monitoring bodies need guidance to be able to

identify what constitutes good practice and appropriately tackle the issues they observe.

The role of monitoring bodies

Monitoring the rights of LGBTI persons has not yet been a focus of detention monitoring at the national level in Latin America. Several interrelated issues were mentioned in this regard:

- There is a lack of awareness on the part of monitoring bodies, which perpetuates the invisibility of LGBTI persons.
- Few monitoring bodies include LGBTI members or members with relevant expertise on the specific needs of LGBTI persons. The LPM in the Brazilian State of Pernambuco constitutes a rare example of good practice in this regard.
- The lack of clear international standards with regard to meeting the needs of LGBTI persons in places of detention and upholding their rights complicates monitoring.

SPT members reported that LGBTI rights were already part of the monitoring approach of the SPT, and that the SPT will elaborate a document on monitoring the situation of LGBTI persons deprived of their liberty.

The IACHR reported that it had started to elaborate elements regarding the rights of LGBTI persons deprived of their liberty in the context of a country visit. These include: allowing of conjugal visits from partners, no prohibition of, or obstacles to, the expression of gender identity, no disciplinary sanctions for expressions of affection among persons of same sex, in particular, lesbians, lack of representation, no assumptions about what is good or not for LGBTI detainees (active participation in decision-making and informed consent about decisions such as allocation in male/female units for transgender detainees), no conflation of LGBTI persons and persons with HIV/AIDS, and no exclusion from access to recreational and labour programs.¹⁹

¹⁹ See IACHR, *Verdad, justicia y reparación : Cuarto informe sobre la situación de derechos humanos en Colombia* (in Spanish only), pp. 444-445.

Ways forward from the discussion ▶

Several suggestions were made with regard to improving the situation of LGBTI persons in detention:

- ⇒ All relevant actors, including NPMs, should address the presence of LGBTI persons in prison and develop policies to pay systematic attention to their specific needs.
- ⇒ Prison authorities should carry out awareness raising and training programs for prison personnel on the needs and rights of LGBTI persons.
- ⇒ NPMs and LPMs should work on relevant public policies regarding LGBTI persons. This should include work on changing the legal framework (decriminalisation of homosexuality, creation of non-discrimination laws on the ground of sexual orientation) as well as combating discriminatory socio-cultural patterns.
- ⇒ NPM and LPM members should be trained explicitly on how to monitor the situation of LGBTI persons.
- ⇒ NPMs and LPMs should strive to include LGBTI persons or persons who have a specific expertise in these matters in their monitoring team.
- ⇒ The Rapporteurships on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons and on the Rights of Persons Deprived of Liberty of the IACHR should take joint action on this issue, including by developing international standards on the rights of LGBTI persons deprived of liberty.

Additional readings

- [Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity](#).
- APT/PRI, *LGBTI persons deprived of their liberty: a framework for preventive monitoring* (2013).

4. Indigenous Peoples

Background

“We need to be particularly cautious with regards to the situation of indigenous persons when visiting detention facilities, as the administration often ignores them and they are, therefore, made invisible. Guards often portray them as “well behaved” but we need to look beyond this and pay extra attention to their conditions, for example, if they receive enough food, as everyone usually forgets about them.”
(Roger Viquez, NPM, Costa Rica)

ILO Convention N°169 (Indigenous and Tribal Peoples Convention) applies to peoples *“who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”*. (art. 1)

The colonial past of Latin America was characterised by systematic human rights violations, including racism and discrimination, against indigenous peoples. This past is still present in the legal, political and social realms as well as in the mind-set and attitudes of people in Latin American societies today. Public institutions such as prisons are no exception to this, with a number of serious consequences for indigenous persons who find themselves in prison. In case of indigenous women, a double vulnerability exists.

The main structural issue is the fact that the very institution of a prison is alien to most indigenous cultures and that these institutions are not designed in light of the needs of indigenous peoples. In its 6th annual report, the SPT expressed this fact in the following way: *“Custodial sentences, which the State justice system usually imposes in criminal cases, are barely used in the indigenous justice system, as community ties determine the structure of the individual and collective identity of community members, and imprisonment directly undermines these ties. For many indigenous persons,*

imprisonment constitutes cruel, inhuman and degrading treatment and even a form of torture."²⁰

Against this general backdrop, the following issues were **identified in preparation for the session** and constituted the basis for the discussions:

- The lack of information available for indigenous persons in their own language;
- Segregation and institutional violence against indigenous persons;
- A lack of respect for their culture and world-vision; and
- The long distances between places of deprivation of liberty and their communities and families.

The national justice system and indigenous justice system, including rights in criminal proceedings

The relationship between the national and indigenous justice systems and thus the concept of (legal) ‘interculturality’ was an important part of the discussion. Reference was frequently made to ILO Convention N°169, which contains relevant standards in this regard (articles 8–10), including: the right of indigenous peoples to retain their own customs and institutions, and that the methods customarily practiced for dealing with offences committed by their members shall be respected, if they are not incompatible with human rights. In criminal proceedings, their customs and characteristics shall be taken into consideration, and preference shall be given to methods of punishment other than confinement in prison.

Paraguay was mentioned as an example of good practice of ‘interculturality’, where customary institutions deal with criminal cases involving indigenous persons. In cases that are referred to the state judiciary, customary law has to be taken into account and an expert on indigenous culture has to be involved in the proceedings. Indigenous justice is also recognised, among others, in Bolivia – at the same level as the national justice system – and in Ecuador.

Several concrete examples regarding the integration of indigenous customs in the judicial proceedings were mentioned. In Peru, the

²⁰ SPT, [6th Annual Report](#) (UN Doc CAT/C/50/2), §93.

legal concept of “culturally conditioned comprehension error“ (*error de comprensión culturalmente condicionado*) is applicable as a ground for exemption from punishment. In Brazil, anthropological expert opinions can be used in proceedings against indigenous defendants, but such an expert opinion was said to be rarely used, resulting in a generally poor understanding of indigenous customs in judicial proceedings.

In most countries, problems of language and interpretation in police and court settings were said to exist. This leads to a range of difficulties for indigenous persons, including that in some cases they do not understand the reasons for their detention.

The Institution of the Public Defender for Indigenous Peoples in Chile represents an example of good practice. Another one is a project in some states of Mexico to register indigenous languages with a view to finding the right interpreters for indigenous persons in court proceedings.

Finally, implementation of article 10 of ILO Convention N°169 regarding preference of other forms of punishment than confinement for indigenous defendants was said to be deficient in most countries of the region which have ratified the Convention.²¹

The situation of indigenous persons in detention in Latin America

Indigenous prisoners commonly experience a lack of appropriate information about their rights and a lack of interpreters in prison. It was said that in some countries (e.g. Panama), the use of their native language is prohibited in prison, and this prohibition is justified on security grounds.

Long distances between places of detention and their communities are aggravated by the fact that costs of transportation are often not affordable for family members. This is the case, for example, in a rural region of Nicaragua - which was referred to in the discussion - where indigenous persons are either detained in police cells in their area or transferred to prisons in other parts of the country where their language is not spoken and family visits are nearly impossible to arrange.

²¹ The following states represented at the Regional Forum are parties to the ILO Convention N°169: Argentina, Bolivia, Brazil, Chile, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru.

Further points of discussion included:

- The impact of detention on indigenous persons is particularly grave in view of the fact that ties to their land, which are of fundamental importance to them, are severed.
- Prevailing racism and discriminatory attitudes towards indigenous peoples were seen as aggravating factors.
- In Chile, the practice of taking the DNA of indigenous detainees was reported as a strongly felt interference with their right to privacy because of its fundamental contradiction to their world-view.
- In the big cities of Mexico, indigenous persons belong to street communities and are often taken to, and held in, private institutions for treatment against drug addiction.

The relationship between customary justice and the prevention of torture

The relationship between customary justice and the prevention of torture was also discussed. Cases of lynching or burying indigenous couples alive for having committed adultery were reported from Bolivia. Traditional forms of punishment, including the death penalty, raise serious questions with regard to the compatibility of customary practices with human rights, in particular the human rights of women, highlighting the limits of acceptance of indigenous justice in the light of ILO Convention N°169. In Chile, a proposal from the Public Defender for Indigenous Peoples, to deal with cases of domestic violence on the basis of customary law, was met with resistance by women's rights organisations.

The SPT pointed to the need to distinguish acts of torture and other forms of ill-treatment from practices which are, according to the world views of indigenous peoples, forms of spiritual purification and healing for transgressors. According to the SPT, such practices, including ice-cold baths or the use of stinging nettles, constitute "lawful sanctions" and not torture for the purposes of article 1 of the UN Convention Against Torture.²²

²² Ibid., §91.

The role of monitoring bodies

With regard to the inclusion of indigenous peoples and their perspective in the establishment and work of NPMs, the following points were raised:

- Consultation on NPM designation and establishment processes: under article 6 of ILO Convention N°169, indigenous peoples have to be consulted in the process of setting up of NPMs. It is not clear whether this has been done in practice in the region.
- Representation of indigenous peoples in NPMs and LPMs: there was no consensus as to whether representatives of indigenous peoples should be part of these bodies. Including them would clearly enhance awareness and knowledge regarding indigenous peoples among the members of the monitoring mechanism, as is the case of the LPM of the Argentinean province of Chaco which has an indigenous member. On the other hand, some participants were of the opinion that this would be an assimilationist approach.
- Communication in indigenous languages: in Honduras, the NPM organised translation of the texts of CAT and OPCAT into two indigenous languages. In Paraguay, the NPM has been receiving training through the Secretariat on Language Policies to increase its capacity to communicate in Guarani.

Ways forward from the discussion ▶

- ⇒ States should systematically implement international standards with regard to the rights of indigenous persons in the context of criminal justice and detention. In doing so, they should take heed of the guidance provided by the SPT in its 6th Annual report.²³
- ⇒ NPMs and LPMs should make sure to either include indigenous persons or persons having relevant expertise in their composition.
- ⇒ NPMs and LPMs should embark on the issue of the rights of indigenous peoples more forcefully and should use their power to promote structural changes in public policies, including legislative reforms.
- ⇒ During visits, NPMs and LPMs should analyse the specific needs of indigenous detainees. This would include adequate information about their rights, use of language, family ties, food and clothing.
- ⇒ NPMs and LPMs need to pay particular attention to whether the rights of indigenous defendants have been upheld during the court proceedings, including by studying the files.

Additional readings

- SPT, [6th Annual Report](#), UN Doc CAT/C/50/2, section V.B. on “Indigenous justice and the prevention of torture”.

²³ Ibidem.

5. Persons with mental health problems

“As monitors, we ourselves need to overcome prejudices (regarding a person deprived of liberty in a psychiatric center) and give value to the words of this person as a victim of human rights violations, beyond his or her psychiatric situation. If we can’t overcome this prejudice when we address this issue, we will never be able to adequately monitor it.”

(Mario Bosch, LPM, Province of Chaco, Argentina)

Background

Persons with mental health problems may be subjected to deprivation of liberty in specialised institutions only *“as a measure of last resort, and solely when there is serious likelihood of immediate or imminent harm to that person or to others. The mere existence of a disability shall in no case justify a deprivation of liberty”*. (Principle III, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas).²⁴ Such an approach requires states to adopt special measures aimed at gradual de-institutionalisation and creation of alternative service models.

The following issues were [identified in preparing this session](#) and constituted the basis for discussions:

- Deprivation of liberty in a specialised institution without a judicial order or the consent of the person affected;
- Types of treatment, including measures of restraint, that carry a risk of ill-treatment;
- The use of isolation without proper procedures or control;
- The use of experiments and medical treatment without consent;
- Precarious living conditions in specialised institutions;
- The absence of meaningful activities in such institutions;
- Excessive use of medication; and
- Problems of lack of credibility of persons with mental health problems in cases of allegations of ill-treatment.

²⁴ IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*.

The working group discussions referred to the above mentioned issues but also included the plight of prisoners with mental health problems, taking into account the diverse links between the prison sector and psychiatric institutions and that persons with mental health problems constitute a growing portion of the prison population.

The situation of persons with mental health problems deprived of their liberty

The de-institutionalisation of persons with mental health problems has not yet been satisfactorily implemented and is rather a very slow process across the region. This is accompanied by a reported lack of judicial control of deprivation of liberty of persons with mental health problems in many countries. A new law on mental health in Argentina, based on the UN Convention on the Rights of Persons with Disabilities, marks a positive development, also by creating a special mechanism within the Office of the General Public Defender (*Defensoría General de la Nación*), which monitors cases of involuntary deprivation of liberty.

Material conditions in psychiatric hospitals were said to be bad throughout the region, with explicit examples adduced from Mexico and Honduras, and abusive treatment of patients pervasive in the form of physical abuse as well as misuse of medication.

The practice of holding drug dependent persons in private institutions in Ecuador was reported. The conditions in these illegal centres are said to be very poor.

In Brazil and in Mexico, there is a particularly worrying trend towards the criminalisation of people with mental health problems, and the ideology of “*peligrosismo*” (exaggerated emphasis on danger) is used to justify the deprivation of liberty. Such situations show the real need to look into questions of public policies with regard to mental health in detention.

Criminal offenders with mental health problems

The treatment of persons having committed criminal offenses without being criminally liable on the basis of a mental disorder figured prominently in the discussion. Situations of indefinite detention in such cases were reported from Argentina and Costa Rica. This

problem raises substantive issues of the legality of deprivation of liberty and it constitutes a challenge for monitoring bodies. Participants expressed a need to establish clear legal criteria for the deprivation of liberty and strict time lines in this regard as well as the need to mobilise family and/or other social networks to facilitate the reinsertion of the person into society. Such a combination of measures should contribute to avoiding protracted detention of persons who have often committed only minor offences.

The following issues regarding the situation of persons with mental health problems in prisons were mentioned:

- The subordination of medical concerns to security considerations is a problematic structural feature of the treatment of offenders with mental health problems. This leads to decisions that do not respect the right to health of this group of persons.
- Physical abuse against persons with mental health problems. In the case of Honduras, it was said to be practiced in all prisons.
- Medical care for detainees who enter with or have developed mental problems in detention is inadequate, also because of a lack of psychiatric care services in the prisons of most countries.

The role of monitoring bodies

From the discussions, it appeared that NPMs across the Latin American region have yet to embark on monitoring of psychiatric institutions in a systematic way. This is partly due to the fact that many NPMs in Latin America, in particular the “younger” ones, have not developed the capacity to monitor these types of places yet.

However, some longer-established NPMs, like those in Mexico and Costa Rica, have been monitoring psychiatric institutions. The more recent NPMs of Uruguay and Ecuador have also conducted visits to such facilities.

It was stressed that there are specific challenges in monitoring psychiatric institutions, including:

- Ensuring the adequate composition of the monitoring team, which should include a psychiatrist or at least a medical doctor;
- Difficulties in evaluating the appropriateness of medication in the context of a visit;

- Difficulties in evaluating the proportionality of use of physical force or instruments of restraint;
- The time-consuming nature of a careful study of the relevant medical documentation;
- Cooperation with other institutions, civil society, universities and groups of family members of patients is not yet adequately developed; and
- Difficulties in accessing illegal private institutions where deprivation of liberty is practiced.

Ways forward from the discussion ▶▶

- ⇒ All actors should contribute to developing public policies with regard to mental health in detention, which are in line with a human rights based approach, including towards de-institutionalisation of persons with mental health problems.
- ⇒ States have to establish clear legal criteria for the deprivation of liberty of persons with mental health problems and effective judicial control, in line with the IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.
- ⇒ States should establish clear criteria and time lines regarding the detention of persons having committed offenses without being criminally liable, as well as support links with families and social networks to facilitate re-integration into the community.
- ⇒ Monitoring mechanisms should ensure that the composition of the visiting teams includes the relevant expertise, that they develop an appropriate monitoring methodology and undertake the necessary capacity building measures.
- ⇒ Monitoring mechanisms should systematically develop cooperation with government institutions, civil society, universities and groups of family members of patients.

VI. Enhancing the impact of NPM work



1. The litmus test: impact

An essential element of the monitoring process involves presenting findings in a clear and convincing way and issuing pertinent recommendations to the state actors which can implement them. This is envisioned in the OPCAT, which stipulates the power of NPMs *“to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations”* (art. 19 (b)) and *“to submit proposals and observations concerning existing or draft legislation”* (art. 19 (c)).

“What we discuss here is nothing new. The whole international system of human rights protection works with recommendations. We have to search for creative and strategic ways to get our recommendations implemented. And we have to look for political means rather than only judicial ones. Renouncing our tenacity in doing so is simply no alternative”. (Roberto Garretón, Chile)

One of the main challenges faced by torture prevention mechanisms is ensuring that their recommendations are implemented and lead to real changes in the practice of deprivation of liberty. Impact obviously constitutes the litmus test of the work of monitoring bodies. As a representative from the Argentinean Ombudsman's Office for Federal Prisons put it: *“If we do not achieve that our recommendations improve the situation of the persons deprived of their liberty, we fail”*.

However, in view of the non-binding nature of recommendations, the following questions arise: How can this be achieved? What are the means preventive mechanisms have at their disposal? The OPCAT solely contains the obligation that *“the competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures”* (art. 22).

Against this background, this session discussed the crucial issue of ensuring the impact of the NPMs by:

- Analysing the factors that constitute obstacles to the effective implementation of recommendations of the preventive mechanisms;
- Exchanging experiences about ways to follow-up on recommendations; and
- Identifying the roles of the different actors in guaranteeing effective implementation.

2. Recommendations – their quality and the need for prioritisation

The quality of NPM recommendations and their prioritisation was seen as an essential element in ensuring the effectiveness of NPM work.

It was suggested that NPM recommendations need to be based on a clear definition of the problem to be solved and the change sought. In this light the following questions must be asked:

- What are the central elements of the problem?
- What are the underlying causes of the problem?
- What is the change that the NPM wants to see?

More generally, the ‘SMART’ criteria for effective recommendations, developed in APT’s briefing paper *“Making Effective Recommendations”*,²⁵ were mentioned as being useful in practice. These provide that recommendations should be “specific, measurable, achievable / argued, results-oriented / root-cause aware, and time-bound / targeted”.

In particular, several speakers made the point that it is crucial to correctly identify the level at which the problem is located (e.g. the operational level, political level or conceptual / mind-set level). Equally, and linked to this, it is important to correctly target recommendations to the relevant actor (e.g. to the director of the centre of detention, higher authorities, legislature, judiciary, general public, etc.). Including a feasible time requirement for implementation was stressed as a further fundamental element.

To adequately “measure” implementation requires developing appropriate indicators, which is a difficult exercise most NPMs still need to embark on.

²⁵ See APT, *Making Effective Recommendations*.

3. Obstacles to implementation

The following issues were raised in terms of obstacles to implementation:

- A lack of resources of state authorities clearly constitutes a major obstacle to implementation of NPM recommendations, in particular in regard to poor material conditions in places of detention. On the other hand, the authorities often raise a lack of resources as an obstacle in order to mask other reasons for non-implementation. Preventive mechanisms need to be sharp in their analysis of the real reasons that lie behind non-implementation.
- Public policies whose ideological underpinning is at odds with human rights constitute a main structural cause standing in the way of implementing desirable change. In particular, “tough on crime” policies (“*políticas de mano dura*”) towards dealing with rising crime rates are widespread and increasingly growing in Latin America.
- A general attitude of the population tolerating torture and/or lack of awareness about this problem constitutes another important factor that needs to be worked on by preventive mechanisms. For example, it was partly the work of monitoring institutions that brought public awareness to the continuing practice of torture in Argentina in recent years. Torture had previously been associated solely with the military dictatorship.
- In addition to general public attitudes, certain groups of people face societal stigma, which make implementation of change in favour of their needs and rights difficult.

4. Developing a strategy and system to follow-up on recommendations

The absence of creative strategies of follow-up on the part of NPMs constitutes what can be called an internal obstacle to effective implementation. While the need for NPMs to develop a systematic and well thought-out system for following up on their recommendations was generally acknowledged, no good practice model seems to exist as yet in Latin America. It was apparent that much further thinking is needed in this area, as part of broader NPM organisational development.

“A mechanism that does not have tensions with the state authorities, but also with the civil society, does not do a proper job. A mechanism has to use its robust findings to build a critical dialogue with the authorities. But if it is only tension – and this is the case with some mechanisms- it is also not good. Then the possibility of a constructive dialogue has been lost.”
(Enrique Font, SPT)

The following guidance for such a process emerged from the discussions:

- NPMs need to create an institutional basis for systematic follow-up action, going well beyond the carrying out of (follow-up) visits.
- Follow-up should be based on systemic thinking and draw on inter/transdisciplinary perspectives. This is particularly so as questions of power relations are at stake in the process of implementing recommendations, having in mind the non-binding nature of recommendations.
- A thorough analysis of the relative power of the NPM vis-à-vis other actors, including “symbolic capital” or reputation, was stressed as important.
- An essential part of such a systemic approach would be the mapping and analysis of all relevant stakeholders – their power and interest or lack of interest to contribute to positive change – and engaging systematically with them.
- In this process, prioritisation of the issues to be tackled is an indispensable element.

One of the difficult issues in shaping follow-up strategies revolves around the self-understanding of the NPM with regard to the following question: in which way is the balance struck between engaging in constructive dialogue with the authorities on the one hand and public action on the other? If all means should be used – as some participants suggested – then obviously public action would be included. There were different opinions around this question, reflecting the different experiences and backgrounds of the participants. It was not, however, disputed that such public action would have to be embedded in an overall strategy.

5. Instruments and tools for follow-up, including in cooperation with other actors

The discussions considered which instruments and tools NPMs can use to follow-up on their recommendations, an issue closely linked to strategies for follow-up.

High quality reports presenting the NPM's findings and recommendations (formulated in line with the SMART criteria) form the fundamental basis for follow-up work, as well as for the application of other instruments and tools. Among the other instruments discussed were the following:

- Follow-up visits constitute a “natural” way of follow-up within the process of monitoring. They serve two interrelated purposes: first, they allow the monitoring body to see whether the recommendations have been implemented or not; second, by dealing again with an issue raised before, they help put emphasis on the issue at stake.
- The creation of a space for dialogue between the NPM and relevant state authorities is helpful for promoting and prompting change. Both NPM members and representatives of state authorities stressed this point. In several countries this dialogue takes the form of round tables between the NPM and the relevant authorities, in some places carried out at regular intervals, e.g. every month in Uruguay. Dialogue has the advantage of face-to-face communication, which allows a better understanding of the perspectives of interlocutors. It also offers the possibility of directly responding to their concerns and fears.
- Special softwares as an (internal) tool for tracking the level of implementation of recommendations could be developed. The example of a software containing all recommendations made by international bodies, developed by the Paraguayan Government with the support of OHCHR, was mentioned.²⁶
- Networking with other actors at the national level is an important way to promote implementation. Relevant actors to engage in this process might be: the public prosecution, the judiciary, other state authorities (inspection bodies), NGOs and universities.

²⁶ See the [software developed by the Paraguayan Government with the support of OHCHR](#).

- Working with the media is a crucial but also complicated means to be used by NPMs. Different opinions were expressed in this regard. On the one hand, it was clear that the media is a powerful actor that can be helpful to further the purposes of the NPM. On the other hand, a premature involvement of the media and/or their partly sensationalist outlook might hamper constructive dialogue with the authorities, which should be the first to be informed about the problem identified. It was clear that NPMs need to have a professional media strategy.
- Furthermore, networking with relevant international actors, in particular the SPT, the UN Committee against Torture and relevant Special Rapporteurs at the international and regional levels constitutes an important way to contribute to follow-up. It can be particularly useful to develop strategic complementarity and cross-reference recommendations made by other bodies – e.g. NPMs using country-specific SPT recommendations in their daily work, or the SPT using NPM recommendations during their country visits.

6. Action in case of non-implementation

In most Latin American countries there is no obligation for the authorities to respond to recommendations of the NPM, beyond the obligation to enter into a dialogue with this body as provided for in the OPCAT. However, two interesting examples of NPM laws exist which contain additional possibilities to act in case of non-implementation of NPM recommendations.

In Argentina, article 9 of the Law establishing the National System to Prevent Torture provides for the power of the future National Committee for the Prevention of Torture to summon public officials in order to get the requested information in case they do not respond adequately within a certain time to the recommendations of the Committee. In addition, such situations can be brought before parliamentary bodies. Furthermore, those responsible for not adequately responding or refusing to cooperate can be held liable under the criminal offence of “disobedience”.

Another interesting example is from Paraguay where article 28 of the NPM law provides for a so-called “ethical judgement” (*juicio ético*). In the case of non-implementation of recommendations by a public

official and upon request by one of its members or the civil society, the NPM can sit as an “ethical tribunal” and hear the case, with the public official being present. The verdict will then be published and can have negative consequence for the career of the public official concerned, in particular with regard to his or her promotion. This constitutes a very strong weapon that public officials are well aware of and fear. So far, this procedure has not been used.

In this regard, it was very clear from the discussions that NPMs have to use these options cautiously and strategically -and as a means of “last resort”- when other avenues have not produced any results.

Ways forward from the discussion ►►

- ⇒ Monitoring bodies should make use of the SMART framework when drafting their recommendations.
- ⇒ Monitoring bodies should develop a systematic strategy to follow-up on their recommendations and use all the means at their disposal.

Additional readings

- APT, *Making Effective Recommendations* (2008).

VII. Mitigating the risk of reprisals: the ethics of monitoring



1. The phenomenon of reprisals – a common challenge

“We have to look at the topic of reprisals as more than merely an obstacle to the work of monitoring bodies. We have to look at it as what it is: a serious violation of human rights and a completely unacceptable behaviour on the part of states which have accepted to be bound by obligations contained in international treaties.” (Andrés Pizarro, IACHR)

There is growing recognition of the worrying fact that, despite a clear prohibition in the OPCAT, reprisals form part of the landscape of detention monitoring, undermining implementation of its most basic principle: “do no harm”. Reprisals represent a serious challenge to the functioning of independent monitoring bodies and are, in the words of the SPT, “*now becoming a major operative obstacle*”²⁷ to monitoring. Under certain circumstances, such phenomena can even put in danger the very concept of independent monitoring.

In the last couple of years, several initiatives have been undertaken to tackle this challenge. The APT produced a briefing paper on “*Mitigating the risks of sanctions related to Detention Monitoring*”²⁸ in 2012 and convened an expert meeting in 2014 on this topic. The UN bodies working against torture and various NPMs are identifying ways to better address this issue. The SPT has set up a focal point and a working group on reprisals, which is in the process of developing a specific policy on this issue.

Several interrelated questions arise in this context: Which forms do reprisals take? How widespread are they? What can be done against them? What is the role of cooperation among different actors in mitigating the risks of reprisals?

²⁷ *Committee Against Torture discusses reprisals with Special Rapporteur on Torture and Subcommittee on Prevention of Torture*, UN Press release, 15 November 2013.

²⁸ See APT, *Mitigating the risks of sanctions related to Detention Monitoring*.

The Regional Forum dealt with this topic in the format of a panel discussion with representatives from the SPT, the IACHR, the Honduran NPM and the Public Prosecution of the Brazilian State of Minas Gerais.

What are reprisals? How widespread are they?

The OPCAT prohibits the use of reprisals, which are described as “*any sanction against any person or organisation for having communicated*” any information to the SPT (art. 15) or the NPM (art. 21). However, there is no clear definition of the terms used in the text. It was stressed, therefore, that a comprehensive look at reprisals was the most appropriate approach, starting from the key principle of “do no harm”.

Reprisals can take different forms: unjustified or too frequent search of cells, confiscation of belongings, cancellation of visits, transferrals or threats of transferral to other institutions, intimidation, verbal and even physical aggression or plain violence.

Having to deal with reprisals is an important part of SPT’s visiting experience. In 15 out of the 18 regular visits undertaken as of December 2013, the SPT had to express concerns over the risk of, or reported cases of, reprisals.

On the basis of the experience of the IACHR, three types of situations regarding the risk of reprisals can be distinguished:

1. Relatively unproblematic situations where no major risk of reprisals is identified, because no real problems are detected in an institution and the level of cooperation on the part of the authorities is high.
2. Situations of a high risk of reprisals characterised by palpable tensions where the IACHR works in close cooperation with national monitoring bodies in order to mitigate the risk of reprisals.
3. Situations where detainees would not talk to the Commission’s delegates for fear of grave consequences for them. This is most common in prisons where criminal factions exercise strict internal control over the detainees.

The reasons for reprisals were said to be manifold, including, obviously, the unequal power relations in a prison setting (between prison staff and inmates, but also among inmates) and the lack of knowledge of the preventive mandate of the SPT or NPMs. Also, in the SPT's experience, a causal relationship between corruption and reprisals exists.

A variety of persons can be the target of reprisals, including: members of monitoring bodies, family members of detainees, and staff at the place of deprivation of liberty. The main focus of the discussion was, however, on persons deprived of their liberty who are most strongly exposed to pertinent risks.

2. Measures for mitigating the risk of reprisals

There is an ever-present risk of reprisals against persons deprived of their liberty. The challenge is thus to develop appropriate measures for mitigating this risk. The following practical examples and suggestions were given in the presentations and discussion:

Before the visit:

- The SPT makes the purpose of the visits and its policy on reprisals very clear at the first meeting with public officials upon arrival in the country.
- It is important to get to know the characteristics of the place of detention, including previous occurrences of reprisals and relevant structures in the place to be visited, e.g. the existence of different factions of detainees.

During the visit:

- Having an appropriate visiting methodology based on the “do no harm” principle was seen to be the most important contribution by the monitoring body in terms of avoiding reprisals.
- This includes:
 - Making sure that interviews take place in private and others do not listen;
 - Asking for informed consent for disclosure of personal details;
 - Interviewing a large number of detainees in order to avoid tracking of the information;
 - Keeping a register of persons interviewed in order to be able

to track them at a later stage;

- Being cautious about raising issues at the final talk with the head of the institution; and
- Give contact details of the monitoring institution in case of any doubt.

After/beyond the visit:

- As a general principle, the findings included in visit reports should be presented in a way that ensures the source of the information cannot be identified; personal details of inmates should only be stated if the person concerned has explicitly consented to it and the information is indispensable for backing up the findings of the report.
- In case of a concrete fear that inmates might be subjected to reprisals, monitors should consider carrying out of a follow-up visit or, in the case of international bodies, suggest such a visit to a national partner. On the occasion of its visit to Brazil, the SPT involved the LPM in Rio de Janeiro in order to undertake a follow-up visit to a place where they feared reprisals.
- More generally, strategically liaising with other actors was considered essential, e.g. NGOs, social service, pastoral care in prisons.
- In case of knowledge of reprisals, during their country visits, the SPT discusses this issue with the highest authorities.
- The SPT is discussing the possibility of issuing public statements in the case of the occurrence of reprisals. It has yet to define under which precise circumstances it could issue such statements.

Ways forward from the discussion ▶

- ⇒ Preventive mechanisms should develop a systematic strategy to mitigate the risk of reprisals making use of the above mentioned framework and all the means at their disposal, including but not limited to those exposed above.

Additional readings

- APT, *Mitigating the risks of sanctions related to detention monitoring* (2012).

VIII. Beyond the Regional Forum: Recommendations to better share the responsibility to prevent torture



The immeasurable task of preventing torture, of turning “*this continent and the world into a place free from torture*”, as expressed by Elizabeth Odio Benito, is the ultimate goal of preventive monitoring bodies. This task requires serious reflection on the challenges ahead and on ways of strengthening one’s own work and impact. It also requires a well-conceived space for dialogue and exchange of practice and information among different actors. This Regional Forum has served well these two purposes.

“A penitentiary system that functions properly is a mechanism to reduce incidences of recidivism, and, therefore, has a clear preventive aspect and may help to improve public security overall. (...) We are convinced that the conclusions of this first Regional Forum will be instrumental in shaping future gatherings among NPMs and further promote OPCAT ratification at the regional level.” (Luis Miguel Hincapié, Vice-Minister of Foreign Affairs, Panama)

Based on the proposals and ideas identified during the different sessions of the Regional Forum, below is a list of selected recommendations for six specific actors in the prevention of torture.

Actions for states:

In relation to NPMs and LPMs

- Guarantee the establishment of NPMs and LPMs through a law which complies with the OPCAT. In cases of NHRIs as NPMs, ensure the creation of a separate structure for the NPM function within the institution, in line with the SPT Guidelines.
- Ensure that the mechanisms are granted adequate financial, material and human resources for their effective functioning, by providing them with an adequate budget, and access to it without any administrative hindrance.
- Guarantee that the selection process of the members of the mechanisms is open, transparent, and inclusive, involving a wide range of actors, including civil society.
- Ensure multidisciplinary and relevant expertise in the composition of the mechanisms.

In relation to vulnerabilities in detention

- Include a gender perspective in shaping criminal and social policies, taking into account the connection between poverty and detention of women.
- Address the risks faced by women in prison and develop policies to pay systematic attention to their specific needs in detention and adopt legislation on alternatives to detention, in accordance with the UN Bangkok Rules.
- Carry out awareness-raising and training programs for prison personnel on the needs and rights of LGBTI persons.
- Implement international standards on the rights of indigenous peoples in the context of criminal justice and detention. In doing so, they should take heed of the SPT guidance contained in its 6th Annual report.
- Establish clear legal criteria for the deprivation of liberty of persons with mental health problems and effective judicial control, in line with the IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

“I thank the APT for gathering us all here. There is a very important idea that ‘unity is strength’ and that, therefore, creating a network among NPMs will make all of us stronger.”
(Guillermo Andrés Aguirre, NPM, Mexico)

Actions for National and Local Preventive Mechanisms:

In relation to their composition

- Step up efforts to ensure multidisciplinary and the relevant expertise in the composition of the mechanism and of the visiting teams, and in the preventive mechanisms’ approach and working methods.
- Ensure a gender balance and adequate representation of ethnic and minority groups in the composition of the mechanisms.
- Include persons with relevant expertise on the needs of, and specific risks faced by, groups of persons in situation of vulnerability in detention (including LGBTI persons, women, indigenous peoples, ...).

In relation to the strategic implementation of their mandate

- Develop working definitions of torture prevention and engage with a wide variety of relevant actors in order to influence policy and action with a view to prevent torture.
- Systematically include, in NPMs' strategy and planning, the issue of how to cover the broad scope of its mandate regarding: the selection of places to be visited- including by ensuring that they do not exclusively focus on "traditional" places- the composition of the visiting team, the choice of interlocutors (during the visit, but also outside of it, e.g. in the case of short-term detention). An analysis of existing problems and vulnerabilities can provide a useful criterion and starting point for developing these strategies.
- Engage strategically in a constructive dialogue with state authorities (e.g. through regular bilateral meetings and the establishment of a permanent space for dialogue or "roundtable" with relevant state institutions) to ensure proper follow-up to their recommendations.
- Develop a systematic strategy to follow-up on their recommendations, including a media strategy.
- Develop a comprehensive strategy to systematically mitigate the risk of reprisals against persons who provide them with information.

In relation to national systems in the federal states of Argentina and Brazil

- Define a strategy to ensure that LPMs are set up in accordance with the OPCAT requirements, which could include the publication of standards and guidelines, by the national bodies in charge of the national system, for the creation of LPMs, and/or the elaboration of a LPM "model law".
- Create a system of interaction and cooperation between the different parts of the national systems of prevention, based on a well thought-out principle of subsidiarity that will evolve over time as a larger number of LPMs are created.

In relation to their internal capacity-building, training and self-evaluation

- Ensure regular training and capacity-building, primarily geared towards developing the necessary technical skills and knowledge

on the characteristics of monitoring non-traditional institutions where persons are deprived of liberty and on how to monitor the situation of groups or persons in situation of vulnerabilities.

- Engage in a process of regular review of their working methods, based on the SPT's "Analytical self-assessment tool for National Preventive Mechanisms".

In relation to vulnerabilities in detention

- Integrate a gender perspective in their work, including: adopting gender-sensitive approaches and methodologies to monitoring and building the capacity of NPM and LPM members in this field.
- Identify and address the risks faced by LGBTI persons in prison and develop policies to pay systematic attention to their specific needs.
- Work on relevant public policies regarding LGBTI persons, including work on changing the legal framework (decriminalisation of homosexuality, adoption of new legislation on non-discrimination on the ground of sexual orientation) as well as combating discriminatory socio-cultural patterns.
- Address more systematically the specific needs of indigenous detainees (including adequate information about their rights, use of language, family ties, food and clothing) and promote structural changes in public policies, including legislative reforms.
- Carry out monitoring of psychiatric institutions in a more systematic way, developing the internal specialised capacity, a specific and tailored methodology, and proper tools needed to monitor these types of places.
- Contribute to the development and implementation of public policies with regard to mental health in detention, including towards de-institutionalisation of persons with mental health problems.

In relation to interaction and cooperation with other actors

- Strengthen interaction and cooperation with civil society organisations and universities to benefit from their expertise, including by having them as external experts participating in NPM visits.
- Develop a media strategy to be able, when appropriate, to publicly raise issues of concern before the general public.

Actions for civil society organisations:

In relation to states

- Lobby for OPCAT ratification and effective implementation.
- Lobby for the adoption of strong OPCAT-compliant NPM and LPM laws.

In relation to NPMs and LPMs

- Engage in the whole process of creation of the mechanisms, including drafting of the legislation, establishment of the structure, and selection process of its members.
- Once established, assist the mechanisms with expertise on detention-related issues (as members of Advisory Council or through formal agreements of cooperation between the mechanisms and NGOs).
- Critically evaluate the mechanisms, including by being involved in social audits of their work.
- Assist the mechanisms on the implementation of their recommendations.

Actions for the academia and professional bodies:

- Contribute to the work of NPMs, including through research and debates.
- Assist NPMs and LPMs with expertise and capacity-building.

Actions for the SPT:

- Contribute to developing a working definition of torture prevention, to facilitate shared understanding among all actors of what it means in practice.
- Consolidate its advisory mandate towards NPMs and LPMs to ensure regular interaction with these bodies outside the context of official SPT in-country missions.
- Ensure proper follow-up strategies after an SPT visit.
- Take all necessary measures, in coordination with NPMs and LPMs, to mitigate the risk of reprisals.
- Contribute to the development of standards on the rights of vulnerabilities in detention.
- Publish a policy paper on the issue of reprisals.

“There is currently no permanent space for communication among the mechanisms. I am not sure what we would call it: a permanent “chat” or a database, but the point is that we are all here, the NPMs from the region, at very different stages of our development and that we can reinforce each other through the experience of others. To achieve this, as it is very difficult to meet regularly, it would be easier to exchange practices using electronic means.” (Esteban Vargas, NPM, Costa Rica)

Action for the APT:

- Develop, in coordination with NPMs and LPMs, a web-based platform, which would include a space for sharing documents and for discussions and exchange around particular topics of interest to them, following the agreement reached during the working meeting on Day 3 of the Forum on the need to create a permanent space for interaction among these mechanisms. The on-line platform will be designed to respond to the needs of NPMs and LPMs and will make use of relevant experience of exchanges among preventive mechanisms in other regions (e.g. European NPM project, which involved interaction among all European mechanisms, and recently created network for Southern European NPMs).

Annex I: Agenda

Day I, Tuesday 30 September 2014

8:00 - 8:30	Registration of participants
8:30 - 10:00	<p>Opening Ceremony</p> <p><i>Inauguration</i></p> <p>Elías Castillo, President, Latin-American Parliament Martine Brunschwig Graf, President, Association for the Prevention of Torture (APT) Carmen Rosa Villa, Regional Representative, Regional Office for Central America, Office of the UN High Commissioner for Human Rights Luis Miguel Hincapié, Vice-Minister of Foreign Affairs, Panama</p> <p><i>Keynote speech</i></p> <p>Elizabeth Odio Benito, Former Judge of the International Criminal Tribunal for the former Yugoslavia, and of the International Criminal Court</p> <p><i>Introductory speeches</i></p> <p>Hermann-Josef Sausen, Ambassador, German Embassy in Panama Alexandre Guyot, Counselor, Swiss Embassy in Costa Rica Amerigo Incalcaterra, Regional Representative, Regional Office for South America, Office of the UN High Commissioner for Human Rights APT Office for Latin America: Sylvia Dias, Director, and María José Urgel, Deputy Director</p> <p>Moderator: Mark Thomson, Secretary General, APT</p>
10:00 - 10:30	Coffee break

10:30 - 12:30	Session 1: Key elements for effective NPMs			
10:30 - 10:50	Introduction (in plenary) Enrique Font, Member, UN Subcommittee on Prevention of Torture (SPT)			
11:00 - 12:30	Working groups			
	Group 1: National Human Rights Institutions as NPMs Moderator: Walter Suntinger	Group 2: New Institutions as NPMs Moderator: Byron Pérez	Group 3: National Systems of Prevention in Federal States Moderator: Mónica Pinto	
12:30 - 14:00	Lunch			
14:00 - 15:30	Session 2: Vulnerabilities in detention			
	Group 1: Women Moderator: Judith Salgado	Group 2: LGBTI persons Moderator: Eliomara Lavaire	Group 3: Indigenous Peoples Moderator: Enrique Gauto	Group 4: Persons with mental health problems Moderator: Roberto Feher
15:30 - 16:00	Coffee break			
16:00 - 17:30	Session 2: Vulnerabilities in detention (cont.)			
19:00	Reception hosted by the Ministry of Foreign Affairs of Panama			

Day 2, Wednesday 1 October 2014

9:00 - 11:00	Session 3: Follow-up to recommendations & cooperation for their effective implementation			
	Group 1: Moderator: Alberto Volpi	Group 2: Moderator: Lucía Chávez	Group 3: Moderator: Roberto Cipriano	Group 4: Moderator: Anna Batalla

11:00 - 11:30	Coffee break
11:30 - 13:00	<p>Panel on cooperation strategies to mitigate the risk of reprisals (Plenary session)</p> <p>Felipe Villavicencio, Member, UN Subcommittee on Prevention of Torture</p> <p>Andrés Pizarro, Specialist Lawyer, Inter-American Commission on Human Rights</p> <p>Odalis Najera, Commissioner, National Preventive Mechanism, Honduras</p> <p>Nivia Mônica Da Silva, Prosecutor, Public Prosecutor's Office, State of Minas Gerais, Brazil</p> <p>Moderator: Jean-Sébastien Blanc, APT</p>
13:00 - 14:30	Lunch
14:30 - 16:00	National roundtables
16:00 - 16:30	Coffee break
16:30 - 17:45	<p>Closing ceremony</p> <p>Report of the discussions: José de Jesus Filho, Vice-president, Brazilian National Committee for the Prevention of Torture and Member of APT Board</p> <p>Comments from participants</p> <p>Closing remarks from APT: Isabelle Heyer, Americas Programme Officer, APT</p> <p>Closing speech: Martine Brunschwig Graf, President, APT</p> <p>Moderator: Mark Thomson, Secretary General, APT</p>
20:00	Reception hosted by the Embassy of the United Kingdom

Day 3, Thursday 2 October 2014

Closed workshop between National and Local Preventive Mechanisms and the UN Subcommittee on Prevention of Torture.

Annex II: List of participants

Argentina

Mr Francisco Mugnolo

Ombudsman for Federal Prisons, Ombudsman's Office for Federal Prisons

Mr Alberto Volpi

Director, Office for the Prevention of Torture, Ombudsman's Office for Federal Prisons

Ms Paula Ossietinsky

Director, Research and Documentation Programme, Ombudsman's Office for Federal Prisons

Mr Abel Córdoba

Director, Ombudsman for Institutional Violence (PROCUVIN)

Ms Paula Litvachky

Director, Justice and Security Programme, Centre for Legal and Social Studies (CELS)

Mr Rodrigo Pomares

Coordinator, Justice and Security Programme, Comisión para la Memoria, Province of Buenos Aires

Mr Roberto Cipriano

Member, Comisión para la Memoria, Province of Buenos Aires

Mr Mario Bosch

President, Local Preventive Mechanism, Province of Chaco

Mr Darío Rubio

President, Local Preventive Mechanism, Province of Río Negro

Mr Fabricio Imparado

Ombudsman on Persons Deprived of their Liberty, Local Preventive Mechanism, Province of Mendoza

Mr David Arnaldo Leiva

Member, Local Preventive Mechanism, Province of Salta

Brazil

Ms Ana Paula Moreira

General Coordinator on Combat against Torture, Secretariat of Human Rights, Presidency of the Republic

Ms María Gorete Marques de Jesus

Member, National Committee for the Prevention of Torture

Mr Luciano Mariz Maia

Deputy Ombudsman, Citizens' Rights Federal Ombudsman's Office

Ms Tania Kolker

Psychiatrist

Ms Vera Lúcia Alves

Member, Local Preventive Mechanism, State of Rio de Janeiro

Mr Tiago Joffily

Prosecutor, Public Prosecutor's Office of Collective Custody of Penitentiary System and Human Rights, Public Ministry, State of Rio de Janeiro

Ms Simone Figueredo

Member, Local Preventive Mechanism, State of Pernambuco

Ms Nivia Mônica Da Silva

Prosecutor, Human Rights Department, Public Prosecutor's Office, State of Minas Gerais

Ms Silvia Sander

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Bolivia

Mr Marcelo Flores

Medical Doctor, Institute of Therapy and Investigation (ITEI)

Chile

Mr Jaime Madariaga de la Barra

Director, Human Rights Unit, Ministry of Justice

Ms Antonia Urrejola

Legal adviser on human rights, Ministry General Secretariat of the Presidency

Ms Paula Salvo

Lawyer, National Human Rights Institute

Mr Roberto Garretón

Lawyer, Former member of the UN Working Group on Arbitrary Detention

Mr Fernando Martínez

Researcher, Centre for Public Security Studies, Institute of Public Affairs, University of Chile

Costa Rica

Ms Elizabeth Odio Benito

Former Chairperson of the Open-ended Working Group on the Draft Optional Protocol to the UN Convention against Torture

Mr Roger Víquez

Coordinator, NPM – Ombudsperson's Office

Mr Esteban Vargas

Member, NPM – Ombudsperson's Office

Ms Marisol López Cajina

Programme Officer, Defence for Children International (DCI)

Ecuador

Mr Gustavo Peñafiel

Director of Relations with Citizens, Sub-Secretariat of Human Rights, Ministry of Justice, Human Rights and Religious Cult

Mr Patricio Aguirre

National Director of Human Rights, Gender and Inclusion, Ministry of Public Health

Ms María del Cisne Ojeda

Director, NPM, Ombudsperson's Office

Mr Julio Ballesteros

Advisor, Public Defender's Office

Guatemala

Mr Antonio Arenales Forno

President, Presidential Human Right Commission (COPREDEH)

Ms Silvia Lucrecia Villalta Martínez

Member, NPM

Mr Hilario Roderico Pineda Sánchez

Member, NPM

Mr Marco Antonio Posadas Pichillá

Executive Secretary, NPM

Mr Byron Pérez

Advocacy Officer, Human Rights Office of the Archbishopric of Guatemala

(ODHAG) and Member of the NPM's Advisory Council

Ms Andrea Barrios

Coordinator, Colectivo Artesana

Honduras

Mr Rigoberto Chang Castillo

Minister, Ministry of Government, Human Rights and Decentralization

Mr Fernando Morazán

Member, NPM

Ms Odalis Najera

Member, NPM

Ms Rosa Gudiel

Lawyer, Coordinator of judges for enforcement of judicial decisions

Ms Eliomara Lavaire

Coordinator, Programme on Integral Health, Centre of Prevention, Treatment and Rehabilitation for Victims of Torture and their Relatives (CPTRT)

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Mr Fernando Coronado

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Ms Lucía Chávez

Research Director, Mexican Commission for the Defense and Promotion of Human Rights

Nicaragua

Mr Álvaro Enrique Osorio Ocampo

Special Ombudsman for Prisons and Executive Secretary of the NPM, Ombudsman's Office

Ms Wendy Flores

Lawyer, Human Rights Centre of Nicaragua (CENIDH)

Mr Denis de Jesús Darce Solís

Project and Training Director, Human Rights Permanent Commission (CPDH)

Panamá

Mr Luis Miguel Hincapié

Deputy Minister of Foreign Affairs, Ministry of Foreign Affairs

Mr Portugal Falcón

Director, Social Development and Humanitarian Affairs, General Direction of International Bodies and Conferences, Ministry of Foreign Affairs

Ms. Floriscelda Peña

Foreign Affairs Analyst, Department for International Bodies and Conferences, Ministry of Foreign Affairs

Mr Milton Henríquez

Minister, Ministry of Government

Ms Gisela de León

Advisor to the Vice-Minister of Government, Ministry of Government

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Lawyer, Human Rights Department, Ministry of Government

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Ms Concepción Corro

Advisor to the Minister, Ministry of Public Safety

Mr Roberto Bula

Statistics Analyst, National Institute of Statistics and Census, General Comptroller of the Republic

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Deputy Director, Socio-demographic Department, National Institute of Statistics and Census

Ms Christina Quiel Canto

Executive Assistant, Access to Justice and Gender Unit, Judiciary

Ms Greta Marchosky

Superior Attorney specialised in International Affairs, Attorney General's Office

Mr Miguel Cárdenas

Lawyer, National Congress

Mr Javier Mitil

Deputy Ombudsman, Ombudsperson's Office

Mr Raimundo Gonzalez

Director for International Affairs, Ombudsperson's Office

Ms Ellis Ríos

Office Coordinator for Persons Deprived of their Liberty, Ombudsperson's Office

Mr Andrés Marín

Specialized Department Officer, Ombudsperson's Office

Ms Lourdes Barria

Specialized Department Officer, Ombudsperson's Office

Mr Guillermo Quintero

Executive Assistant to the Ombudsperson, Ombudsperson's Office

Mr Víctor Atencio

Lawyer

Mr Daniel Pineda

Statistics Assistant, Criminology Institute, University of Panama

Ms Aida Selles de Palacios

Director, Criminology Institute, University of Panama

Ms Maribel Jaén

President, Commission Justice and Peace

Ms Elsy Saavedra Vergara

Member, Prison Pastoral Care

Paraguay**Ms Sheila Abed**

Minister of Justice, Ministry of Justice

Mr Pedro Mayor Martinez

Judge (Juez Penal de Garantía), Court of First Instance

Ms Selva Antonia Morel de Acevedo

Deputy Public Defender in Criminal Matters, Ministry of Public Defense

Mr José María Delgado

Lawyer, Ministry of Public Defense

Mr Roque Orrego

President, NPM

Mr Enrique Gauto

Secretary, Coordination Network for Human Rights in Paraguay (CODEHUPY)

Peru**Ms María Soledad Pérez Tello**

Parliamentarian, National Congress

Ms Gisella Vignolo Huamani

Deputy Ombudswoman for Human Rights and Persons with Disabilities, Ombudsperson's Office

Mr Miguel Huerta

Director, Human Rights
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Ms Nathaly Herrera

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Mr Carlos Manzor

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Ms Ana Juanche

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Medical Advisor, Office of the
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Annex III:

General background paper

The Optional Protocol to the UN Convention against Torture (OPCAT)²⁹ was adopted by the United Nations General Assembly on 18 December 2002. It entered into force on 22 June 2006. 73 states are party to the Protocol globally. This treaty provides for a system of regular visits to places of detention to be carried out by an international body (the Subcommittee on the Prevention of Torture (SPT) which took up its functions in 2007) and by one or more national bodies known as “National Preventive Mechanisms” (NPMs). State Parties undertake to designate or establish such mechanisms no later than one year after ratification of the Protocol.

In its preamble, the OPCAT provides that states have a “*primary responsibility*” to prevent torture in applying the articles of the treaty and that “*strengthening the protection of persons deprived of their liberty and the full respect for their human rights is a **common responsibility** shared by all and that international implementing bodies complement and strengthen national measures (...)*”. Taking this as well as the urgent need to strengthen the potential of NPMs in the region into account (and in cases where they have not yet been set up to support the processes leading to their establishment), the APT took up the initiative to organise a Regional Forum on the implementation of the OPCAT in Latin America. This event will mark the first time all Latin American mechanisms to prevent torture will meet in one venue. A great array of national, regional and international stakeholders that play a role in the functioning of these mechanisms will also take part. The event aims to:

- Identify solutions to the challenges faced by various Latin American countries in the implementation of the OPCAT;
- Emphasise the responsibility of state authorities and the role of civil society and other stakeholders to cooperate with local and national preventive mechanisms to ensure full implementation of

²⁹ [Full text of the Optional Protocol.](#)

their recommendations; and

- Define cooperation strategies between various actors to be able to respond to specific issues relating to the situation of detainees, particularly of vulnerable groups in places of detention.

THE OPCAT IN LATIN AMERICA

14 Latin American states are party to the OPCAT. Of these, 12 have designated or set up their NPM. The OPCAT leaves a broad margin of discretion to states in terms of the NPM model they wish to adopt or create. In Latin America there are currently three types of NPMs:

1. National human rights institutions: **Costa Rica** (Ombudsman's Office), **Chile** (National Institute of Human Rights), **Ecuador** (Ombudsman's Office), **Mexico** (National Commission of Human Rights), **Nicaragua** (Ombudsman's Office) and **Uruguay** (National Institution for Human Rights and Ombudsman's office)
2. New specialised institutions: **Paraguay, Honduras, Guatemala** and **Bolivia**
3. National systems for the prevention of torture, which include not only the creation of a mechanism at the federal level, but also local mechanisms at the state or provincial level: **Argentina** and **Brazil**

Since its inception in 2007, the SPT has conducted site visits to the following Latin American countries: Argentina, Brazil, Bolivia, Honduras, Mexico, Nicaragua, Peru, and Paraguay (2 visits, including one follow-up visit). With the exception of Bolivia and Peru, all reports drafted on these visits are public. In addition to these "conventional" visits the Subcommittee visited Honduras in 2012 and Ecuador in 2014, to conduct "advisory visits to the NPM" – a new form of visit initiated by the SPT in 2012.³⁰

Despite much progress in the eight years since the entry into force of the OPCAT, many challenges remain in terms of the creation of independent, national mechanisms that are equipped with the human, material and financial resources necessary to enable them to carry out their mandate efficiently.

³⁰ The objective of these visits is to further advance its mandate as advisor for NPMs (Art. 11 (b) (iii)).

COOPERATION: THE CORNERSTONE OF THE OPCAT

The OPCAT's preventive system is based on triangular cooperation between the international body (the SPT), the NPM and the State. Indeed, the treaty provides in article 2(4) that "*The Subcommittee on Prevention and the State Parties shall cooperate in the implementation of this Protocol.*" The treaty also states that the SPT will cooperate with other regional and international human rights bodies (art. 11(c)). These shareholders include, among others: the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights (IACHR) at the regional level and the UN Special Rapporteur on Torture, the UN Committee against Torture, and the Office of the UN High Commissioner for Human Rights at global level.

Nationally, the OPCAT provides for cooperation between state authorities and the NPM (art. 22), specifically in terms of providing follow-up to the recommendations of the preventive mechanism. These state authorities include:

- The authorities directly responsible for deprivation of liberty and the various ministries to which they report;
- The legislative branch (due to its role not only in the legislative process that leads to the establishment of an NPM but also in drafting bills or amendments relating to the legal framework on torture, procedural rights, the criminal justice system, etc.);
- The judiciary (due to its role as guarantor of the rights of persons being prosecuted for a crime and the its regulatory power over detention processes);
- Monitoring agencies (other than NPMs) which monitor the conditions of deprivation of liberty.

Lastly, other non-state actors (civil society, universities, professional associations, bar associations, doctors, psychologists and the media) play an essential role in cooperating with NPMs and monitor compliance with their recommendations by the State, in order to contribute to the establishment of effective torture prevention systems throughout Latin America.

State of implementation of the OPCAT in Latin America³¹

State Party	Date of Ratification	NPM	Type of NPM	Date of designation/ Legal basis	State of the implementation process
Argentina	15 November 2004	National Preventive System of torture or other cruel, inhuman or degrading treatment, comprising: a National Committee for the Prevention of Torture; a Federal Council on Local Preventive Mechanisms; Local Preventive Mechanisms in all 24 provinces of the country; public institutions and NGOs.	A national system made up of a mechanism at the national level and local mechanisms	Law n°26.827 (November 2012)	The National Committee has not yet been established. The selection of its members is still pending. At the provincial level, five mechanisms are operational in the provinces of Chaco, Mendoza, Rio Negro, Salta and Tucumán. There are processes for creating mechanisms in other provinces: Santa Fe, Neuquén, Misiones, Corrientes, Córdoba, San Luis, Tierra del Fuego and Buenos Aires.
Bolivia	23 May 2006	Service for the Prevention of Torture (SEPRET)	New specialised institution	Law n°474 (December 2013), Decree n°2082 (August 2014)	The law foresees an NPM as a decentralised institution to be placed under the supervision of the Ministry of Justice. This mechanism has yet to be established.

³¹ Situation as of October 2014. For more information, please consult the [APT OPCAT database](#).

State Party	Date of Ratification	NPM	Type of NPM	Date of designation/ Legal basis	State of the implementation process
Brazil	12 January 2007	National system to prevent and combat Torture. Composed of: A national committee to Prevent and Combat Torture and a national mechanism of prevention and combating torture that provides for a local-level mechanism at individual state level.	National system including a mechanism at the national level and local mechanisms	Law n°12.847 (August 2013)	The National Committee members were appointed in July 2014. The selection of members of the National Mechanism is still pending. At the local level, seven mechanisms have been established by law in the states of Alagoas, Espirito Santo, Minas Gerais, Paraíba, Pernambuco, Rio de Janeiro, and Rondônia. The state of Mato Grosso is in the process of debating a draft law to establish the mechanism. The only operational mechanism in the country is that of Rio de Janeiro (since 2011). In the State of Pernambuco, the members were selected and their appointment is pending.
Chile	12 December 2008	National Human Rights Institute	National Human Rights Institute	December 2009 (letter sent to the SPT)	Regulation that would allow the NHRI to carry out its functions as an NPM and grant the institute the resources it needs to take on this new mandate is pending.

State Party	Date of Ratification	NPM	Type of NPM	Date of designation/ Legal basis	State of the implementation process
Costa Rica	1 December 2005	Ombudsman	National Human Rights Institution	Presidential Decree n°33568 (December 2006) Law n°9204 (December 2013)	The NPM has been operational since 2009. It is administratively attached to the Ombudsman but enjoys a wide functional autonomy (under the guise of "maximum decentralisation").
Ecuador	20 July 2010	Ombudsman	National Human Rights Institution	Resolution of the Ombudsman (November 2011)	The NPM is a unit within the Ombudsman which has been operational since 2013. A bill is pending to amend the law establishing the Ombudsman and incorporate, amongst others, the new functions of the NPM.
Guatemala	9 June 2008	National Office for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment	New specialised institution	Decree n°40-2010 (November 2010)	The office has been operational since March-April 2014. The NPM law provides for an Advisory Council as an advisor to the office, composed of representatives of civil society. The selection of members of the Council is still pending.

State Party	Date of Ratification	NPM	Type of NPM	Date of designation/ Legal basis	State of the implementation process
Honduras	23 May 2006	National Committee for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment (CONAPREV)	New specialised institution	Decree n°136-2008 (December 2008); Reform of Article 7 (decree 356-2013, May 2014)	The Committee has been operational since late 2010. The NPM law provides for an Advisory Council as an advisory body of the Committee, made up of representatives of civil society, the Prosecutor for Human Rights and Criminal Enforcement Courts. The Council is not yet operational.
Mexico	11 April 2005	National Human Rights Commission	National Human Rights Institution	Inter-ministerial agreement (July 2007)	The NPM has been operational since 2007 within a department of the Human Rights Commission within the National Commission.
Nicaragua	25 February 2009	Ombudsman's office for the Defence of Human Rights	National Human Rights Institution	Presidential Agreement n°4 (January 2012)	The NPM is a unit of the Ombudsman's office which has been operational since 2013. A bill is pending to determine the functions of the NPM.
Panama	2 June 2011	Not yet designated			The preparation of a draft law within an inter-institutional subcommittee (including various state institutions and civil society organisations) coordinated by the Ministry of Foreign Affairs is still pending.

State Party	Date of Ratification	NPM	Type of NPM	Date of designation/ Legal basis	State of the implementation process
Paraguay	2 December 2005	National Commission for the Prevention of Torture and other cruel, inhuman or degrading punishment	New specialised institution	Law n°4288 (April 2011)	The NPM has been operational since 2013. The national commission, which is the main body of the mechanism, is reinforced by a technical team, individual experts as well as civil society organisations.
Peru	14 September 2006	Ombudsman	National Human Rights Institution	Law amending the legislation on the Ombudsman (not yet in force)	The law which expands the functions of the Ombudsman to include the NPM mandate was approved by the national Congress in June 2014. However, the text of this law is still being worked on to clarify it further, before it can be sent to the President of the Republic for signature.
Uruguay	8 December 2005	National Human Rights Institution and Ombudsman	National Human Rights Institution	Law n°18.446 (December 2008)	The NPM has been operational since late 2013. It was set up at that time as a specific unit within the institution.

Annex IV: Selected useful resources

Standards

[Optional Protocol to the UN Convention against Torture](#)

[IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#)

[Istanbul Protocol](#), Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

SPT Documents

[The concept of prevention](#), UN Doc CAT/OP/12/6, 30 December 2010

[Guidelines on national preventive mechanisms](#), UN Doc CAT/OP/12/5, 9 December 2010

[Analytical self-assessment tool for National Preventive Mechanisms](#), UN Doc CAT/OP/1, 6 February 2012

[6th Annual Report](#), UN Doc CAT/C/50/2, 23 April 2013

APT Documents

APT/ACNUDH, *Realidades de los Mecanismos Nacionales de Prevención de la Tortura en América Latina* (2014)

The Global Forum on the OPCAT, Outcome report (2011)

Annex V: Useful websites

Association for the Prevention of Torture

Subcommittee on Prevention of Torture

IACHR's Rapporteurship on the Rights of Persons Deprived of Liberty

National Preventive Mechanisms

Costa Rica (Ombudsperson's Office)

Ecuador (Ombudsperson's Office)

Honduras (New institution)

Mexico (Ombudsperson's Office)

Nicaragua (Ombudsperson's Office)

Paraguay (New institution)

Uruguay (NHRI and Ombudsperson's Office)

As of December 2014, 14 Latin American states are parties to the Optional Protocol to the UN Convention against Torture (OPCAT) and 12 have designated or created their National Preventive Mechanisms (NPMs). In Argentina and Brazil, several Local Preventive Mechanisms (LPMs) have been established at the provincial or state level. However, major challenges remain in the implementation of the OPCAT in the region.

To respond to these challenges, and contribute, in particular, to strengthen the effectiveness of national and local torture prevention mechanisms, the APT convened the first-ever Regional Forum on OPCAT implementation in Latin America from 30 September to 2 October 2014 in Panama.

The event consisted of a two-day conference with 120 participants (including all NPMs and LPMs, representatives of state institutions from the 14 states parties, civil society organisations and international bodies) and a one-day working meeting between NPMs, LPMs and members of the UN Subcommittee on Prevention of Torture (SPT).

This report contains an analytical summary of the main issues discussed and the outcomes of the debates, including suggestions for further action by the different actors.

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